

# Ten Questions People Ask About *Getting to YES*

## **Questions About Fairness and "Principled" Negotiation**

### **Question 1: "Does positional bargaining ever make sense?"**

Positional bargaining is easy, so it is not surprising that people often do it. It requires no preparation, it is universally understood (sometimes you can even do it with fingers when you and the other side do not share a common language), and in some contexts it is entrenched and expected. In contrast, looking behind positions for interests, inventing options for mutual gain, and finding and using objective criteria take hard work and, when the other side seems recalcitrant, emotional restraint and maturity.

In virtually every case, the outcome will be better for both sides with principled negotiation. The issue is whether it is worth the extra effort. Here are some questions to consider:

**How important is it to avoid an arbitrary outcome?** If, like the house builder in Chapter 5, you are negotiating over how deep to build your home's foundations, you will not want to haggle over arbitrary positions no matter how much easier it might be to reach agreement. Even if you are negotiating for a one-of-a-kind antique chamber pot, where objective standards will be hard to find, exploring the dealer's interests and looking for creative options is probably a good idea. Still, one factor to consider in choosing a negotiating approach is how much you care about finding an answer to the problem that makes sense on the merits.

The stakes would be much higher if you were negotiating over the foundations for an office building than those for a tool shed. They will also be higher if this transaction will set a precedent for future transactions.

**How complex are the issues?** The more complex the subject matter, the more unwise it is to engage in positional bargaining. Complexity calls for careful analysis of interests that are shared or that can be creatively dovetailed, and then for brainstorming. Both will be easier to the extent the parties see themselves as engaged in joint problem-solving.

**How important is it to maintain a good working relationship?** If the other side is a valued customer or client, maintaining your ongoing relationship may be more important to you than the outcome of any one deal. This does not mean you should be less persistent in pursuing your interests, but it does suggest avoiding tactics such as threats or ultimatums that involve a high risk of damage to the relationship. Negotiation on the merits helps avoid a choice between giving in or angering the other side.

In single-issue negotiations among strangers where the transaction costs of exploring interests would be high and where each side is protected by competitive opportunities, simple haggling over positions may work fine. But if the discussion starts to bog down, be prepared to change gears. Start clarifying the underlying interests.

You should also consider the effect of this negotiation on your relationship with others. Is this negotiation likely to affect your reputation as a negotiator and, consequently, how others approach negotiating with you? If so, what effect would you like it to have?

**What are the other side's expectations, and how hard would they be to change?** In many labor-management and other contexts, the parties have a long history of hard-fought and almost ritualistic positional bargaining. Each side sees the other as "the enemy" and the situation as zero-sum, ignoring the enormous shared costs of strikes, lockouts, and bad feelings. In these situations it is not easy to establish joint problem-solving, yet it may be correspondingly more important. Even parties that would like to change often

find it hard in practice to shed old habits: to listen instead of attacking, to brainstorm instead of quarreling, and to explore interests before making a commitment. Some parties locked into adversarial ruts seem unable to consider alternative approaches until they reach the brink of mutual annihilation, and some not even then. In such contexts you will want to set a realistic timetable for change that may span several complete negotiations. It took General Motors and the United Auto Workers four contracts to change the fundamental structure of their negotiations, and there remain constituents on each side who are not yet comfortable with the new regime.

**Where are you in the negotiation?** Bargaining over positions tends to inhibit looking for joint gains. In many negotiations, the parties end up with outcomes that "leave a lot of gold on the table." Bargaining over positions does the least harm if it comes *after* you have identified each other's interests, invented options for mutual gain, and discussed relevant standards of fairness.

**Question 2: 'What If the other side believes in a different standard of fairness?'**

In most negotiations there will be no one "right" or "fairest" answer; people will advance different standards by which to judge what is fair. Yet using external standards improves on haggling in three ways: An outcome informed even by conflicting standards of fairness and community practice is likely to be wiser than an arbitrary result. Using standards reduces the costs of "backing down"—it is easier to agree to follow a principle or independent standard than to give in to the other side's positional demand. And finally, unlike arbitrary positions, some standards are more persuasive than others.

In a negotiation between a young lawyer and a Wall Street law firm over salary, for example, it would be absurd for the hiring partner to say, "I don't suppose you think you are any smarter than I am, so we'll offer you the same salary I made when I started out forty years ago—\$4,000." The young lawyer would

point out the impact of inflation over the intervening years and suggest using current salaries. If the partner proposed using the current salaries for young lawyers in Dayton or Des Moines, the young lawyer would point out that the average salary for young lawyers in similarly prestigious Manhattan firms was a more appropriate standard.

Usually one standard will be more persuasive than another to the extent that it is more directly on point, more widely accepted, and more immediately relevant in terms of time, place, and circumstance.

**Agreement on the "best" standard is not necessary.** Differences in values, culture, experience, and perceptions may well lead parties to disagree about the relative merits of different standards. If it were necessary to agree on which standard was "best," settling a negotiation might not be possible. But agreement on criteria is not necessary. Criteria are just one tool that may help the parties find an agreement better for both than no agreement. Using external standards often helps narrow the range of disagreement and may help expand the area of potential agreement. When standards have been refined to the point that it is difficult to argue persuasively that one standard is more applicable than another, the parties can explore tradeoffs or resort to fair procedures to settle the remaining differences. They can flip a coin, use an arbitrator, or even split the difference.

### **Question 3: "Should I be fair if I don't have to be?"**

*Getting to YES* is not a sermon on the morality of right and wrong; it is a book on how to do well in a negotiation. We do not suggest that you should be good for the sake of being good (nor do we discourage it).<sup>\*</sup> We do not suggest that you give in to the first

<sup>\*</sup>We do think that, in addition to providing a good all-around method for getting what you want in a negotiation, principled negotiation can help make the world a better place. It promotes understanding among people, whether they be parent and child, worker and manager, or Arab and Israeli. Focusing on interests and

offer that is arguably within the realm of fairness. Nor do we suggest that you never ask for more than what a judge or jury might think is fair. We argue only that using independent standards to discuss the fairness of a proposal is an idea that can help you get what you deserve and protect you from getting taken.

If you want more than you can justify as fair and find that you are regularly able to persuade others to give it to you, you may not find some of the suggestions in this book all that useful. But the negotiators we meet more often fear getting *less* than they should in a negotiation, or damaging a relationship if they press firmly for what they do deserve. The ideas in this book are meant to show you how to get what you are entitled to while still getting along with the other side.

Nevertheless, sometimes you may have an opportunity to get more than you think would be fair. Should you take it? In our opinion, not without careful thought. More is at stake than just a choice about your moral self-definition. (That too probably deserves careful thought, but advising in that realm is not our purpose here.) Presented with the opportunity to get more than you think is fair, you should weigh the possible benefits against the potential costs of accepting the windfall:

**How much is the difference worth to you?** What is the most that you could justify to yourself as fair? Just how important to you is the excess above that standard? Weigh this benefit against the risk of incurring some of the costs listed below, and then consider whether there might not be better options. (For example, could the proposed transaction be structured so that the other

creative options helps increase satisfaction and minimize waste. Relying on standards of fairness and seeking to meet the interests of *both* sides helps produce agreements that are durable, set good precedents, and build lasting relationships. The more a problem-solving approach to negotiation becomes the norm in dealing with differences among individuals and nations, the lower will be the costs of conflict. And beyond such social benefits, you may find that using this approach serves values of caring and justice in a way that is personally satisfying.

side sees themselves as doing you a favor rather than getting ripped off?)

It would also be wise to consider how certain you are of these potential benefits. Might you be overlooking something? Is the other side really so blind? Many negotiators are overly optimistic in assuming that they are more clever than their counterparts.

**Will the unfair result be durable?** If the other side later concludes that an agreement is unfair, they may be unwilling to carry it out. What would it cost to try to enforce the agreement or to replace it? Courts may refuse to enforce an agreement found to be "unconscionable."

You should also consider where you are in the negotiation. There is no value in a superfavorable tentative agreement if the other side wakes up and repudiates it before it becomes final. And if the other side concludes from the incident that you are an untrustworthy lout out to take advantage of them, the cost may not be limited to this provision of this agreement.

**What damage might the unfair result cause to this or other relationships?** How likely is it that you will find yourself negotiating with this same party again? If you did, what might be the risks for you if they were "out for revenge"? How about your reputation with other people, especially your reputation for fair dealing? Might it be adversely affected more than would offset your immediate gain?

A well-established reputation for fair dealing can be an extraordinary asset. It opens up a large realm of creative agreements that would be impossible if others did not trust you. Such a reputation is much easier to destroy than to build.

**Will your conscience bother you?** Are you likely later to regret the agreement, believing that you took unfair advantage of someone? Consider the tourist who bought a beautiful Kashmir rug from the family who had labored for a full year to make it. He cleverly offered to pay in German marks, then offered worthless marks from the inflationary pre-WW II Weimar period. Only when he told the story to shocked friends back home did he begin to



think about what he had done to this family. In time, the very sight of his beautiful rug turned his stomach. Like this tourist, many people find that they care about more in life than money and “beating” the other side.

## **Questions About Dealing with People**

### **Question 4: “What do I do if the people *are* the problem?”**

Some people have interpreted the admonition “Separate the people from the problem” to mean sweep people problems under the rug. This is emphatically *not* what we mean. People problems often require more attention than substantive ones. The human propensity for defensive and reactive behavior is one reason so many negotiations fail when agreement would otherwise make sense. In negotiation you ignore people issues—how you are treating the other side—at your peril. Our basic advice is the same whether people problems are one concern or the main focus of your negotiation:

**Build a working relationship independent of agreement or disagreement.** The more seriously you disagree with someone, the more important it is that you be able to deal well with that disagreement. A good working relationship is one that can cope with differences. Such a relationship cannot be bought by making substantive concessions or by pretending that disagreements do not exist. Experience suggests that appeasement does not often work. Making an unjustified concession now is unlikely to make it easier to deal with future differences. You may think that next time it is their turn to make a concession; they are likely to believe that if they are stubborn enough, you will again give in. (Neville Chamberlain’s agreement to German occupation of the Sudetenland and the lack of military response to Hitler’s subsequent occupation of all of Czechoslovakia probably encouraged the Nazis to believe that an invasion of Poland would also not lead to war.)