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ETHICAL ISSUES IN NEGOTIATION

2 Negot.J. 363-70 (1986).

The agent for a small grain seller reported the following telephone conversation, concerning a disagreement over grain contracted to be sold to General Mills:

We're General Mills; and if you don't deliver this grain to us, why we'll have a battery of lawyers in there tomorrow morning to visit you, and then we are going to the North Dakota Public Service [Commission]; we're going to the Minneapolis Grain Exchange and we're going to the people in Montana and there will be no more Muschler Grain Company. We're going to take your license.

Tactics mainly intended to permit one party claim value at another's expense inescapably raise hard ethical issues. How should one evaluate moves that stake out positions, threaten another with walkout or worse, misrepresent values or beliefs, hold another person's wants hostage to claim value at that person's expense, or offer an "elegant" solution of undeniable joint benefit but constructed so that one side will get the lion's share?

The essence of much bargaining involves changing another's perceptions of where in fact one would settle. Several kinds of tactics can lead to impressions that are at variance with the truth about one's actual position: persuasive rationales, commitments, references to other no-agreement alternatives, calculated patterns of concessions, failures to correct misperceptions, and the like. These tactics are tempting for obvious reasons: one side may claim value by causing the other to misperceive the range of potentially acceptable agreements. And both sides are generally in this same boat.

Such misrepresentations about each side's real interests and the set of possible bargaining outcomes should be distinguished from misrepresentations about certain aspects of the substance of the negotiation (e.g., whether the car has known difficulties that will require repair, whether the firm being acquired has important undiscussed liabilities, and so on). This latter category of tactics, which we might dub "malign persuasion," more frequently fails tests of ethical appropriateness. Consider two such tests.

ARE THE "RULES" KNOWN AND ACCEPTED BY ALL SIDES?

Some people take the symmetry of the bargaining situation to ease the difficulty of ethical choice. The British statesman, Henry Taylor, is reported to have said that "falsehood ceases to be falsehood when it is understood on all sides that the truth is not expected to be spoken." In other words, if these tactics are mutually accepted as within the "rules of the game," there is no problem. A good analogy can be found in a game of poker: Bluffing is expected and thus permissible, while drawing a gun or kicking over the table are not. Yet often, the line is harder to draw.

For instance, a foreigner in Hong Kong may be aware that at least some tailors bargain routinely, but still be unsure whether a particular one—who insists he has fixed prices—is "just bargaining." Yet that tailor may reap considerable advantage if in fact he bargains but is persuasive that he does

not. It is often self-servingly easy for the deceiver to assume that others know and accept the rules. And a worse problem is posed if many situations are often not even recognized as negotiation, when in fact they exhibit its essential characteristics (interdependence, some perceived conflict, opportunistic potential, the possibility of explicit or tacit agreement on joint action). When, as is often the case in organizational life, such less acknowledged negotiation occurs, then how can any "rules" of the game meet the mutual "awareness and acceptance of the rules" test?

#### CAN THE SITUATION BE FREELY ENTERED AND LEFT?

Ethicist Sissela Bok (1978) adds another criterion: For lying to be appropriate, not only must the rules be well-understood, but the participants must be able freely to enter *and* leave the situation. Thus to the extent that mutually expected, ritual flattery or a work of fiction involve "lying," there is little problem. To make an analogy between deception and violence: though a boxing match, which can involve rough moves, meets this criterion, a duel, from which exit may be impossible, does not.

Yet this standard may be too high. Bargaining situations—formal and informal, tacit and explicit—are far more widespread than many people realize. In fact, a good case can be made that bargaining pervades life inside and outside of organizations, making continual free entry and exit impractical. So if bargaining will go on and people will necessarily be involved in it, something else is required.

#### OTHER HELPFUL QUESTIONS

When it is unclear whether a particular tactic is ethically appropriate, we find that a number of other questions—beyond whether others know and accept it or may leave—can illuminate the choice. Consider several such questions:

*Self-image.* Peter Drucker (1981) asks a basic question: When you look at yourself in the mirror the next morning, will you like the person you see? And there are many such useful queries about self image, which are intended to clarify the appropriateness of the choice itself and not to ask about the possible consequences (firing, ostracism, etc.) to you or of different parties being aware of your actions: Would you be comfortable if your co-workers, colleagues, and friends were aware that you had used a particular tactic? Your spouse, children, or parents? If it came out on the front page of the *New York Times* or the *Wall Street Journal*? If it became known in ten years? Twenty? In the history books?

*Reciprocity.* Does it accord with the Golden Rule? How would you feel if someone did it to you? To a younger colleague? A respected mentor? A member of your family? (Of course, saying that you would mind very much if it were done to another need not imply that the tactic is unethical; that person may not be in your situation or have your experience—but figuring out the reason you would be bothered can give a clue to the ethics of the choice.)

*Advising Others.* Would you be comfortable advising another to use this tactic? Instructing your agent to use it? How about if such advice became known?

*Designing the System.* Imagine that you were completely outside the setting in which the tactic might be used, but that you were responsible for designing the situation itself: the number of people present, their stakes, the conventions governing their encounters, the range of permissible actions, and so on. The wrinkle is that you would be assigned a role in that setting, *but* you would not know in advance the identity of the person whose role you would assume. Would you build in the possibility for the kind of tactics you are now trying to evaluate? A simpler version of this test is to ask how you would rule on this tactic if you were an arbitrator, or perhaps an elder, in a small society.

*Social Result.* What if everybody bargained this way? Would the resulting society be desirable? These questions may not have obvious answers. For example, hard, individual competition may seem dehumanizing. Yet many argue that, precisely because competition is encouraged, standards of living rise in free-market societies and some forms of excellence flourish.

*Alternative Tactics.* Are there alternative tactics available that have fewer ethical ambiguities or costs? Can the whole issue be avoided by following a different tack, even at a small cost elsewhere?

*Taking a Broader View.* In agonizing over a tactic—for instance, whether to shade values—it is often worth stepping back to take a broader perspective.

First, there is a powerful tendency for people to focus on conflict, see a “zero sum” world, and primarily aim to enlarge their individual shares. Such an emphasis on “claiming” is common yet it can stunt creativity and often cause significant joint gains to go unrealized. In such cases, does the real problem lie in the ethical judgment call about a tactic intended to claim value, or is it a disproportionate focus on claiming itself? If it is the latter, the more fruitful question may be how to make the other face of negotiation—moves jointly to “create value”—more salient.

Second, does the type of situation itself generate powerful tendencies toward the questionable tactics involved? Is it an industry in which “favors” to public officials are an “expected” means for winning good contracts? If so, evaluating the acceptability of a given move may be less important than deciding (1) whether to leave the situation that inherently poses such choices, or (2) which actions could alter, even slightly, the prevalence of the questionable practices.

## CONCLUSION

The overall choice of how to negotiate, whether to emphasize moves that create value or claim it, has implications beyond single encounters. The dynamic that leads individual bargainers to poor agreements, impasses, and conflict spirals also has a larger social counterpart. Without choices that keep creative actions from being driven out, this larger social game tends toward an equilibrium in which everyone claims, engages constantly in behavior that distorts information, and worse.

Most people are willing to sacrifice something to avoid such outcomes, and to improve the way people relate to each other in negotiation and beyond. The wider echos of ethical choices made in negotiation can be forces for

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positive change. Each person must decide if individual risks are worth general improvement, even if such improvement seems small, uncertain, and not likely to be visible. Yet a widespread choice to disregard ethics in negotiation would mark a long step down the road to a more cynical, Hobbesian world.