

KENNEDY ON NEGOTIATION


Gavin Kennedy



A **Gower** Book

KENNEDY ON NEGOTIATION

For Beatrice



KENNEDY ON NEGOTIATION

Gavin Kennedy

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PREFACE

There has been a limited amount of original material on negotiation published lately. Occasionally someone has something new to say, or brings some specific and noteworthy experiences or original research to our attention. Mostly, however, monotonous repetition jades one's sense of wonder and excitement. Nobody to my knowledge has discussed the best original material from several sources in one volume.

Kennedy on Negotiation germinated from refereeing the manuscript of a particularly poor work on negotiation for an American publisher. The text was wholly derivative from the unacknowledged works of others and, worse, its author misinterpreted the ideas he passed off as his own. My referee's report supplied the bibliographical sources for the purloined works and recommended rejection. The commissioning editor wrote enthusiastically of my referee's report and also asked me to accept the 'usual reader's fee of \$50' and a copy of the book when (!) it was published. I took the fee and declined the book.

Negotiation texts are in danger of sliding into a dead-end. The so-called popular market in books on negotiation is going nowhere, except in the endless re-cycling of most of what we already know about negotiation and of the most effective ways to train negotiators. The problem is that 'what we already know' is dispersed in numerous books and a few video packages, with little cross-referencing to or even recognition of the others. Surprisingly, there are few on-going public controversies between the competing schools of negotiation practice. Their authors keep their work very much to themselves and eschew mention of each other.

Fundamentally different approaches to negotiation remain in isolation as if their authors were too polite to contradict others in the field. Surely studies of negotiation practice are now mature enough for a more vigorous debate?

The three main approaches are:

1. negotiation as a phased behavioural process;
2. negotiation as a streetwise manipulative game;
3. negotiation as a principled search for a rational solution.

Each approach, of course, has several important tributaries feeding into and off it, and there is some very limited but usually hidden cross-feeding from each to the others as well.

If these approaches were merely different insights into the same phenomenon they would be of interest only to specialist trainers and a few academics. The audience for *Kennedy on Negotiation*, however, is much wider. All practitioners, trainers and students of negotiation can benefit from a robust – even slightly polemical – review of the main differences in current negotiating practice. Why? Because ineffective practices usually have their roots in theories asserted by people who have little practical experience and who have misunderstood the title they have practised.

There are other approaches too, such as academic works on game theory, economics, social anthropology, social psychology and history that have contributed to our understanding of negotiation. Some of them also contributed to the misleading advice that is available to practitioners and, where appropriate, I shall comment on their misinterpretations.

Let me be clear, however. This is not an exhaustive survey of the literature on negotiation. I remain a practitioner and a tutor, not a bibliophile. My only concern is with the works that improve the practice of negotiation. If I delve deep on occasion, it is only to root out the source of the errors that lead the innocent practitioner into costly negotiating mistakes.

Eliminating poor negotiation practice contributes as much to personal development as does the adoption of effective practice. Effective negotiating, however, can always be contaminated by poor practice creeping back in. So knowing what to avoid, but not being sure of what to do instead, means that you suffer the fate of the rabbit caught in your headlights.

The present lack of debate on the competing approaches and a lack of rigorous testing of the advice they offer, produces a suffocatingly bland genre that gives negotiation texts and training courses a bad name. Some texts state the blindingly obvious while others are positively dangerous. Practical negotiators asking for bread receive a stone.

The lack of controversy, and, as important, awareness that there are controversies, means that the acquisition of effective negotiation skills is a matter of the chance choice of approach occasioned by which book or training course you happen to come across first.

For this reason a book examining various works has a readership

among practical negotiators. Hence, *Kennedy on Negotiation* studies the claims and assertions of important authors and their negotiation work (as in opus) and is also an assertive statement that practical negotiation when guided by sound ideas and practice does indeed work (as in achievement). *Kennedy on Negotiation* shows why on certain occasions negotiation works, and why alas, on other occasions, when guided by silly ideas, it doesn't.

Having read the text, you are invited to test what you have learned – and retained – in a short Practice Examination (Appendix 3), based on the type of examination set at Edinburgh Business School (Heriot-Watt University) for the MBA elective in Negotiation. This consists of a short case study with some pertinent questions, and some longer essays (choose four out of ten) on some of the themes of the book.

Of course, you *can* cheat but you won't learn or prove much that way! Alternatively, you can set aside two to three hours and attempt the questions just like in a normal examination. Please use your own words and not just copious extracts from my text (I will recognize my work if you do!).

Should you like me to assess what you have written – and you do not have to agree with my versions of the issues to pass, because well argued dissent is always welcomed – please follow the instructions when you send your answers to me. I will reply to every set of examination answers I receive with a set of model answers plus my comments on your work (and, no, you will not receive invitations to buy time shares and double glazing or to invest in 'get-rich-quick' scams!). Good luck!

Ex bona fide negotiari

Gavin Kennedy

NOTE ON SEX ROLES

Happily we live in a less male-dominated world of business but when quoting from works of the 1970s and 1980s I have not, of course, interfered with contemporary biases in their language.

In *Kennedy on Negotiation* I alternate, roughly, between 'he' and 'she' when referring to negotiators, rather than choosing 'he' alone, or relying on that monstrosity 'him or her' every time I refer to a negotiator, while 's/he' did not bear thinking about.



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ACKNOWLEDGEMENTS

This book owes its appearance to the enormous patience of my publisher, Mr Gower. I started it five years ago and, like the fable, I kept halving the distance between where it was in manuscript and its completion date. This caused deadlines to slip. In my defence I blame the commercial activities of Negotiate Limited for continually raising the opportunity cost of writing. Success, however, in 1996 finally enabled me to take time out to finish the book.

The usual suspects I have mentioned on other occasions in my other books also contributed to *Kennedy on Negotiation*. My first debt is to the management of the Shell-Haven refinery on the Thames estuary, where I observed and analysed the productivity bargaining negotiations with the craft-based trades unions during 1969–71. Shell began my abiding interest in the negotiation of prices and terms of trade in the real world (in Shell's case, the price of labour and the working practices of their craftsmen), as opposed to how I taught price theory at the time as an academic economist.

Recently (1994–95), I revisited labour negotiations as a negotiation consultant to the National Health Service (NHS). It was a time-warp back to the 1970s, as if nothing had happened during Margaret Thatcher's governments. Nevertheless, the Management Executive of the NHS in Scotland enabled me to re-test many of the 'certainties' I had taken on board from observing similar processes at Shell-Haven twenty-five years earlier.

However, my main work as a consultant negotiator remains in the commercial world. The men and women (increasingly, more of the latter) who are moving up the management grades of private companies and numerous boards of directors have been a constant source of inspiration. New purchasing policies are attempting to replace the adversarial negotiations of the past. Sales negotiation has moved a long way since the 'benefits not features', 'overcome objections' and

'keep closing' exhortations of the 1960s. Cross-cultural negotiations are coming to the fore too. Virtually hundreds of negotiators engaged in these areas have influenced my thinking and practice and I thank them for all the (often unintentional) help they provided.

As ever, a family plays a significant role in the writing of any book and mine, yet again, have been their normal patient selves. I wrote the earlier versions of the text and undertook almost all the re-editing of the final manuscript at Doulezon in France, occasionally disrupting family holidays. For accepting such collateral disruption with their usual equanimity, I can only express my eternal gratitude to those concerned.

I have dedicated *Kennedy on Negotiation* to my daughter, Beatrice. If I could write as well as she plays the piano, your journey through the following pages would be dreamlike. Unfortunately, I can't.

GK



PROLOGUE



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PROLOGUE



NEGOTIATION

Two people meet to reconcile their different solutions to the same problem. They interact, behave in variously different ways, attempt to change each other's perceptions using various forms of language, recover from crises of mutually exclusive expectations, settle on a common solution by which one of them gets some of what they want through trading with the other person, who acquires some of what they want in exchange, and they both agree on how to implement what they agreed. Then they separate to go about their other business. An everyday occurrence? We call it a negotiation.

Because I have views about the competing explanations of what happens when you negotiate and different prescriptions about how to improve your performance, you will read here differing views on negotiation.

One authority writes, for example, that 'Negotiation is a basic means of getting what you want from others'¹ and this is fine as far as it goes, but their definition could apply equally well to stealing, begging, panhandling, conning, or coercing. Hence, I suggest a definition of negotiation that isolates the unique feature that makes it different from other methods of getting what you want and other forms of decision making.



DECISION MAKING

Decision *making* is about choosing what is to be done, and by whom. Decision *taking* concerns accepting somebody else's decision about what is to be done, when you are bound by circumstance, position, or

habit so to do. Competing forms of decision making exist. In some forms you can influence the outcome, in others you cannot.

In *arbitration*, for example, your influence on the outcome ends when you make the final submission of your case to the arbiter – she is free to choose a compromise solution, taking into consideration the merits of the rival cases. Sometimes, she also considers the politics of a party's disappointment if she rules too far to one side at the expense of the other.

True, you can so design your final submission as to be more likely to attract the arbiter's support for your case. This happens in *pendulum arbitration*, where she must choose solely between the final submissions of the rival parties: it is your submission or theirs with no compromises between them permitted. You seek the arbiter's favour by making your submission more reasonable. If both of you modify your original stances with doses of reasonableness, you could move so close towards each other from the original unreasonable stances that you no longer need arbitration. That is why pendulum arbitration codes should be included in negotiation procedure agreements and commercial contracts.

Other decision-making methods competing with negotiation include:

- *Persuasion* You use language, and sometimes pure rhetoric, to elicit responses that address your wants (often used in selling, propaganda, and politics).
- *Gambling* Coin tossing (heads or tails?) or 'putting your money where your mouth is', and so on.
- *Command decision* The person in authority makes the decision (a platoon commander, for example). It is advocated when any command decision in a desperately dangerous situation is better than no decision at all.
- *Instruction* Presumes that the decision is reasonably clear cut, perhaps routine, and the person in charge instructs the persons paid (or pledged) to accept the legitimacy of the instruction and carry it out.
- *Litigation* You sue the other in a third party legal process that decides, from precedent perhaps or from reference to a legal statute or from the 'Solomon'-like qualities of the judiciary.
- *Coercion* The more powerful party makes the decision, which could be the state with the legal means to implement it (prisons, armies and police). Extra-legal coercion comes from the gang boss, the street gang, the rampaging mob, the terrorist, or the biggest guy on the block.

All decision-making methods are appropriate in some circumstances

but not in others. Their use depends on the people, the circumstances and the options. No method is uniquely superior to the others and, therefore, there are no implications of moral rectitude, or a failure thereof, in preferring one method to another. Using only one method on all and every occasion, for all and every circumstance, however, is not wise. In sum, you should be situationally flexible when making decisions.



WHAT IS NEGOTIATION?

You need to distinguish negotiating from other methods of decision making by focusing on what is unique to negotiation and is not shared by its competitors. Hence, my definition:

Negotiation is a process by which we search for terms to obtain what we want from somebody who wants something from us.

Negotiation is an explicit exchange or trade between parties who want something from each other. It is also a voluntary exchange, in the sense that the parties can exercise their veto not to agree to the offered terms, whereas in a purely coercive process there are unpleasant consequences if you say 'no'. In a negotiated exchange the parties are much more free to say 'yes' when the terms are 'right' enough for them to do so, and 'no' when otherwise. The threatened menace implied in the Godfather's 'offer you can't refuse' is not within the ambit of negotiation because negotiation requires that you are free to refuse any offer.

My definition comes from long observation. That negotiation is an interactive process between people who want something from each other is observable in the conduct and the content of what happens when people negotiate. The intriguing paradox that all negotiations are unique yet also conform to a common process, is something I shall resolve later. Suffice to note here that unless negotiation processes had common elements, it would not be comprehensible as a process and, for that reason alone, your negotiating performance would be immune to behavioural improvements.

Negotiation is a searching process. Neither party knows whether agreement can be reached. You may search in good faith and not find what you are looking for. We talk about the 'failure of the negotiations' to find an acceptable solution as if failure to agree was always a defeat. Some failures are inevitable and it is appropriate that they do fail when gaps between the parties' aspirations remain. Some negotiations that fail today may succeed tomorrow when circumstances change, or are

changed by war, terrorism, sanctions, strikes and the manipulation of public opinion.

Searching for terms describes what negotiators do. You make tentative suggestions, you probe each other, you test for better offers, you signal and you explore each other's reactions and responses. When you stop searching you usually have agreed or you are stuck in a deadlock.

You search to find the terms to obtain what you want. By terms, I mean the terms of trade – what you get for what you give – which is the main mechanism leading to a solution, if there is one. The essence of negotiation is that there is more than one set of terms that could produce an agreement. This is both a help and a hindrance. Because it is easier to find one of several possible needles in a haystack, rather than the proverbial one alone, the existence of several possible settlements is a help. But because there is more than one possible settlement you do not necessarily accept the first one that you find and this could become a hindrance.

If there are other solutions available, some perhaps better than the first one you find, you should continue the search for what may be better solutions awaiting discovery. This pressure to improve on what is on offer, becomes a hindrance when, by continuing the search, you risk losing the first solution you found. In short, you push too hard and wait too long in the futile hope that you can improve on what you already have.

Explicit in my definition is your dependence on somebody else wanting something from you. If they do not want anything at all from you a negotiated solution is not possible.

True, I may not realize that I want something from you and it is up to you to convince me that I do. No matter how persuasive you are, it is possible that I remain unconvinced. Negotiation in these circumstances is inappropriate. You must do without whatever it is that you want from me, or find somebody else who wants something from you, or find another method of obtaining what you want, provided you have alternatives to hand. Steal perhaps? Use violence? Sue me for it? Whatever you do it will not be within the ambit of negotiation.

Trading by its nature requires a voluntary exchange, tangible or intangible. Without explicit trading there is no negotiated decision.



HAGGLING AND HORSE TRADING

When some authors acknowledge the role of trading they call it 'haggling' and 'horse trading',² as if trading was disreputable and succeeds only by sleight of hand.

The disreputable aura ascribed by many people to 'haggling' has a long tradition in 'polite' society. It was certainly beneath the mores of the Victorians – only the poor had a need to quibble with tradesmen! To be dismissed from polite society with sneers that you were 'in trade' as a retailer is one of the ironies of Victorian Britain, then the greatest trading nation on earth.

Remnants of this mind-set occur today among people who, when shopping, never deign to 'haggle', barter or trade over the price on the tag. They regard questioning a price as bad manners, beneath them and an embarrassment similar to creating a 'scene' in a public place. Many people confess to being unable to haggle, yet when they try it they enjoy it, as callers have testified on radio phone-ins I have been on.

The line: 'If you ask how much it costs, you cannot afford it' is an example of price snobbishness. Challenging a price, however, is neither shady nor shabby. It is only sensible as long as the potential pay-off from the price challenge is worth the time and effort of making one. Negotiation is about gaining some control over your life. The alternative is to accept whatever somebody else chooses for you.

Challenging other people's plans for you, whether at home, work or play, is a good habit. Readers who live in societies where you can exercise your negotiating skills at will in any field of endeavour you choose have a personal advantage over those readers who live in societies where it is not safe to challenge anything.

In negotiating you may not always be successful, the deals you get may not always be the best ones and you may sometimes regret having spent too much time and effort on agreeing to some of them, even the better ones. Thankfully, for those with the option of negotiating it is as common to us as obeying orders and accepting our lot was as common to our recent forebears.



PROMISES

Traditional negotiation, based on trade or exchange, has a long history. The practice of trading survives in 'archaic' societies in the African bush, the Amazon rain forest and the uplands of Papua New Guinea, and trading long pre-dates the emergence of capitalism. It has taken many forms, not all of them using money. Some cultures show curious deviations from explicit trading through what amounts to implicit gift-exchange.³

The mere existence of contracts and compacts, such as marriage or military alliances is conditional on your ability to make promises about

the future,⁴ *and to keep them.*⁵ Once out of your partner's sight, you might abandon your promises at your convenience unless the fear of the consequences of doing so forces you into compliance.

Over time, enforcing compliance entailed various levels of brutality until the enforcement of contracts became subject to the rule of law and not the rule of violence. People in the past who cheated and who broke their promises suffered severe punishments until they learned by dreadful example to behave differently. If you could not keep your promises you suffered the consequences if you were found out. The beginnings of buying and selling were 'soaked in blood thoroughly and for a long time' as people took their gory revenge on those who broke their promises.⁶ Now legal sanctions force compliance, but the principle is still the same even though, thankfully, the means of enforcement are different.

No evidence is, nor can be, offered for these assertions, though an aged Arab trader in the Gulf recently told me that when his great grandfather made an agreement for a joint venture with the Emir, he sent his ten-year-old eldest son to live in the Emir's household as a visible pledge of his family's commitment to carry out his promises. By this gesture I understood that the viability of the boy's throat was at risk if his family had failed to keep its side of the bargain. Thankfully they kept their promises because the young hostage survived to become my Arab informant's grandfather.

Not everybody feels comfortable defining negotiation uniquely as a process of exchanging promises. Some feminist academics reject negotiation as an exchange process altogether because they believe that this roots it in the experiences of the male sex, which influence apparently 'obscures relations of domination and power' (I would have thought it highlighted them). Instead, they prefer to analyse how negotiation affects people who closely identify themselves with each other, such as 'friends, dating couples', etc. They want to shift attention from the anonymity of markets to minority perspectives of personal relationships.⁷

I think we should be more concerned with negotiation as a trading process – for that is what the large majority of people, male and female, experience when they negotiate – than what it might mean for a few introspective dating couples on American campuses. Therefore, I think it is more productive to see negotiation as an *explicit* exchange between people whatever their relationships.

NOBODY EVER SAW TWO DOGS NEGOTIATE OVER A BONE

There is a propensity for people to negotiate.⁸ This propensity is not found in animals because they know nothing of contracts or promises. Nobody, for example, has ever seen two dogs negotiate over a bone and nobody ever saw an animal signify to another that it was willing to give 'this for that'.⁹ Animals distribute the bounties of nature, primarily food, mates and territory, among themselves by violence and the threat of violence.

Barbarian societies behave similarly to animals when consuming the bounties of nature and the fruits of human labour. Exponents of the 'Genghis Khan school of wealth accumulation' take what they want and leave their victims to fend for themselves. But while it is certainly possible to violently redistribute the bounties of nature and the fruits of human labour, it is not possible by violence to sustain the *creation* of human wealth nor to protect nature from becoming a desert.

The behaviour of two dogs, therefore, is significant. If humans can arrange their affairs differently from dogs, by practising traditional negotiation, they can create and distribute untold quantities of the fruits of labour and the bounties of nature, beyond the wildest dreams of only a few centuries ago.

INTERESTS AND CHARITY

People are (or rather, can be) different from animals in their behaviour. Civilized people need the co-operation and assistance of millions of others. Yet a whole lifetime is scarcely sufficient to gain the friendship of but a few persons and while friendship has many rewards and joys it is not a sufficient way to acquire most of what we want.

'A friend in need is a friend indeed' has more than a grain of truth in it. I do not suggest that friends are unimportant (on occasion they can be life-saving) but you do not have enough friends to provide over prolonged periods your daily necessities of life. Hundreds of thousands, perhaps millions, of people in our global village are necessary to produce the multitude of things you want. If you know only a few people and, of them, even fewer who are close to being your friends, how can you rely solely on them and they upon you to produce but a fraction of what you all want?

Millions of negotiations occur every hour of every day and involve people you never meet nor know. These negotiations occur whatever

your loves or dislikes of other people. Of one thing you can be certain: unless you reciprocate with the necessary efforts required for you to access the products of their labour, you will do without them. Such is the power of the global market, that, whoever you are, you rely on the anonymous co-operation of others for the most basic of your necessities and the most trivial of your luxuries. And they depend on you playing your part too.

This leads to the absolute necessity of negotiating to meet the *interests* of the other party. If you disregard their interests you must rely on their charity to get what you want, but you will be more likely to prevail in this quest if it is to their own advantage to do for you what you require of them.¹⁰

Whoever offers you a bargain of any kind says in one form or another: 'Give me that which I want, and you shall have this which you want'. It is in this manner that you obtain the far greater part of those things of which you stand in need. It is not from the benevolence of others that you should expect your dinner but from their regard to their own interest. That is why it is better to address yourself 'not to their humanity, but to their self-love; and never talk to them of [y]our necessities, but of their advantages'.¹¹

These statements contain controversial ideas. Some people object to them on ethical grounds. They feel that people *ought* to do everybody else favours because it is good for them to do so, and not because it is in their self-interest. Frankly, such criticism is naive. An ought can never be an is, and to rely on what people ought to do is to risk (life-threatening?) disappointment.

If everybody relied on everybody else acting like those few friends on whom you can depend *on occasion*, we would as a species rapidly reduce our living standards to levels not seen since the Ice Ages. If you were to rely on unknowable strangers, abiding by 'rules' (agreed and ensured by whom?) that they should supply you with everything you want, under no more than their sense of their charity, you might wait a long time for anything.

In the meantime, I suggest that you make traditional arrangements for your dinner.



NASH AND THE BARGAINING PROBLEM

The bargaining problem is not so much related to the definition of negotiation as it is to the questions of why and how people negotiate. These questions are not just academic (though many academics offer their views on them) but neither is the problem as easy to solve as it

first looks. So this and the following chapter may become very slightly technical, prompting me to assure you that I have made every effort to keep it simple. As practitioners, neither you nor I have time for exposure to purely academic debates, so let me assure you that this topic is vitally important to all practising negotiators and that the trespassing of academics into this field is not a proof of its irrelevance.

Your answer to why you negotiate is that you do so because presumably it makes you in some sense better off. Given that you volunteer to accept or not accept the offered deal, it follows that if you accept the deal you are in some way better off than if you don't. What is true for you must be true for other negotiators, so it is fair to conclude that both of you negotiate because you both gain something.

Briefly put, the bargaining problem is about how you arrive at a solution when, for whatever reason, there is a gap between your conflicting aspirations on some important issues. You may or may not also have common interests on other issues.

Unfortunately, in practice there is not one but two problems. The lay person's riposte that obviously there are joint benefits for both parties in negotiating, otherwise they wouldn't negotiate, is partly right but might be less convincing to observers of bargaining behaviour. And the first attempts to solve the bargaining problem were as far away from what observation and experience of bargaining behaviour showed as you could get.

Economists for more than a century fully understood how markets set prices but for many years it remained an irritatingly grey area before economists understood how bargainers set prices. John Nash took up the challenge in 1950 and initiated a whole avalanche of research contributions to the mathematics of bargaining theory. Nash showed how his solution was mathematically determinate, given his idealizing assumptions.

Nash asserted that the situations of monopoly versus monopsony, of trading between two nations, and of negotiation between employer and labour union were bargaining problems. His was a theoretical discussion of the bargaining problem, which he conceived of as establishing a definite 'solution' to the amount of satisfaction each individual should expect to get from bargaining, or, rather, a determination of how much it should be worth to each of these individuals to have an opportunity to bargain.¹²

The mathematics of utility theory are very limiting and for those not previously exposed to economics the Nash assumptions seem almost naive in comparison to the circumstances commonly found in real world bargaining problems.

Nash, for instance, assumes:

- highly rational ‘bargainers who can accurately compare’ each other’s ‘desires for various things’;
- bargainers who have ‘equal bargaining skills’;
- bargainers who ‘have full knowledge of the tastes and preferences of the other’;
- bargainers who desire ‘to maximize’ their gains in bargaining.

Fortunately, we do not need to develop the mathematical argument here because Nash also provides a simple arithmetical example to demonstrate his solution, using two individuals, Bill and Jack, who are considering exchanging some goods they own and which they want to barter.

His model of the bargaining problem uses von Neuman and Morgentstern’s¹³ numerical utility theory. Utility is an economist’s way of ‘measuring’ the satisfaction, however defined, that an individual receives from possessing units of a good. In Figure P.1, the players’ utilities appear as ‘numbers’.

For example, the book for Bill has a utility of ‘2’ and for Jack a utility of ‘4’. Crudely, take that number ‘4’ to mean that the book for Jack would have a greater amount of satisfaction for him (however Jack defines his satisfaction) than say, the ball (1), and that for Bill (however Bill defines his satisfaction) take the ‘2’ to mean that the book has much less satisfaction for him than, say, the pen (10).

Now, given the original distribution of the goods between them and the utilities of the goods for each of them, what exchange of the goods, asked Nash, would maximize their satisfaction?

Nash postulated that the solution to the bargaining problem in this and every other case would be where the ‘product of the utility gains is

Bill’s goods	Utility to Bill	Utility to Jack
book	2	4
whip	2	2
ball	2	1
bat	2	2
box	4	1
Jack’s goods		
pen	10	1
toy	4	1
knife	6	2
hat	2	2

Figure P.1 Utilities of the goods to Bill and Jack¹⁴

maximized'. The bargainers would agree to exchange the goods in whatever way that maximized their joint gains in utility.

For Bill and Jack, Nash asserted that they would trade as follows:

- Bill gives Jack: book, whip, ball and bat
- Jack gives Bill: pen, toy and knife.

Now what is interesting about the Nash solution is that the utilities of the goods are final offers only and are not subject to any bargaining. In other words, the unique exchange that maximizes the differences between the utilities the players receive from the goods they offer against the utilities they give up in exchange, are first and final offers from both of them. As, by assumption, both negotiators know the utility that each of them ascribes to each of the goods, it would, of course, be pointless to think in terms of other than final offers.

Nash (safely) assumes that the players will trade those goods that they value less for those that they value more. And as Bill and Jack have perfect information about each other's preferences, neither can bluff the other into 'paying' more for a good because they know the utilities each of them places on all the goods. Given this, we can set out the Nash equilibrium trade for Bill and Jack as in Figure P.2.

	Bill		Jack	
Total utility before they bargain	12		6	
Goods received in trade				
	Gains	Losses	Gains	Losses
knife	6	2	book	4
pen	10	2	whip	2
toy	4	2	ball	1
		2	bat	2
Totals	20	-8	9	-4
Net gains	12		5	
Total utility after they bargain	24		11	

Figure P.2 Net utility positions for Bill and Jack after trading

Compared to their original utility positions (12 for Bill and 6 for Jack) and given the utility endowments of the items they traded, they have both increased their utilities (to 24 for Bill and 11 for Jack). The product of their net gains is $12 \times 5 = 60$. Nash affirmed that no other combination of traded items could produce a gain in utility that was greater than 60. The product of their net gains in utility was 'how much it should be worth to each of these individuals to have this opportunity of bargaining.'¹⁵

Nash's solution followed inescapably from his idealistic and restrictive assumptions. We could ask whether it was a bargaining solution at all, in that the strategies of both players must produce the defined solution and their bargaining skills *per se* are eliminated by assumption. For an optimum bargain to be concluded it would have to be one that made both players better off than they were before they traded. If you made either one of them better off than the optimal bargain, you could only do so by worsening the other's position. The Nash solution conforms to this condition.

Nash's derivation of the players' utilities assumes away the conditions of the real world. Nash players have fixed relative values for each item. They have perfect information about each other's preferences and utilities. The outcome of their 'bargaining' necessarily is to maximize their joint gains.

As a solution to the bargaining problem, Nash's model is plausibly compelling. It predicts that the bargainers will reach the optimal solution. That they don't reach the Nash solution in practice is not a definitive refutation of Nash. Because bargainers in practice operate in different conditions from the assumptions of the model, this explains their variations from the optimal solution. Mathematically, however, the Nash solution is robust.

The Nash solution is also fruitful if we consider a loose version of it to explain a transaction that you and I might undertake. Remember that Bill's gain in utility is the net difference between his valuation of the items he receives and his valuation of whatever he must give up to Jack in exchange. Applying this idea to our trade, say I value the utilities in the package I obtain from you at '100' and I trade items worth to me '65', my net gain in utility is '35'. In the same transaction, if you value the items you obtain at '75' and you value the items you trade at '25', then your net gain in utility is '50'.

As neither you nor I reveal (nor can we do so in a meaningful way) our subjective valuations of the transaction ('35' for me, '50' for you), there is no way by which we could compare our relative performances, nor can we calculate what the deal is worth to the other. That we agreed to the deal, is the only evidence that there was some additional utility present for both of us. What that utility is, or what it consists of,

is unknowable. Therefore, whether we have maximized it is also unknowable. But it does have some value as an explanation of our agreeing to the deal. If you think of the Nash solution as being vaguely precise (!) you have probably taken it as far as you need to go as a practitioner. The problem with the Nash solution is somewhat more worrying. Theorists should occasionally look out of their study windows, so to speak. For Nash assumes behaviour from his bargainers that does not correspond to the common experience of most negotiators. And the most devastating evidence for this came shortly after the Nash solution appeared in 1950.

A small group of researchers, working out of the Rand Research Centre, in Santa Monica, California, invented a modestly simple game that they played repeatedly. It is now fairly common in negotiation skills and team-building workshops. It produces remarkably consistent results.¹⁶ It is called the 'dilemma' game, and it is a game without content though it has strict rules. The players aim to 'maximize their positive scores'. They do this by playing for points, which are not worth anything other than being a convenient way to keep a score. The status of the points is roughly analogous to notions of utility, with the objective being to 'maximizing one's utility'.

There are two ways of playing the game as the players discover for themselves. Nobody tells them which, or any, way to play nor even that two ways exist. People coming to the game for the first time are thus uninfluenced by prejudices or notions of 'correct' behaviour other than their own. They are the perfect material for an experiment in pure behavioural choice!

The two ways of playing the dilemma game correspond closely to the dichotomy of negotiation behaviour. If the individual interprets the object of the game as being how they can maximize their personal gains at the expense of the other player, they will demonstrate *zero-sum* or *non-co-operative* behaviour.

The partner, whatever her first interpretations of the way to play the game, will be forced to retaliate using zero-sum behaviour too. Their scores at the end of the game will not maximize their joint gains and, worse, could minimize their joint gains leaving them both with negative or very low positive individual scores.

If, on the other hand, an individual interprets the object of the game as being how their joint scores can be maximized, *and this coincides with the predilections of the other player*, they will demonstrate *non-zero-sum* or *co-operative* behaviour.

Their eventual positive scores, in this case only, are maximized (at 48 points each) and they are as close to a Nash solution as is possible ($48 \times 48 = 2304$). You can test this by multiplying any combination of scores that sum to 96 ($48 + 48 = 96$) and you will see that no com-

bination exceeds 2304. For example, $40 \times 56 = 2008$; $30 \times 66 = 1980$; and $20 \times 76 = 1520$, and so on.

What surprises researchers are the very few cases where the players individually choose to interpret the game as a co-operative game and behave accordingly. On the contrary, few players choose or persist with a strategy of play that would lead to a Nash solution!

After 12 years' experience of observing managers playing the dilemma game, I can report that the majority of those who play the game for the first time adopt non-co-operative strategies and many of the others who try initially to play a co-operative strategy switch to non-co-operative behaviour in retaliation. Nash joint maximizing behaviour is remarkable by its almost total absence.

Note that the rules prohibit the players from discussing the game or the appropriate behaviours they should use before they begin playing. They are both bereft of defence but able to attack before they open the play. That, incidentally, is the dilemma! In my experience, only about 8 per cent of pairs of players simultaneously hit on a co-operative Nash solution to the dilemma game and go on to gain 48 points each. Other researchers¹⁷ report as many as 12 per cent in Britain and 25 per cent in the USA playing a co-operative strategy but I have no information on exactly what briefing they offer to players before they start the game, which might explain this difference. It still leaves between 75 and 92 per cent of players faltering with less than optimal Nash scores of 48 each, though some recover from initial non-co-operative play to gain scores in the thirties.

Just under half of the players individually choose behaviour in the first round that suggests that they see dilemma (assuming they obey the 'rules' and make a conscious choice) as a co-operative game, but, after a few rounds most of them find they cannot alter the non-Nash behaviours of a partner who behaves non-co-operatively. Some, of course, find it impossible to alter their partner's behaviour over ten rounds and they both end up with low scores.

Maximizing joint gains as a bargaining objective is a minority choice of the thousands of negotiators I and my colleagues have observed. Depressingly, for the Nash solution, most bargainers behave as if they reject joint gain as their objective. The overwhelming majority of bargainers have sub-optimal, non-Nash, outcomes.

Some players, by defecting on their promises (there are two short sessions after rounds 4 and 8 where they may negotiate with each other) manage to gain high positive scores (greater than 48) purely at the expense of their hapless partners who believed what they were promised. The arithmetic of these high positive scores still does not beat the Nash solution because what they gain over 48 points, their partner loses and the higher their own score the more it reduces their

partner's score. The product of a negative and a positive number is always a negative number and one well short of a Nash solution.

THE REAL PROBLEM WITH BARGAINING

The real bargaining problem lies in the dichotomy of zero sum and non-zero sum, or non-co-operative and co-operative behaviours in the negotiation process. Maximizing the distribution of the benefits depends upon the behaviours of the bargainers. Experience suggests that in most cases they behave in ways that fail to maximize their potential gains. This conclusion did not pass unnoticed by observers and practitioners, when the first detailed studies of working negotiators got under way in the United States in the early 1960s.

If, using the language of Walton and McKersie,¹⁸ you choose to be, or you meet with, a *distributive* bargainer you can only benefit at the other negotiator's expense. Only if you choose to be, *and meet with*, an *integrative* bargainer can you both make joint gains at neither party's expense. Lax and Sebenius¹⁹ neatly called this a choice between being a 'claiming' or a 'creating' bargainer, though, strictly, this is only a *quasi*-choice because the gains you seek from your individual choice are not independent of my choice – and behaviour. This is the real bargaining problem – it's not just what you choose that counts, it's what we both choose separately.

Exchange can produce jointly created benefits, both tangible and intangible. A joint benefit does not mean that it is, necessarily, a shared benefit. What benefits me may not have any corresponding benefits for you. Benefits express themselves differently, use different currencies and are invisible except to the party that receives them.

Hence, there are two distinct methods of negotiation producing different solutions to the bargaining problem depending on the congruence or otherwise of the behaviours independently adopted by each of the negotiators. Not understanding this fact of life leads to many of the real problems you experience when negotiating. Idealizing negotiation into a joint gaining game and acting as if your idealization is always true, leads only to disappointment.

The purpose of your tithe on my granary could be to distribute some of my grain to the starving, with which objective I would have some sympathy. You could, instead, live off it and all the other tithes you collect in the area, in the style of the Sheriff of Nottingham. In so far as I can negotiate at all with your tithe collectors (be they the Little Sisters of the Poor, or thugs with psychopathic tendencies), the issue

for negotiation is going to be the single one of 'how much of my grain qualifies for your tithe?'

How your emissaries set about their task is decisive, as is what I think of them. The Little Sisters may be well meaning but if I believe that the so-called starving poor are an undeserving lot of layabouts, shiftless in the extreme and successful preyers on guileless nuns, I am going to haggle harder with the nuns than with the mouth-foaming, blank-staring gorillas you sent instead and with whom I choose to be prudent. Before I create the wrong impression, this merely illustrates a case and is not smuggled in as gratuitous social comment. (While I have long been sceptical of the 'Robin Hoods' of this world I have never had any doubts about the intentions of the 'Sheriffs of Nottingham'!)

Claimers see negotiation as the distribution of a fixed amount between them and you. The bigger their share the smaller is yours. It is a zero-sum transaction; what they gain, you lose. Where claiming predominates, manipulative ploys, tricks and power perceptions are the tactical imperatives of the negotiators, reaching their 'highest' level of competence in 'street-wise' negotiating.

Creators are different. Lax and Sebenius²⁰ identify three ways to create a joint gain. First, an agreement that you both voluntarily enter into is likely to be better than no agreement at all, on the safe presumption that, as both of you have the right to veto any deal with which you are uncomfortable, it is the value created by the deals you agree to that makes you say 'yes' rather than 'no'. In saying 'no' to any deal, you prefer to forgo what you would 'gain' from saying 'yes'.

Second, by accepting another deal, replacing one that is unacceptable to one or both of you, it must create additional value to you both in some way. If it does not, because, for instance, it made one of you worse off than no deal, the loser would veto it.

Third, negotiators moving towards an agreeable deal, making both of you better off or no worse off, who discover a previously unthought of solution, 'whether a new trade, a different option, or a changed schedule of payments', create additional value.²¹

Lax and Sebenius introduce the ideas of *private* and *public* value in this context. Private value is something exclusive to the person, who can only get more of it at the expense of less of it for others; public value is akin to the economists' idea of a public as opposed to a private good, in that the consumption of any amount of the public good does not detract one iota from anybody else's consumption of the same good. For example, a defence budget spent on deterrence equally defends all the citizenry. No part of the territory receives more defence than another when the defence budget deters invasion of all of it (it might be different if deterrence fails and war breaks out). Another example could be, if the environmental budget, in conjunction with laws, produces cleaner

air, no amount of extra breathing of the cleaner air by one person will reduce the amount left for others to breathe.

In negotiation we have a third and important source of value creation, not identified by Lax and Sebenius, which does not come within 'the measuring rod of money'.²² I refer to the idea of *subjective value*. This has the characteristics of a private good, in the sense that it is something I feel I gain from the transaction and which I do not have to share with anybody else, and it also has the characteristics of a public good, in the sense that my subjective consumption of my private gains in no way reduces the subjective gains you receive from your side of the transaction. In the Nash example (Figure P.2), Bill's net gain of 12 in utility is not at the expense of Jack's utility net gain of 5. Both enjoy their satisfactions to the full without diminishing the other's.

In my view, subjective value is a significant motive for negotiating the joint creation of value. It explains much negotiating behaviour and the outcomes that certain behaviours produce. Its only drawback as a practical activity at present is that much of the analytical ingenuity in coping with the role of subjective value in negotiation is highly technical and beyond the mathematics of most negotiating practitioners. While it is, of course, a challenge to authors on negotiation to 'popularize' useful ideas into operationally valuable techniques for both practitioners and trainers, we shall have to leave you with the idea of subjective value and move on.

That joint gains are possible from creating value rather than merely distributing it, is unchallengeable. The real bargaining problem is that it is not easy in practice to do so:

many parties do not automatically know what opportunities for co-operative action there are to exploit. The parties must explore – imperfectly – the arrangements they may jointly be able to create. In practice many gains go unrealised. Inferior agreements are made. Impasse results and conflict escalates when co-operative action might have been better for all. Understanding where private and common value really come from should make jointly creating it more likely.²³

This constitutes the essence of the real bargaining problem: if joint gains are preferable, how do bargainers achieve them, and why, we must ask, do so few negotiators seek them?

First, you should note that the failure of Nash to provide a general solution to the real bargaining problem merely makes your practitioner's quest more realistic. Recognizing the tendency of players to behave as if a zero-sum gain is their objective alerts you to the need to develop behaviours that can successfully produce joint gains. The idealization of negotiating behaviour specified by Nash is a boundary on the range of possible behaviours exhibited by negotiators in the real