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The False Promise of Principled Negotiations

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For over two decades, the method of principled negotiation has been the dominant formative approach to negotiation. Its flagship book, *Getting to Yes* (Fisher & Ury, 1981; Fisher, Ury, & Patton, 1991) remains the standard presentation of the method. *Getting to Yes* promotes the method of principled negotiation as an all-purpose strategy of negotiation. The authors of *Getting to Yes* developed the method of principled negotiation as an alternative to positional bargaining. In this article, the author contends that the method of principled negotiation is not the all-purpose strategy of negotiation promised in *Getting to Yes*. Furthermore, the author contends that the method of principled negotiation is not a strategy of negotiation at all. In addition, the author contends that by persuading that principled negotiation is an all-purpose strategy *Getting to Yes* misleads negotiators, hinders the development of actual negotiation strategies, and leads to suboptimal results in many negotiations. In this paper, the author discusses the main concepts used in building the method of principled negotiation and shows that the method is built on incomplete definitions and erroneous assumptions. The author argues in favor of moving beyond the method of principled negotiation in order to find actual solutions to the challenges posed by different negotiations. Thus, the author proposes using a variety of strategies designed to achieve different goals, instead of trying to use, in every case, the “all-purpose” method/strategy of principled negotiation.

Introduction

Negotiation is a goal-oriented and voluntary process of communication between two or more individuals or organizations. The goal of negotiation is to provide each of the negotiating parties with an outcome it desires. The parties may negotiate to exchange resources in a transaction, or they may negotiate to join forces in a cooperative effort to generate the result they want. Negotiation is a basic tool in the management of personal and organizational conflicts. Negotiation is a crucial managerial skill.

Negotiating can be difficult and costly. The cost of negotiations includes spending financial resources, devoting time, and being emotionally engaged. A negotiator pays the price regardless of the result of the negotiation. The investment can be significant, and makes sense only in the context of the specific goal the negotiator wants to achieve.

Because negotiations can be difficult and costly, professional negotiators and organizations are permanently looking to increase negotiation efficiency and effectiveness. Every reasonable negotiator searches for better ways of negotiating. Negotiators attend seminars and workshops, and buy books in a search for new ideas.

Books and seminars about how to negotiate are plentiful. Most of them promise a universal solution to negotiation’s dilemmas: all a negotiator has to do is to follow few simple recommendations and all negotiations will end in successful agreement. This is

fantasy. The easy and universal solutions are inevitably the result of oversimplifying negotiations. Usually, the authors or presenters examine a particular situation or type of negotiation and then generalize their recommendations to all types of negotiations.

The best-known and most influential book about negotiations is *Getting to Yes: Negotiating Agreement Without Giving In* (Fisher & Ury, 1981; Fisher et al., 1991). The book promotes the idea of using the method of principled negotiation as an all-purpose strategy of negotiation. The authors of *Getting to Yes* developed the method/strategy of principled negotiations in several additional publications. This article takes into account the content of the sequels of *Getting to Yes*.

Getting to Yes is a model of reader-friendly and persuasive writing. Its argumentation is commonsensical and the examples recall situations well known or easy to imagine. The book makes the case for the method of principled negotiation in a very appealing manner. *Getting to Yes* is a wonderful introduction to the negotiation of transactions, particularly within the context of an ongoing relationship (for example, between husband and wife). There is no doubt that all negotiators would benefit by mastering the advice contained in *Getting to Yes*. At the same time, it is essential to recognize its limitations.

Review of *Getting to Yes*

The method of principled negotiation consists of a set of four recommendations or principles. According to *Getting to Yes* the four principles put together add up to a very special strategy, a strategy anyone can use in any negotiation regardless of the goal of that negotiation (Fisher et al., 1991, p. xix).

Getting to Yes makes the assumption that “every negotiation is different, but the basic elements do not change” (Fisher et al., 1991, p. xix). Thus, according to *Getting to Yes*, it is reasonable to believe that an all-purpose strategy of negotiation exists. This is the rationale behind the method of principled negotiation—the all-purpose strategy of negotiation.

The authors of *Getting to Yes* believe that all negotiations are basically the same process. *Getting to Yes* explicitly assumes that all negotiations are about transactions in which the parties exchange resources, so that each side gets something from the other (Fisher et al., 1991, p. xvii). In addition, they believe that positional bargaining (or haggling) is the prototype for all negotiations; they call it the standard strategy. Thus, they built the method of principled negotiation as an alternative to positional bargaining (Fisher et al., 1991, p. 6).

The four recommendations of the principled method of negotiation are:

- Separate the people from the problem
- Focus on interests not positions
- Invent options for mutual gain
- Insist on using objective criteria

For example, the method advises that in a negotiation, instead of rejecting the other’s position openly, a negotiator should ask questions about the rationale behind that position (focus on interests not positions). Thus, the negotiator may lead the others to discover by themselves the flaws in their positions. Also, as a consequence, the negotiator may get a better understanding of the others’ interests. This recommendation has its origins in an

ancient Greek method of debate often called Socratic questioning. *Getting to Yes* also relies on the use of scientific reasoning, directing that disagreement between individuals should be settled on the basis of evidence and objective rationality. In this way, the goal of a negotiation becomes a quest for determining the truth, independent from the subjective preferences of the negotiators. This idea of a rational spirit in search of truth, to which personal preferences have to give way, also can be traced back to ancient Greece.

The method of principled negotiation can be seen as an attempt to bridge the divide that exists between negotiations that take place in society at large, and the functioning of the scientific community when settling academic disputes. It is a call for negotiators to keep emotions under control and behave rationally. In addition, the method is based on the idea that negotiations are non-zero sum games—that individuals negotiate because of an implicit assumption that agreement is possible. As such, the recommendations contained in the method of principled negotiation—each independently—are valid.

In the field of alternative dispute resolution, these recommendations have a long history: (1) the use of objective criteria, is a core element in any reasonable judicial system, it is used in arbitration and, of course, when negotiating the settlement of a preexisting conflict; (2) the idea of inventing multiple options from which to choose is the core element of package negotiation, in which the goal is to find a Pareto optimum allocation; (3) the focus on interests instead of positions is a basic tool used in mediation; and (4) the use of joint brainstorming techniques to invent solutions is an essential feature of teamwork and cooperation negotiation.

The Main Flaws of the Method of Principled Negotiations

Oversimplification of Negotiations

Getting to Yes sees negotiation exclusively as a means of getting something *from* the other in a transaction (Fisher et al., 1991, p. xvii). *Getting to Yes* does not recognize that individuals may negotiate to get things from the other (if the other has the desired resources) or they may negotiate to join forces with the other to produce the desired resources. Thus, *Getting to Yes* does not recognize the difference that exists between negotiating to buy something from someone and negotiating to marry that person.

Also, *Getting to Yes* does not see the distinctiveness of the negotiations that define management. A manager's job consists, precisely, in getting things done through and *with* others. The very existence of every organization is the result of an effort to integrate the parties. In transactions the goal is to exchange, allocate, or redistribute resources the parties already have, usually for independent use by the parties after negotiation. In contrast, in negotiations to join with others the parties' goal is to generate something they do not have (hence cannot exchange). In this case, after the negotiation, the parties stay together, share resources, and start working jointly to achieve the goal they have agreed upon.

The difference between negotiations to unite (merge or marry) with the other and negotiations to buy a service from that other is enormous, both in terms of the purpose and of the procedure required to reach a viable agreement. For example, usually formal negotiations of transactions begin with an initial offer (or with a call for an offer). In contrast, formal negotiations aimed at creating a new relationship (for example in a merger) usually begin with an opening statement. These are two completely different documents

that serve different purposes and initiate different negotiation procedures. In less formal circumstances, when buying something, the beginning of the process is usually the tag price (initial offer). If, on the other hand, one side wants to marry the other, the first one may start the conversation with an “I love you”—an opening statement. In a marriage negotiation, advancing a price offer would be a terrible *faux pas*.

Some negotiations have elements of both types of negotiations, for example, when an individual negotiates employment with an organization. The negotiation is about bringing the parties together in a new type of collaborative relationship, and simultaneously each side expects to get something from the other. The strategy the parties will use, in this negotiation, depends on the projected significance of the relationship. In some cases, the negotiation strategy will emphasize the transactional aspect of the contract, and in other the joining together aspect of the agreement.

The method of principled negotiation is about transactions and settlements involving resources that are external to the parties. In transactions, the parties can look at the resources at stake (product offered and payment required) as external to, and independent from, the mutual feelings and attitudes the parties may have. Hence, negotiators can separate “the people” (the individuals’ mutual perception and feelings) from “the problem” (the things or issues that are at stake). In these negotiations, the substance (the resources at stake) is something the parties can give up or exchange. For example, one party can give away money in exchange for another party’s product, or as compensation or reimbursement for past wrongdoings or loss. In some cases, one can put the money and the products that are at stake on a table, and look at them from a distance. The substance exists independently from the parties. It is external to the parties.

In contrast, in negotiations to join forces, the projected relationship and the individuals involved are the “substance” of the negotiation. In this case, a negotiator cannot separate the people (or the relationship) from the problem (the substance). For these and other reasons the two types of negotiation require the use of different strategies. The definition of negotiation used in *Getting to Yes* does not allow for the differentiation between these two cases of negotiations. In reality, it does not allow for the existence of the second type of negotiation.

Principled negotiation mistakenly assumes that in all negotiations, the substance is external to the negotiating parties. The method of principled negotiation fails to recognize that in some negotiations the parties themselves and the relationship they share is the substance of the negotiation.

The method thus erroneously requires that negotiators follow the same pattern of behavior in both types of negotiations. Principled negotiation asserts that negotiators should (1) separate the substance from the parties; (2) build packages to overcome conflicting interests; and (3) request objective justification of offers. In addition, negotiators should prepare for negotiation by developing their best alternative to a negotiated agreement (BATNA) i.e., an alternative source of what they want.

The foregoing simple recommendations constitute the whole of the principled negotiation method. They leave unanswered, however, a number of questions. What is the meaning of developing a “best alternative” in a marriage negotiation? How objective can be the parties’ feelings, moral values, preferences, and culture? How can one build tradeoffs with abstract values like solidarity, honesty, commitment, autonomy, sympathy, care, and love?

In a negotiation to organize a common effort or to fuse with the other, more important than what I get from the other is what we can achieve together. The method of principled negotiation oversimplifies the multiplicity of types of negotiation processes and ignores this important distinction. The method disregards essential elements of merger negotiations and other negotiations aimed at integrating the parties. Principled negotiation fails even to acknowledge these forms of negotiation as a distinct category. Thus, it does not realize the significance of the intangibles in these negotiations.

In fact, it is the intangibles that make each organization unique and successful. Rarely will a successful merger result where the negotiators have ignored cultural differences, values, and the implicit psychological contract. Negotiators that follow the method of principled negotiation tend to focus instead on the visible, relatively easy-to-handle, material issues. A negotiation to merge turns into negotiating an acquisition (one side buys the other), in which the intangibles have been completely disregarded.

The failure to recognize the difference between a merger or marriage and a purchase-and-sale of an asset is repeated in almost every merger negotiation in the United States. The failure rate for corporate merger agreements is catastrophic. Available data shows that the probability of corporate merger success is much lower than the chance of making a profit by tossing a coin.

Anyone who has researched merger success rate knows that more than 70% of all mergers and acquisitions fail to produce any benefit for the shareholders, and over half actually destroy value (Suri & Joshi, 2011).

Both the quality of an agreement and the likelihood of implementation success are a function of the quality of the negotiation that led to the agreement. We can infer, therefore, that too often there is something wrong with the way negotiators are handling merger negotiations. In most cases, the negotiators are smart businesspersons who have been trained in the most expensive negotiation programs in the country. The negotiators' failure reflects in very large part a failure of the model of negotiation that they have been taught—a failure of the method of principled negotiation.

Misunderstanding of the Concept of Strategy

Getting to Yes obscures the topic of negotiations by failing to clarify many basic terms (e.g., strategy, relationship, agreement) and failing to take into account that many of these terms have multiple competing meanings in vernacular English and in social sciences. For example, the authors of the method of principled negotiation are indecisive about how to name the set of recommendations they put together: is it a method, an approach, or a strategy of negotiation? They use these concepts interchangeably.

In most cases, *Getting to Yes* calls principled negotiation a method, although the book also says that there are three strategies: hard positional bargaining, soft positional bargaining, and principled negotiation (Fisher et al., 1991, p. xviii). The book calls the first two the standard strategies of negotiation. The book also states that there are other strategies. We can only guess that these are the nonstandard strategies, but *Getting to Yes* does not reveal what these are.

To make things worse, *Getting to Yes* claims that the method of principled negotiation is a strategy that serves “all purposes;” in other words, that the method of principled negotiation is a strategy one can use in any negotiation, regardless of the particular goal of

that negotiation. In *Getting to Yes*, when designing a strategy, the particular goal of the negotiation does not matter.

But, does it matter? To answer this question, let us imagine General Grant writing to President Lincoln that, while he does not have a strategy for the upcoming campaign, he knows and is confident in a fighting method or approach to war. Would President Lincoln have found Grant's confidence in a method or approach and acceptable substitute for a strategy? A more recent example: What would have been the reaction if President Obama had said to Congress that he does not have a strategy for fighting ISIS, but that he has a method by which to carry out the fight? Most individuals intuitively know that there is a difference and that the difference matters.

In a social interaction, a strategy is an action plan designed by one side to achieve a specific goal when the result also depends on the actions of the other side. Negotiators need strategic planning because the actions of others remain largely uncertain and beyond control. A strategy requires rational justification.

A method, on the other hand, is a procedure designed to tackle a known and repetitive task, in situations largely under control and with low uncertainty about the result. A person's use of a method of doing something is often a matter of personal preference or taste.

A strategy is designed to achieve the goal promptly and with the minimum waste of resources (i.e., effectively and efficiently), whereas a method does not have to be efficient, as long as it promises to accomplish a task. For example, one can cook a Thanksgiving turkey following an ancient method used by one's ancestors. The method may involve very inefficient tools, but, if at the end the turkey is cooked, the method was good enough. The only justification for using the method may be sentimental reasons. A strategy requires thoughtful implementation. In contrast, a method may require the thoughtless repetition of some steps.

Getting to Yes argues in favor of using the all-purpose method/strategy of principled negotiation saying that the basic elements in all negotiations are the same. This is upside down reasoning: the factor that determines the design of a negotiation strategy is the specific goal the negotiator wants to achieve, not the basic elements common to all negotiations. Of course, negotiators need to know the basics. Nevertheless, strategic thinking requires negotiators to look forward to the specific goal they want to achieve. Different negotiation strategies exist precisely because negotiators seek to achieve different goals.

The method of principled negotiation does not have a specific goal; it is "all-purpose." Because the method does not have a goal, it does not constitute a plan. Therefore, the method of principled negotiation is not a negotiation strategy. And, if the method is not a strategy, then it necessarily cannot be the all-purpose strategy promised by *Getting to Yes*.

The existence of an all-purpose strategy is inconsistent with the very notions of strategic choice. To choose a person needs, at least, two viable alternatives. If a universally efficient and effective strategy in negotiations would exist, then the discovery of that strategy would render strategic thinking redundant and obsolete. If the method of principled negotiation would be the all-purpose strategy that *Getting to Yes* claims it to be, then there would be no need for further strategic thinking in negotiations. The concept of strategy would lose its meaning and the only remaining problem would be the tactical detail: how to implement the all-purpose strategy, how to express emotions, how to deal with the

other's emotions, how to react to verbal attacks, where to sit during a negotiation, and so on. The followers of the method of principled negotiation seem convinced that this is the case.

If, on the other hand, the method of principled negotiation is not in fact an all-purpose strategy, then to persuade negotiators that it is, has to lead to suboptimal results in most negotiations. This is true, particularly, in the context of organizational and business related negotiations. Organizations are complex entities that have extremely diverse stakeholders and that pursue very different goals in their relationship with those stakeholders. An organization that does not differentiate its strategies is condemned to be inefficient and ineffective in most of its negotiations. Like, for example, in the aforementioned case of merger negotiations.

A Mixture of Elements of Different Strategies

Instead of serving to achieve one goal, the recommendations of the method of principled negotiation serve two purposes. One is getting something from the other side in a settlement (using objective criteria). The other is getting something from the other in a package agreement (using tradeoffs). If the goal of a negotiation is either of these— reaching an objective settlement or building a package agreement— then the recommendations of principled negotiation can be very handy.

Nevertheless, these are two different goals that often lead to contradictory results. In the negotiation of a settlement based on objective criteria, the parties' preferences about allocation are of secondary significance (and often completely irrelevant). Objective criteria negotiation is similar to arbitration: the settlement has to be legitimate from a perspective external to the parties and independent of them. In contrast, a package agreement results from an effort to please the parties' preferences. A package agreement is good enough if the parties like it and believe it is implementable. External opinions are less important (and often completely irrelevant).

In a negotiation in which the goal is to allocate gains (or losses) between the parties, a negotiator may use one of the foregoing recommendations first, and, if that does not work, then the other. For example, the negotiator may present a package offer. If it does not work (the offer is rejected), then the negotiator may try the other recommendation: he or she may ask for an objective justification for the other's position. Where both parties are reasonable, having these two options may help in settling disagreement over allocation of resources. Negotiators may have the option of using the two recommendations separately (almost never simultaneously) precisely because these two recommendations belong with different strategies. The method of principled negotiation mixes elements of these two strategies without recognizing the differences and contradictions that exist between them.

The following analogy may help clarify the issue at hand: imagine a pharmacist who realizes that the majority of customers coming to the pharmacy buy the same few medicines. These are popular medicines that are effective treatment for some common conditions (let's call them the "standard diseases"). The pharmacist decides to take portions of each of the few popular medicines, mix them together, and market the mixture as an all-purpose medicine.

Is the mixture likely to cure anything? Most likely not, and if it does, it is purely by chance, or because of a placebo effect. In fact, you probably cannot expect the mixture to

cure even the diseases that the original components normally cure (when in the right quantities and without the interference and side effects of the other components). Is the mixture actually likely to provoke damage? Yes! Individuals would be taking doses of medicines that they do not need, in which case the effects of combining the drugs may be devastating.

Of course, the pharmacist can show examples of how each of the marvelous separate components efficiently deals with particular conditions. Regardless of how wonderful and convincing the examples may be, however, it does not mean that the mixture will work as an all-purpose medicine, or that the mixture cures a particular disease.

The pharmacist's claims are simply false, if not absurd. Nevertheless, because many customers have used in the past the original components and know about their efficiency, they may be persuaded to think that the mixture also will work wonders. The pharmacist can easily find customers ready to confirm that they had used (some of the components of) the medicine and that the particular component(s) worked.

This absurd pharmacist example characterizes the problem of the method of principled negotiation: the method is a mixture of elements from different strategies. The method has been presented in a very reader-friendly manner including wonderful examples. Nevertheless, it is built on faulty definitions and false assumptions and, under detail examination, its flaws become visible. The method is not a coherent strategy of negotiation at all.

The particular recommendations of the method of principled negotiation are associated with different negotiation strategies and different alternative methods of dispute resolution. For example, the idea of using objective criteria is a core element in arbitration and settlement negotiations. In arbitration, the goal is to settle a conflict regardless of the parties' preferences (arbitration does not care about "mutual gains"). On the other hand, inventing options of mutual gain is a basic element in package negotiation and mediation. In these strategies the goal is to create an agreement based on the parties' preferences. Therefore, in package negotiation, the parties spend time looking for tradeoffs (compromises) that reconcile their conflicting preferences. *Getting to Yes* does not recognize that these two recommendations have different purposes that, in some circumstances, may render them mutually incompatible. *Getting to Yes* simply mixes them and calls the mixture an "all-purpose strategy."

A significant element in the method of principled negotiations is that conflict should be resolved on its merits. This is the foundation of academic debate. It is important to remember the difference that exists between academic debate and negotiation. The two processes have a common element: in both there is a process of communicating back and forth for the purpose of reaching consensus. Nevertheless, usually the outcome of an academic dispute is not negotiable—it is a zero-sum game. An academic statement is either correct or incorrect. One side wins—the one that is correct, and the other loses—the one that is incorrect. In an academic debate about the truthfulness of a statement there is a lot of room for insisting on using objective criteria, but there is no room for inventing options for mutual gain.

For example, in this article the author claims that the method of principled negotiation is not an "all purpose strategy." This is a dispute about the truthfulness of a statement made in *Getting to Yes*. There is no room for negotiation: there are only two possible and

contradictory results; *Getting to Yes* is right and the author of this article wrong, or vice versa.

If the parties cannot find a decisive argument to settle an academic dispute, then the conflict remains unsolved and all scientists and academics can do is to continue to search for the truth. Of course, someone may argue that the difference between the parties is merely semantic and, therefore, that there is no real contradiction. But, then negotiation would not be necessary either because there would be no conflict. Clarification would suffice.

The advocates of principled negotiation may not like this article, its argumentation, analogies, examples, and style. They may accuse the author of not being polite enough, of having bad intentions or of being ignorant, and they may be right in all accounts. They may argue that the timing of the article is unfortunate, etc. But, all these arguments are irrelevant and even silly, because what counts is the merit of the debate, i.e., to decide who is wrong and who is right. This is the rationale behind the advice given in *Getting to Yes* to focus on the merits. Also, this is the argument behind Godwin's law that prohibits "playing the Hitler card" in online debates—the first one that accuses the other of being a Nazi loses the debate. In a debate, the side that launches personal attacks or focuses on non-issues reveals the hopelessness of its position.

Negotiations are much more complicated and varied than academic disputes! In negotiations, the parties often deal with future and uncertain events, and with constantly changing human needs, preferences, and subjective perceptions. Negotiations serve to manage social conflicts and ethical dilemmas much more difficult than establishing the truthfulness of an academic statement. Science can provide knowledge and criteria useful and often decisive in the negotiation of social conflicts. Also, the scientific method can provide some tips about the process of negotiations, but these tips are by no means an all-purpose strategy of negotiation.

The fact that all negotiations share some common features does not release negotiators from the obligation of designing appropriate strategies to attain different goals. The different goals a negotiator may face include, for example, settling a conflict after a breach of a previous agreement, determining the exchange price of commodities between mutually indifferent negotiators, building a Pareto optimal package agreement, joining forces with the other to achieve a specific objective before a deadline, merging for the lifetime with the other to form a new entity, etc. Each of these goals requires a different strategy. In all of these situations it is advisable to keep emotions under control and behave rationally. Nevertheless, keeping emotions under control and being reasonable does not constitute a strategy; it is not even a method of negotiation.

Negotiators need to be flexible. They need to know how and when they can make tactical adaptations during a negotiation. Nevertheless, a change of strategy is a different matter: strategic change usually implies a redefinition of the goal of the negotiation. Normally, the decision to modify the goal of a negotiation requires independent, calm, and thoughtful consideration of different scenarios. A change of strategy "in the heat of battle" is a symptom of poor strategic thinking.

A Misunderstanding of Positional Bargaining

In addition to the failure to provide a definition of strategy, *Getting to Yes* lacks a definition or explanation of some other crucial concepts, such as agreement. Consequently, many schools that preach the method of principled negotiation began to fill in the blanks with their own, often flawed, ideas. The most absurd of these ideas include, among others, that positional bargaining is a zero-sum game and that an agreement negotiated using positional bargaining is a “win-lose” result.

According to *Getting to Yes*, an important difference between positional bargaining and the method of principled negotiation is that in positional bargaining “the result is frequently an agreement less satisfactory to each side than it could have been” (Fisher et al., 1991, p. 5). In other words, *Getting to Yes* recognizes (correctly) that agreement negotiated using positional bargaining does provide both sides with a gain. Simultaneously, *Getting to Yes* says that the gains that the parties get when using positional bargaining are smaller than the gains they could get using the method of principled negotiation.

After recognizing that positional bargaining provides both sides with gains, *Getting to Yes* embarks on building a method that, in contrast to positional bargaining, provides both sides with mutual gains. This lack of logical consistency is behind many misunderstandings in the further development of the method of principled negotiation. Does positional bargaining provide both parties with gains or not? Many readers have drawn the unfortunate conclusion that positional bargaining precludes the parties achieving mutually beneficial results.

It is important to understand that there is a significant difference between “less satisfactory result for each side” and a “win-lose” or zero-sum result. Echoing the authors of *Getting to Yes*, we contend that any genuine agreement represents a “gain-gain” result. Any genuine agreement is the result of a voluntary decision made by the parties, because each of them independently considers the result “good enough”—each sees the agreement as a gain. In reality, when talking about positional bargaining, *Getting to Yes* contests the size of the gain that each party gets, not the fact that the gain is there. The fact that an agreement was negotiated using positional bargaining does not make it a “win-lose” or zero-sum result. Also, notice that the fact that an agreement represents gains for both sides (or mutual gains) does not mean that the relationship between the parties has changed or that the parties have been integrated.

In order to better illustrate the issue, let us imagine that you want to buy a car. Like millions of individuals in the United States every year, you decide to haggle hard to buy from a dealer in your city. After spending one hour in the showroom haggling over ever-smaller amounts of money, you reach an agreement with the dealer over the price. You say “yes” to an offer made by the dealer.

Why did you say “yes?” If you are like the majority of buyers in this market, you said “yes” because the price was good enough, i.e., you perceived buying the car for that price as a gain for you. Would you buy from a dealer knowing that you can make a better deal buying somewhere else, or not buying the car at all? If you are like most buyers, you would not. Also, you can assume with high certainty that the dealer has made a gain simultaneously. Do you think the dealer would sell you the car knowing that he or she would be worse off by selling you the car than would be by keeping it? You have to assume that most dealers know what they are doing and that they will sell you the car only if the

sale represents a gain for them. In other words, after haggling hard over the price, both sides have reached an agreement and both consider it a gain. There is no “zero-sum” or “win-lose” result, just a “gain-gain.”

During the positional negotiation that you had with the car dealer in the example above, every additional dollar that you had to pay was an additional gain for the dealer. By the same token, every additional dollar that you claimed was a “loss” for the dealer. This dynamic looks like a zero-sum game, but it is not. That is because each side has a different perception of value of the exchanged resources. The dealer values more the money that you are willing to pay than the car that he or she is willing to relinquish, and vice versa, you value more the car than having the money. Because of the significance of the difference in perceptions of value, the additional dollar that you claim or concede does not change the overall non-zero sum character of the interaction. You may pay more or less for the car, but as long as the amount that you pay is, for you, of lesser value than the car, you have a gain. And, voilà! After hard positional negotiation, the distributive agreement represents an “enlarged pie.”

The basic assumption behind positional bargaining is that negotiators haggle over the exchange price of resources to determine a price that both sides can accept voluntarily. You can never assume that anyone will voluntarily make a decision that he or she considers worse than the alternative (unless the person is insane). Therefore, a legitimate agreement is always a non-zero-sum result, and the game of genuine negotiation is always a non-zero-sum game. There is no other way in which you can think about the result of positional bargaining, particularly in a business environment in the free market. Let me emphasize that, by referring here to genuine or legitimate negotiation, we are excluding interactions in cases of blackmail, extortion, coercion, or patent deception.

Notice that the very concept of agreement implies that the parties are independently making a voluntary decision. For both parties to say yes, each has to perceive the agreement as a source of gains (even if these are only relative gains, as when individuals agree to something to minimize losses). Because every legitimate agreement represents a gain-gain result (regardless of the strategy used to negotiate it), it is redundant to state that the goal of a negotiation strategy is to reach an agreement of mutual gain.

Of course, negotiators sometimes make mistakes. Sometimes, for example, they sign agreements that they should not have signed. This happens in any kind of negotiation, integrative or distributive. Nevertheless, if you have the opportunity to talk to a negotiator at the moment when he or she says “yes,” you will notice that, at this very moment, each negotiator believes that he or she will be better off with the “yes” than with a “no.” It is this belief, at this very moment, that makes the negotiator say “yes.” It does not matter how the agreement has been negotiated, so long as it is a genuine agreement the moment the parties say “yes;” the agreement is a gain-gain result: each side is convinced it has a gain.

After making a serious decision (individually or in negotiations), parties have a tendency to feel uneasy and to have second thoughts. Often, individuals begin to consider a revision of the decision and sometimes they try to undo previous decisions. Sometimes, after accepting an agreement, individuals develop a feeling that the decision was wrong or that they may have been taken. Psychologists call this phenomenon post-decision dissonance.

The causes of post-decision dissonance are complex and often have little to do with the actual rationality or profitability of the decision. Negotiations may make post-decision

dissonance acute, by providing a counterpart that a negotiator can blame for the decision. Nevertheless, post-decision dissonance can have many causes, including a lack of self-knowledge (individuals often do not know what is good for them), uncertainty about the future, personal insecurity, and the like. Individuals may feel taken or regret having made a decision because of psychological factors that have little to do with the process of negotiation or with the quality of the agreement. Individuals may develop post-decision dissonance regardless of the strategy that the parties have used or the goal that they achieved. Even in a merger (or marriage), in which there has been nothing over which to haggle, the parties may feel that the decision was a mistake (which may be true).

The Significance and Meaning of the Relationship between Negotiators

A major assumption of the method of principled negotiation is that most negotiations happen within an ongoing relationship, i.e., a preexisting relationship (Fisher, et al., 1991, p. 20) that is expected to continue largely unchanged after the negotiation. Therefore, it says, it is a crucial task for negotiators to protect or even cement the existing relationship. Furthermore, *Getting to Yes* maintains that positional bargaining represents a burden upon the ongoing relationship. That is one of the main reasons why negotiators should forego use of positional bargaining and embark on using the method of principled negotiation.

The idea that most negotiations take place within an ongoing relationship is difficult to contest, in part because it depends on the definition one uses. Nevertheless, if we accept the distributive definition of negotiation used to develop the method of principled negotiation (that all negotiations are about transactions), we cannot overlook that most negotiations of transactions in the free market are between strangers (and about agreeing on a simple voluntary exchange). In most cases, mutually indifferent strangers politely exchange proposals, reach or fail to reach agreement, and eventually exchange resources and then walk away. They do so expecting not to meet each other again (which does not change the fact that most individuals behave politely). And, if they meet again, it is by chance. You probably interact daily with different individuals who want to sell you something. In most cases, these are individuals you did not know previously, and who will remain strangers for you after the negotiation.

In most business dealings, properly performed, positional bargaining poses no major threat to the relationship between the parties. *Getting to Yes* has drawn the wrong conclusions about positional bargaining. At best, its conclusions about positional bargaining are an exaggeration. In reality, in many business situations, positional bargaining is a good enough strategy that allows the parties reaching mutually beneficial results.

Yes, in negotiations (including of transactions), it is reasonable to advise that negotiators pay attention not to inflict damage on the relationship (no matter how insignificant or ephemeral) or offend the other side. But, there is a big difference between paying attention not to damage a relationship (which a negotiator should do by default) and changing one's strategy for the sake of protecting it.

Getting to Yes presents the relationship between negotiators in an extremely simplistic fashion. In *Getting to Yes*, the only dimension that matters is how good or bad the relationship is. *Getting to Yes* does not realize that negotiators often negotiate precisely the kind of relationship that they wish to have with others. Strangers negotiate to form a team,

friends negotiate to create business partnerships or to become romantic partners, companies negotiate to merge, and couples negotiate to marry. In these negotiations, the parties do not just improve an ongoing relationship; they transform it. It is not about having a good or bad relationship; it is about having a specific relationship. In many negotiations, the goal is to transform the relationship so that in its new form it is more efficient, satisfying or profitable than the previous one. In negotiations to integrate the parties, the negotiators may not be interested, at all, in a substantial exchange. They may just want the parties to contribute to the common effort. Sometimes, the parties' contributions to the common cause may be completely intangible. For instance, their main contribution may be their skills or motivation, or just their presence.

It is true that, amongst other purposes, individuals use negotiations to deal with conflict between parties, where conflicts have the potential to damage an existing and significant relationship (or the prospects for such a relationship). This is true particularly when conflict management by the parties is poor.

Getting to Yes is the beginning of a series that includes *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* (Ury, 1991) and *Getting Together: Building Relationships As We Negotiate* (Fisher & Brown, 1988). Each of these subsequent books develops additional aspects of the method of principled negotiation, but without making any corrections to the original, principal method of principled negotiation. All of the books make the same implicit assumption about the universality of principled negotiation. All see negotiation as limited to getting something from the other in a transaction; in all, the substance at stake is always external to the parties. They strive to elaborate upon, and extrapolate from, the method of principled negotiation, but none looks back to question or go beyond the foundations of the method of principled negotiation.

Getting to Yes focuses on the tactics negotiators can use to make a profit in transaction or to settle a conflict. *Getting Together: Building Relationships as We Negotiate*, instead of focusing on the transaction, looks at ways to preserve the ongoing relationship in which the negotiation occurs. Both books assume that the relationship between the parties is the background behind the negotiation. Therefore, the books assume that the relationship should have little or no (negative) impact on the negotiation, and, vice versa, the negotiation should have little or no (negative) impact on the relationship.

Despite the implication that readers might draw from the title, *Getting Together* is not about building new relationships. Instead, it is about keeping existing relationships. It is not about negotiating to join forces in a new team, but about settling differences within an existing team. It is not about merging or creating new organizations, but about negotiating transactions within an existing organization. The advice contained in *Getting Together*—to be unconditionally constructive—is reasonable, useful, and applicable to almost any existing relationship. Unfortunately, it does not solve any of the shortcomings of the method of principled negotiation.

Conclusion

Admittedly, the commonsensical recommendations of the method of principled negotiation contain good general psychological advice, namely, be reasonable and keep emotions under control. Obviously, a person who is reasonable and who keeps emotions under control has a higher likelihood of success in any social interaction—including negotiations

and war—when compared to an unreasonable person who easily loses control. The reasonable person will settle preexisting conflicts more efficiently than will an irascible person. As well, when trying to negotiate a Pareto optimal allocation in a package deal, the reasonable person is more likely to do better than the irrational one. But, this does not mean that being reasonable is a negotiation strategy. Being reasonable is just a precondition for formulating proper negotiation strategies. A proficient and successful negotiator must be far more than just a reasonable person.

Negotiation is a goal-driven activity and negotiation strategies have a clear managerial purpose. The goal of a negotiation strategy has to meet managerial standards: it has to be specific, measurable, and time-framed (Doran, 1981). A principled negotiation's declared goal is to reach wise agreements, in an efficient manner, while improving the relationship between the parties (Fisher et al., 1991 p. 4). This goal sounds wonderful, but from a managerial perspective is meaningless. Without the specifics it does not conform to the requirements of a properly defined goal. Even if *Getting to Yes* specifies the meaning of "wise," still the declared goal of principled negotiation is too general and vague—it is just a wish.

The very idea that the method of principled negotiation could be an all-purpose strategy of negotiation is an absurd. An all-purpose strategy, by definition has no specific purpose, hence is not a strategy. The method of principled negotiation cannot be all-purpose and a strategy of negotiation simultaneously. An all-purpose strategy would be like a flying horse; if an animal flies it is not a horse, if it is a horse it does not fly. A flying horse may exist only in a mythical world.

Persuading negotiators that principled negotiation is an all-purpose strategy of negotiation has several undesirable outcomes:

1. It inhibits strategic thinking—strategic thinking becomes unnecessary.
2. It inhibits, beyond reason, the use of positional bargaining.
3. It blocks proper understanding of the scope of negotiations.
4. It leads to suboptimal results in many negotiations

The idea that four commonsensical recommendations will be enough to tackle every negotiation is ridiculous. The reality is that negotiators need to move beyond the simple recommendations of principled negotiations. Negotiators have to learn to formulate proper goals and design appropriate plans for particular negotiations. Strategic thinking and strategic planning are particularly important in the management of organizational negotiations. It is impossible to manage different types of negotiations with multiple stakeholders using the simple approach proposed by the method of principled negotiations. Negotiators have to move beyond principled negotiation.

Getting to Yes fails to provide unequivocal definitions of the concepts it uses to build the method of principled negotiations. This weakness leads to further mistakes and misunderstandings. Concepts like strategy, method, tactics, distributive, integrative, agreement, gains, etc. become twisted and vague. To move beyond the method of principled negotiation and to have a sound debate about formative ideas in negotiations, we need to agree on the definitions we use.

We suggest, for example, that in the context of negotiations, we use the traditional meaning of the words distributive and integrative. Thus, a negotiation is distributive if the goal is to agree on the terms of a redistribution of resources the parties already have. This

is the case, for example, in buying/selling transactions, when deciding who has to pay compensation to the other in a settlement, or when allocating gains in a package agreement. On the other hand, a negotiation is integrative if the goal is to integrate the parties (to bring together or unify the parties). This is the case, for example, when individuals negotiate to join forces to form a new company or to marry, or when companies merge or when nations create new international organizations to solve common problems.

These definitions are different from the understanding of “distributive” and “integrative” in the method of principled negotiation. The method of principled negotiation assumes that a negotiation is distributive if the parties negotiated the agreement using positional bargaining or, if one or both sides are unhappy with the result. Hence, if during the negotiation the parties redistribute resources as tradeoffs in a package agreement and both sides are happy with the result, then the negotiation is deemed integrative (the distribution of gains in the package has been “integrated”).

Using the term integrative negotiation to talk about integration of the parties, and distributive negotiations to talk about the allocation of resources between the parties, has several advantages. It helps define the goal of the negotiation and design an appropriate plan to achieve it. The new understanding of the main categories of negotiation strategies is simple: it does not depend on the negotiators’ evolving and subjective perception of the result of a negotiation. There is no need to wait for the result, to know the type of negotiation that just took place. The new definitions also are concordant with the use of the terms in other social sciences. Political scientists, for example, talk about European integration meaning that several states have joined forces in a common organization. The new definitions work better in the context of management—an activity aimed at getting things done with and through people. In addition, the new definitions would set negotiators free from prejudices against positional bargaining.

If we agree to use the new (but traditional) definitions of “integrative” and “distributive” negotiations, then the main differences between the two can be summarized as follows (Martinez Reyes, 2014):

1. In distributive negotiations, the goal is to agree on a reallocation of resources that the parties control. In contrast, in integrative negotiations, the goal is to build up and redefine the relationship that exists between the parties.
2. As a result of distributive negotiations the parties get what they want from the other; as a result of integrative negotiations the parties engage in collaborative action with each other. It is this collaboration that promises to provide both sides with what they want.
3. In distributive negotiations, an agreement is a compromise that represents an immediate gain and partial gratification for both sides; in integrative negotiations, the agreement represents a potentially complete solution to the parties’ problems—there is no need for compromise.
4. Distributive negotiations imply that the parties have control over the negotiated resources, to such a degree that they can make decision about giving them away. In integrative negotiations, the parties join forces and pool resources, instead of giving them away. The parties do so because they hope to gain control over resources that they do not have at the time of the negotiation. In some cases, the parties may create jointly intangible resources or resources that remain beyond anyone’s control. These are resources the parties cannot distribute, as in an agreement aimed at improving the quality of the air in a city.

5. In distributive negotiations, the substance of the negotiation (the resources at stake) is external to the parties; in integrative negotiations, the substance is the parties themselves and their relationship.

6. As a result of distributive negotiations, the relationship between the parties may not change at all. As a result of integrative negotiations, the relationship between the parties is completely transformed. The parties may become integrated even for the lifetime—there is no going back to the previous relationship. (p. 46)

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