CHAPTER TWO

The Negotiator’s Dilemma: Creating and Claiming Value

This chapter investigates the essence of the negotiation process. We assume that each negotiator strives to advance his interests, whether they are narrowly conceived or include such concerns as improving the relationship, acting in accord with conceptions of equity, or furthering the welfare of others. Negotiators must learn, in part from each other, what is jointly possible and desirable. To do so requires some degree of cooperation. But, at the same time, they seek to advance their individual interests. This involves some degree of competition.

That negotiation includes cooperation and competition, common and conflicting interests, is nothing new. In fact, it is typically understood that these elements are both present and can be disentangled. Deep down, however, some people believe that the elements of conflict are illusory, that meaningful communication will erase any such unfortunate misperceptions. Others see mainly competition and take the cooperative pieces to be minimal. Some overtly acknowledge the reality of each aspect but direct all their attention to one of them and wish, pretend, or act as if the other does not exist. Still others hold to a more balanced view that accepts both elements as signifi-
cant but seeks to treat them separately. In this chapter, we argue that all these approaches are flawed.

A deeper analysis shows that the competitive and cooperative elements are inextricably entwined. In practice, they cannot be separated. This bonding is fundamentally important to the analysis, structuring, and conduct of negotiation. There is a central, inescapable tension between cooperative moves to create value jointly and competitive moves to gain individual advantage. This tension affects virtually all tactical and strategic choice. Analysts must come to grips with it; negotiators must manage it. Neither denial nor discomfort will make it disappear.

Warring Conceptions of Negotiation

Negotiators and analysts tend to fall into two groups that are guided by warring conceptions of the bargaining process. In the left-hand corner are the "value creators" and in the right-hand corner are the "value claimers."

VALUE CREATORS

Value creators tend to believe that, above all, successful negotiators must be inventive and cooperative enough to devise an agreement that yields considerable gain to each party, relative to no-agreement possibilities. Some speak about the need for replacing the "win-lose" image of negotiation with "win-win" negotiation, from which all parties presumably derive great value. For example, suppose that the mayor of a southern city learns when negotiating with the city's police union that, compared to the union, she places relatively greater weight on wage reductions than on the composition of a civilian review board. She may find that offering changes in the composition of the board for previously unattainable wage reductions may create benefit for both parties compared to the otherwise likely agreement with higher wages and with the current civilian review board composition.

Communication and sharing information can help negotiators to create value jointly. Consider the case of a singer negotiating with the owner of an auditorium over payment for a proposed concert. They reached impasse over the size of the fee with the performer's demands exceeding the owner's highest offer. In fact, when the amount of the fixed payment was the issue, no possibility of agreement may have existed at all. The singer, however, based his demand on the expectation that the house would certainly be filled with fans while the owner projected only a half-capacity crowd. Ironically, this difference in their beliefs about attendance provided a way out. They reached a mutually acceptable arrangement in which the performer received a modest fixed fee plus a set percentage of the ticket receipts. The singer, given his beliefs, thus expected an adequate to fairly large payment; the concert-hall owner was happy with the agreement because he only expected to pay a moderate fee. This "contingent" arrangement, of the sort discussed in Chapter Five, permitted the concert to occur, leaving both parties feeling better off and fully willing to live with the outcome.

In addition to information sharing and honest communication, the drive to create value by discovering joint gains can require ingenuity and may benefit from a variety of techniques and attitudes. The parties can treat the negotiation as solving a joint problem; they can organize brainstorming sessions to invent creative solutions to their problems. They may succeed by putting familiar pieces of the problem together in ways that people had not previously seen, as well as by wholesale reformulations of the problem.

Roger Fisher and Bill Ury give an example that concerns the difficult Egyptian-Israeli negotiations over where to draw a boundary in the Sinai. 1 This appeared to be an absolutely classic example of zero-sum bargaining, in which each square mile lost to one party was the other side's gain. For years the negotiations proceeded inconclusively with proposed boundary lines drawn and redrawn on innumerable maps. On probing the real interests of the two sides, however, Egypt was found to care a great deal about sovereignty over the Sinai while Israel was heavily concerned with its security. As such, a creative solution could be devised to "unbundle" these different interests and give to each what it valued most. In the Sinai, this involved creating a demilitarized zone under the Egyptian flag. This had the effect of giving Egypt "sovereignty" and Israel "security." This situation exemplifies extremely common tendencies to assume that negotiators' interests are in direct opposition, a conviction that can sometimes be corrected by communicating, sharing information, and inventing solutions.

Value creators advocate exploring and cultivating shared interests in substance, in maintaining a working relationship, in having a

pleasant nonstrident negotiation process, in mutually held norms or principles, and even in reaching agreement at all. The Marshall Plan for economic rehabilitation of postwar Europe arose in part from the common interests in a revitalized Europe seen by Truman, Marshall, many in Congress, as well as numerous key Europeans. The Marshall Plan thus created great value for many.

We create value by finding joint gains for all negotiating parties. A joint gain represents an improvement from each party's point of view; one's gain need not be another's loss. An extremely simple example makes the point. Say that two young boys each have three pieces of fruit. Willy, who hates bananas and loves pears, has a banana and two oranges. Sam, who hates pears and loves bananas, has a pear and two apples. The first move is easy: they trade for pear and are both happier. But after making this deal, they realize that they can do still better. Though each has a taste both for apples and oranges, a second piece of the same fruit is less desirable than the first. So they also swap an apple for an orange. The banana-pear exchange represents an improvement over the no-trade alternative; the apple-orange transaction that leaves each with three different kinds of fruit improves the original agreement—is a joint gain—for both boys.

The economist's analogy is simple: creativity has expanded the size of the pie under negotiation. Value creators see the essence of negotiating as expanding the pie, as pursuing joint gains. This is aided by openness, clear communication, sharing information, creativity, an attitude of joint problem solving, and cultivating common interests.

VALUE CLAIMERS

Value claimers, on the other hand, tend to see this drive for joint gain as naive and weak-minded. For them, negotiation is hard, tough bargaining. The object of negotiation is to convince the other guy that he wants what you have to offer much more than what he has; moreover, you have all the time in the world while he is up against pressing deadlines. To "win" at negotiating—and thus make the other fellow "lose"—one must start high, concede slowly, exaggerate the value of concessions, minimize the benefits of the other's concessions, conceal information, argue forcefully on behalf of principles that imply favorable settlements, make commitments to accept only highly favorable agreements, and be willing to outwait the other fellow.

The Negotiator's Dilemma: Creating and Claiming Value

The hardest of bargainers will threaten to walk away or to retaliate harshly if their one-sided demands are not met; they may ridicule, attack, and intimidate their adversaries. For example, Lewis Glucksman, once the volatile head of trading activities at Lehman Brothers, the large investment banking firm, employed the hardest sort of bargaining tactics in his bid to wrest control of Lehman from then-Chairman Peter G. Peterson after being elevated to co-CEO status with Peterson. As co-CEO, Glucksman abruptly demanded full control of the firm, making a thinly veiled threat that unless his demands were met, he would provoke civil war at Lehman and take the entire profitable trading department elsewhere. When Peterson and others desperately sought less damaging accommodation, Glucksman conveyed the impression that "his feet were set in cement," even if that meant the destruction of the firm. (Ultimately, Peterson left with a substantial money settlement and Glucksman presided briefly over a shaken Lehman that was soon sold at a bargain price to American Express.)

At the heart of this adversarial approach is an image of a negotiation with a winner and a loser: "We are dividing a pie of fixed size and every slice I give to you is a slice I do not get; thus, I need to claim as much of the value as possible by giving you as little as possible.''

A Fundamental Tension of Negotiation

Both of these images of negotiation are incomplete and inadequate. Value creating and value claiming are linked parts of negotiation. Both processes are present. No matter how much creative problem solving enlarges the pie, it must still be divided; value that has been created must be claimed. And, if the pie is not enlarged, there will be less to divide; there is more value to be claimed if one has helped create it first. An essential tension in negotiation exists between cooperative moves to create value and competitive moves to claim it.

While creating value by exchanging civilian review board provisions for wage reductions, the southern city mayor may be able to squeeze out large wage reductions for minor changes in the composition of the civilian review board. Or, the concert hall owner may offer the singer a percentage of the gate combined with a fixed fee that is just barely high enough to induce the singer to sign the contract. Even when the parties to a potential agreement share strong common interests, one side may claim the lion's share of the value an agree-
ment creates. To achieve agreement on plans to rebuild Europe Truman was forced to forego much of its value to him by not incorporating it into his election campaign and by explicitly giving credit to others—the Marshall Plan sounds quite different from what he would have preferred to call the Truman Plan.

The Tension at the Tactical Level

The tension between cooperative moves to create value and competitive moves to claim it is greatly exacerbated by the interaction of the tactics used either to create or claim value.

First, tactics for claiming value (which we will call “claiming tactics”) can impede its creation. Exaggerating the value of concessions and minimizing the benefit of others’ concessions presents a distorted picture of one’s relative preferences; thus, mutually beneficial trades may not be discovered. Making threats or commitments to highly favorable outcomes surely impedes hearing and understanding others’ interests. Concealing information may also cause one to leave joint gains on the table. In fact, excessive use of tactics for claiming value may well sour the parties’ relationship and reduce the trust between them. Such tactics may also evoke a variety of unhelpful interests. Conflict may escalate and make joint prospects less appealing and settlement less likely.

Second, approaches to creating value are vulnerable to tactics for claiming value. Revealing information about one’s relative preferences is risky. If the mayor states that she gives relatively greater weight to wage reductions than to civilian review board composition, the union representative may respond by saying that the union members also feel more strongly about wage reductions, but would be willing to give in a little on wage reductions if the mayor will compensate them handsomely by completely changing the board. The information that a negotiator would accept position A in return for a favorable resolution on a second issue can be exploited: “So, you’ll accept A. Good. Now, let’s move on to discuss the merits of the second issue.” The willingness to make a new, creative offer can often be taken as a sign that its proposer is able and willing to make further concessions. Thus, such offers sometimes remain undisclosed. Even purely shared interests can be held hostage in exchange for concessions on other issues. Though a divorcing husband and wife may both prefer giving the wife custody of the child, the husband may

‘‘suddenly’’ develop strong parental instincts to extract concessions on alimony in return for giving the wife custody.

In tactical choices, each negotiator thus has reasons not to be open and cooperative. Each also has apparent incentives to try to claim value. Moves to claim value thus tend to drive out moves to create it. Yet, if both choose to claim value, by being dishonest or less than forthcoming about preferences, beliefs, or minimum requirements, they may miss mutually beneficial terms for agreement.

Indeed, the structure of many bargaining situations suggests that negotiators will tend to leave joint gains on the table or even reach impasses when mutually acceptable agreements are available. We will use an extended, simplified example of a cable television operator negotiating with a town over the terms of the cable franchise to explore the tactical dilemmas that often lead to suboptimal outcomes.

Stone versus Ward

Mr. Stone, representing MicroCable Inc., and Mayor Ward, representing the town council of a town we will call Clayton, are negotiating three issues: the price the town residents would have to pay for their subscriptions, the date by which the system would be fully operational (the completion date), and the number of cable channels to be offered.

The Mayor places greatest weight on a speedy completion date, in part because of his upcoming reelection campaign. Within the range of feasible prices and numbers of channels, he cares approximately the same about the price, which he would like to minimize, and the number of channels, which he would like to maximize. The cable company gives greatest weight to price and the least weight to the number of channels. MicroCable would of course like the highest price and the slowest completion, but perhaps surprisingly, Stone estimates that, though providing more channels involves additional costs, it would ultimately pay off handsomely because he will be able to sell more pay TV subscriptions. Neither party is certain about the other’s beliefs and preferences. If both were to reveal their preferences to a third party and to ask her to construct a jointly desirable agreement, the agreement might well specify the maximum number of channels, a high price, and a relatively fast completion.

In preparing for the negotiation, Mayor Ward recalls the experience of a colleague who had negotiated with a different cable firm.
His colleague had publicly expressed a strong interest in a quick completion time—which he ultimately obtained but only after being unmercifully squeezed on price. Mayor Ward fears that Stone would respond opportunistically to a similar announcement, insisting that fast completion would be very costly for him but that perhaps he could arrange it only in return for very high prices and few channels. Such an agreement would be barely acceptable to the Mayor and the town, but would, the Mayor guesses, be quite desirable for Stone. In other words, Mayor Ward fears that if he attempts to jointly create value by sharing information about his preferences, Stone will attempt to claim the value by being misleading about his preferences. Thus, the Mayor elects to be a bit cagey and plans to downplay his interests in completion and the number of channels. He also plans to exaggerate his interest in a low price, with the hope of ultimately making a seemingly big concession on that issue in return for a big gain on completion and channels.

Stone has similar inclinations. If he lets the Mayor know that he is much more concerned with price than with speed of completion and that he actually wants more channels, he reasons, he will have given up all his bargaining chips. Mayor Ward would, he guesses, initially offer a moderately high price but only in return for an unbearably early completion date. And, he fears that the Mayor would use the town’s political process to make it difficult to be dislodged from his offer. Thus, Stone is also afraid that if he attempts to create value by sharing information about his preferences, the Mayor will attempt to claim that value by being opportunistic about his and may also try to make a binding commitment to his preferred position. So, Stone also chooses to be cagey, but plans to let the Mayor and the town know, early on, that a moderate completion time and a moderate number of channels are barely possible and are very costly to him. He has an assistant prepare slides detailing the costs, but not the revenue forecasts, of additional channels. The assistant also prepares financial analyses that are intended to show that he will need high prices to recoup the cost of even such moderate concessions. Ultimately, he hopes to concede a little on the completion date for a modest price increase, and to appear magnanimous in making a final concession of the maximum number of channels for a last major price increase.

The negotiation begins in the conference room at Clayton City Hall. The Mayor welcomes Stone and his associates. He talks at some length about the value that his town’s citizens place on cable television and about the fine reputation of Stone’s firm. He then expresses his strong hope and belief that Clayton and MicroCable will come to a mutually beneficial agreement as the first step in a working relationship. Stone thanks the Mayor for his warm welcome. He feels that it is important to draw attention to their common ground: both the town and MicroCable want to see a fine cable system in Clayton. In this negotiation, they are thus looking out for each other’s interests.

As the formal negotiation starts, Mayor Ward and Stone begin to thrust and parry. The Mayor stresses the importance the city places on keeping the price down. He also mentions that speedy completion and a large number of channels would be preferred by Clayton’s residents. Stone responds sympathetically but explains the high cost of even normal completion times and of the number of channels in a basic system. Adding channels to the system and accelerating construction of the system faster than its “normal rate” are sufficiently costly that a cable franchise would be virtually unprofitable. He presents financial analyses showing the costs both of more channels and of “accelerated” completion dates.

Unable to counter directly, Mayor Ward alludes to (not yet formally received) strong offers by other cable operators. Stone parries by mentioning another town that eagerly seeks the superior MicroCable system, but says that he would of course rather do business in Clayton. They move beyond this minor impasse by concentrating on the price, in which both sides have expressed strong interest. They bargain hard. The Mayor claims that neither the town council nor the citizenry could approve a franchise with anything more than a moderate price, unless the services were extraordinary. Stone then cites still more of his financial analyses. Each searches for a favorable wedge. After arguing about different definitions of “fair and reasonable profit” and “fair return on investment,” they compromise by agreeing on the price reached in a negotiation between a neighboring town and one of MicroCable’s competitors. The Mayor never realizes that Stone could be more flexible on completion dates and does not arrange as early a date as he might have gotten for the price. And, ironically, Stone’s careful financial presentation about the costs of adding channels makes it difficult for him to offer the town the maximum number of channels without losing face. The bargaining is tense, but they ultimately settle at a compromise on each issue: a moderate price, a moderate completion date, and about half the maximum number of channels.
Both men leave feeling good about the outcome. As Stone says to his assistant, "We didn't get everything we wanted but we gave as good as we got." Before the town council's vote on the franchise agreement, the Mayor describes the negotiation as a success: "If both sides complain a bit about the agreement, then you know it must be a good deal." The town council approves the proposal unanimously.

In the negotiations, each of the parties was afraid that his attempt to create value by sharing information would be exploited by the other's claiming tactics. Each chose to attempt to mislead or claim a bit, in self-protection. And, relative to what was possible, they ended up with an inferior solution. They left joint gains on the table. Both would have preferred the maximum number of channels and both would have preferred a higher price in return for earlier completion. A pity, but not uncommon.

The Negotiator's Dilemma

Let us abstract from this example. Consider two negotiators (for continuity named Ward and Stone) each of whom can choose between two negotiating styles: creating value (being open, sharing information about preferences and beliefs, not being misleading about minimum requirements, and so forth) and claiming value (being cagey and misleading about preferences, beliefs, and minimum requirements; making commitments and threats, and so forth). Each has the same two options for any tactical choice. If both choose to create value, they each receive a good outcome, which we will call GOOD for each. If Ward chooses to create value and Stone chooses to claim value, then Stone does even better than if he had chosen to create value—rank this outcome GREAT for Stone—but Ward does much worse—rank this outcome TERRIBLE for him. Similarly, if Stone is the creative one and Ward is the claimer, then Ward does well—rank this outcome for him as GREAT—while Stone's outcome is TERRIBLE. If both claim, they fail to find joint gains and come up with a mediocre outcome, which we call MEDIocre for both. Figure 2.1 summarizes the outcomes for each choice. In each box, Ward's payoff is in the lower left corner and Stone's is in the upper right. Thus, when Ward claims and Stone creates, Ward's outcome is GREAT while Stone's is TERRIBLE.

Now, if Ward were going to create, Stone would prefer the GREAT outcome obtained by claiming to the GOOD outcome he could have obtained by creating; so, Stone should claim. If, on the other hand, Ward were going to claim, Stone would prefer the MEDIocre outcome from claiming to the TERRIBLE outcome he would receive from creating. In fact, no matter what Ward does, it seems that Stone would be better off trying to claim value!

Similarly, Ward should also prefer to claim. By symmetric reasoning, if Stone chooses to create, Ward prefers the GREAT outcome he gets by claiming to the the GOOD outcome he gets from creating. If Stone claims, Ward prefers the MEDIocre outcome he gets from claiming to the TERRIBLE outcome he gets from creating.

Both negotiators choose to claim. They land in the lower-right-hand box and receive MEDIocre outcomes. They leave joint gains on the table, since both would prefer the GOOD outcomes they could have received had they both chosen to create value and ended up in the upper-left-hand box.

This is the crux of the Negotiator's Dilemma. Individually rational decisions to emphasize claiming tactics by being cagey and misleading lead to a mutually undesirable outcome. As described,

 Several authors have discussed versions of similar negotiation dilemmas. See for example Zartman (1976) and Pruitt (1981). In our judgment, the best such discussion, usefully developed in a different direction, can be found in Walton and McKersie (1965, 1966). An abstract version of a similar dilemma is currently being investigated by game theorists studying bargaining with incomplete information. One major result, due to Myerson (1979), is that in highly simplified situations that are analogous to the ones we discuss, fully honest revelation of private information by individual bargainers and Pareto efficiency cannot simultaneously be achieved. This is a starkly abstracted analogue of the result we describe that tends to result from the tension between competitive moves to create value and competitive moves to claim it individually.
this situation has the structure of the famous "Prisoner's Dilemma." In such situations, the motivation to protect oneself and employ tactics for claiming value is compelling. Because tactics for claiming value impede creation, we expect negotiators in many settings to leave joint gains on the table. And, over time, the inexorable pull towards claiming tactics is insidious: negotiators will "learn" to become value claimers. A negotiator inclined towards sharing information and constructive, mutually desirable agreements, after being skewed in several encounters with experienced value-claimers, may bitterly come to alter his strategy to a more self-protective, value-claiming stance. Williams' description of new attorneys learning to negotiate out-of-court settlements is consistent with this analysis:

During the first few months of practice, they encounter some attorneys who hammer them into the ground, exploiting and taking advantage of them at every turn, and others who are trying to teach them how to be good lawyers. The experience is not calculated to engender trust in fellow officers of the court. Rather, the tendency in young lawyers is to develop a mild paranoia and to distrust everyone. This is unfortunate, because some opponents are providing valuable information, albeit in subtle ways.

Because both sides in our negotiation would prefer to end up with a GOOD-GOOD (create-create) outcome rather than a MEDIUM-MEDIUM (claim-claim) one, experience may "teach" negotiation

In addition to the payoff structure, the classic Prisoner's Dilemma involves rules of interaction: no communication and the inability of the parties to make prior, communicated, binding commitments to one choice or the other. Under these rules, the equilibrium in a single play of the Prisoner's Dilemma is for both players to defect (claim). (For a perspective discussion of the Prisoner's Dilemma, see Luce and Raiffa, 1957). In negotiations, of course, communication is possible, and credible irreversible commitments to cooperate are difficult but not always impossible to make. Thus, we suggest that the structure of the Negotiator's Dilemma implies a tendency for both parties to choose to claim value, but not that this is an irreversible equilibrium. Moreover, we shall argue below that a negotiation in fact contains a sequence of choices with much the same structure, though again the rules of interaction differ. The economic equilibrium for playing a finite number of repetitions of the Prisoner's Dilemma is to defect (claim) in every play. But experimental results suggest that players playing the finitely repeated Prisoner's Dilemma often do better than the "rational" players of game theory and are sometimes able to cooperate for substantial mutual gain. Thus, we do not take the analogy to the repeated Prisoner's Dilemma to imply that people will use game-theoretic equilibrium strategies, but to suggest a powerful tendency toward such behavior.

---

The Negotiator's Dilemma: Creating and Claiming Value

lessons that both sides, like Williams's young attorneys, would be better off not having "learned."

Taking the Negotiator's Dilemma Metaphor
Seriously but Not Literally

The Negotiator's Dilemma characterizes the whole of a negotiation. Yet the Dilemma is a simplification, a metaphor. As presented, it appears to condemn each negotiator to a once-and-for-all choice as a creator or claimer; clearly there are many choices along the way.

The dilemma is also meant to apply to each tactical choice. Even here, the line between "creating" and "claiming" need not be clear-cut. A negotiator can reveal information early, late, throughout, or not at all; she can mislead by omission, commission, or be straight. She may discover a new option for mutual benefit, a joint gain, but present it in such a way that it emphasizes only agreements highly favorable to her. She may offer a creative proposal or hold back because it conveys sensitive information about tradeoffs or minimal requirements. Yet at a basic enough level, tactical choices embody the creating-claiming tension, even if they contain elements of both.

Thus, we take the Negotiator's Dilemma seriously, even though we do not take the matrix representation literally. The tension it reflects between cooperative impulses to create value and competitive impulses to claim it is inherent in the large and in the small. The essence of effective negotiation involves managing this tension, creating while claiming value.

---