

Negotiation

The Game
Has Changed

Max H. Bazerman

Negotiation | Princeton University Press, Baz30

Negotiation: The Game Has Changed

“This was a fine course, but . . .”

- . . . it doesn't account for the cultural norms of negotiating in my country.**
- . . . it doesn't deal with negotiating with the Chinese [or pick any other country].**
- . . . you didn't cover the supply crisis that we are currently facing.**
- . . . do your ideas apply when dealing with liars or irrational opponent?**
- . . . negotiating over Zoom is different than negotiating in person.**
- . . . how does the course apply to negotiating with my romantic partner?**
- . . . how does it apply to getting my patients to take their medicine?**
- . . . what if my negotiation counterpart doesn't have the power to commit to an agreement?**

Negotiation: The Game Has Changed

Generic Ideas Versus Context in Negotiation

1st Book or nth Book on negotiation

**compare to Negotiating Rationally [with Maggie Neale]
and Negotiation Genius [with Deepak Malhotra]**

Contemporary Examples

Big Changes in the New Millennium

9/11 changed the country's perceived power, our alliances with other countries, and the culture of the largest U.S. city. It also made many Americans feel much more vulnerable.

The Great Recession shaped our understanding of the real estate economy and the nature of negotiations for mortgages. And it affected the job market, including candidates' bargaining power in salary negotiations.

Over the last twenty-plus years, Americans have become much more bifurcated, a process that sped up during the Trump era.

The online economy has shaped how parties reach agreement. You can now rent another person's home without talking to them or to their agent. You can set up an e-auction to buy or sell goods for your company without talking to the other side.

The phenomenal growth of the Chinese economy has given the Chinese government and Chinese companies more power while taking away power from the U.S. government and U.S. companies. It has also dramatically altered which parties belong to the trading networks of corporations all over the world.

Our work life is much more diverse than it used to be. The globalization of the economy and societal shifts that bring more diversity to the workplace mean that we interact with people who differ from us more than in the past.

Covid-19 pandemic. We have different trading partners and interact with our negotiation opponents in different ways. Supply chains have been disrupted in ways that no one ever expected. Negotiations over retail and office space have changed dramatically as demand for that space shrunk significantly.

The Core Ideas Hold

It is critical to think about your BATNA and reservation point

It is critical to think about their BATNA and reservation point

The reservation points define the Zone of Possible Agreements

40 years into this journey, lots of experienced negotiators still
assume a mythical fixed-pie

We know how to help negotiators create value – making the
deal better for both parties

It is critical to know about your systematic biases in negotiation

It is critical to know about the other side's systematic biases in
negotiation

Anchors matter

50-50 splits have normative appeal

Extreme Anchors

“Some very important people in my company have stressed that a key to getting the best possible price from suppliers is to start with a very low offer, leaving plenty of room to negotiate if needed. At company events, my colleagues have been praised for their aggressive negotiation style. I am currently in a situation, post-Covid, where we need a large quantity of a product where there is very little supply available. The supplier I am about to negotiate with has their choice of buyers. Should I still make a very low offer to anchor the discussion effectively?”

How extreme should your initial offer be?

I’ve heard many stories about the impressive results people obtained by making extreme offers. However, these storytellers seldom tell me about the deals they screwed up with their tough stance.

Recall Donald Trump’s demand that Mexico pay for a wall separating Mexico from the United States. This extreme demand led Mexico to cancel a planned meeting with Trump and reduce cooperation on border issues. Mexico paid none of the costs associated with Trump’s wall-building activities.

Galinsky and Schweitzer write, “Your first offer should be just this side of crazy, as opposed to that side of crazy.” (Friend or Foe)

The problem with evidence from classrooms, experiments, and AI tournaments: They do not walk away as often as they do in the real world.

Solution: Anchor within the Zone of Possible Agreement

50-50 Splits

“I was just at the car dealer, and after an hour and a half of haggling, the salesperson said, ‘We’re only \$600 apart, and we’re both reasonable people, so why don’t we just split the difference?’ Did it make sense for me to agree to this intuitively reasonable compromise?”

“Here are two credit cards,” your dinner companion says to the restaurant server. “Can you split the bill in half?”

“When I die, my two children should each get 50% of my assets.”

“The dog needs two more walks today. How about I do the 4 p.m., and you do the 8 p.m.?”

Chris Voss: “Never Split the Difference”

Barry Nalebuff: Always “Split the Pie”

Messick: Splitting the difference as a social heuristic

Negotiating Ethically

“We have been searching for a new home, and a friend of ours is our real estate agent. We have always trusted her but have noticed that she keeps advising us to make offers that are higher than we believe are reasonable. We are concerned that this serves her interest in getting a quick sale but not our interest in getting as low a price as possible. Should we question her ability to offer us ethical advice? Should we listen to her advice? Should we even remain friends with someone whose advice would benefit her but not necessarily us?”

Which of the following best describes your view about lying in negotiations?

- 1) You should never lie.
- 2) You should very rarely lie.
- 3) You should avoid lying but lies are often necessary in negotiation.
- 4) Lying is simply a part of the negotiation process.

Lying interferes with value creation!

The Context of Disputes

“Like you, I live in Cambridge, Massachusetts. I also work for the city of Cambridge. A few years ago, the City Council passed a new law that pushed the city forward by requiring it to build 22.6 miles of bike lanes through the town, including on the most significant commercial street, Massachusetts Avenue. Overall, Cambridge is proactive about improving the environment. Yet, now that we are implementing the law, pedestrians are unhappy about the risk of being hit by bicycles, and businesses have turned hostile since parking spaces in front of their stores were eliminated to create the bicycle lanes. Lawsuits are pending, and lots of resources are being wasted. Since the law was passed by the democratically elected City Council, why are so many people so angry now, and what could have been done to move more effectively toward a bicycle-friendly environment?”

Covid and disputes?

English Premier League (Kteily and Malhotra – HBS case)

Transacting Online

In 1990, if you wanted to reserve a hotel room, you could call the hotel or the hotel chain from your landline (you didn't have a cell phone back then) and book the reservation directly over the phone. Or, you could visit or call your travel agent and ask them to make the arrangements for you. By the early 1990s, techies started to use the internet, but most people continued to make room reservations by phone. In 1991, Bob Diener and Dave Litman founded the phone-based Hotel Reservations Network (HRN), which later became the online company Hotels.com. Transacting today is different.

We also “negotiate online” And, this requires planning. Zoom lies between telephone calls and face-to-face meetings. Whether Zoom negotiations closely resemble an in-person negotiation or are closer to a telephone negotiation may lie in how the platform is used. Kurtzberg and colleagues have found:

Are the negotiators looking at each other, or are they multitasking and looking at a second screen?

Are they negotiating on their smartphone's tiny screen or on a 32-inch monitor? The better negotiators can see each other, the more likely they are to capture some of the benefits of face-to-face communication.

Larger screens are associated with greater trust and richer communication—that is, laptops are better than smartphones when it comes to video negotiations. Greater communication richness enabled by larger screens translates to more joint value creation than is achieved on smaller screens. And when the size of the screens of two negotiating counterparts differs, the advantage on the value-claiming side tends to go to the negotiator with the larger screen.

When you multi-task, the other side trusts you less.

Changing the Game 1

Maybe you don't have to say yes or no:

One Friday night a few years ago, a friend of mine sent me an email, asking for negotiation advice. The day before, she and her partner had put their condo here in Cambridge, Mass., up for sale in a hot market with a list price of \$989K. An open house was scheduled for Sunday, and buyers were told that no offers would be considered before Tuesday at noon. The hope was to generate multiple offers and trigger a bidding war, though my friend said they were open to having their “socks knocked off” before then with a great offer. She was anxious for the condo to sell quickly. The condo had “tons of showings” so far, she told me in her email, and they had just gotten a great offer: \$1.125M with an expiration of Sunday evening. The offer waived the right to an inspection of the condo and highlighted why financing was unlikely to be a barrier for the buyer. My friend and her partner were happy to receive what seemed like a very high offer, but they were concerned: Did this suggest their agent had seriously undervalued the condo?

The agent provided his opinion in this email to my friend:

WOW! I think these are your buyers! You should seriously consider this offer or counter at \$1,150,000 to see if they bite! Nice personal letter/photo etc. 10K for initial deposit, usually \$1,000. Wow, \$102,500 dollars “non-refundable” at the Purchase & Sale Agreement. Usually only 5% down payment for P&S etc. If they default can we split it. . . lol No, seriously you may think someone would, could pay more etc. But we don't have a crystal ball. So don't lose them.

Changing the Game 1

Borrowing from Guhan Subramanian, I proposed that she and her partner counter with:

- 1) A request for the prospective buyer to make their offer legally binding through the following Wednesday.
- 2) In return, offering the prospective buyer a chance to beat the best offer the sellers receive by \$25,000, if they receive a higher offer by Wednesday.
- 3) If no higher offer arrives, the sellers would commit to accepting the current offer.

My friend adjusted my suggested final premium down from \$25,000 to \$10,000 and sent the following counter-proposal to the buyer:

You officially extend your offer, as is, to Tuesday, August 16 at 9p.m. In exchange, we will give you right of first refusal: if we obtain an offer that beats yours, before accepting it, we will give you the opportunity to beat it by \$10K, in which case the house is yours. If no better offer comes in, then we simply execute your current offer. This arrangement gives you the certainty of knowing that if you want the house, you will have the final opportunity to get it. It also means you only pay more if there is a competing offer.

The buyers accepted the proposal. My colleague and her partner received multiple higher offers, created an auction, and took the highest price offer, \$1.2M, to the original bidder, who used their option and beat the best offer by \$10,000. My friend and her partner were delighted, as they received \$60,000-85,000 (minus the agents' 6% commission) more than if they had followed their agent's advice.

Changing the Game 2

Negotiating the Contract for Negotiation

My last book before *Negotiation* was *Complicit*, published with Princeton University Press. I ran a modified auction process with five publishers who were interested in *Complicit*. After eliminating the two low bidders and getting second-round bids from the three bidders left in the auction, I thought this range gave me a pretty good idea of the advance I would get if I simply continued the auction. I told Princeton that I would accept an offer with a variety of terms, including an advance about 20% higher than their prior bid (and would agree to not take their response back to any other publisher). Princeton accepted, and we had a deal. I ran what Subramanian calls a negotiauction.

With *Complicit* in production, I started writing the book you're reading now. After I had drafted Chapters 1-3 and a book proposal, I looked at my contract for *Complicit* and noticed, for the first time, clause 10:

OPTION ON NEXT BOOK In consideration of the Press undertaking to publish the Work that is the subject of this Agreement, you hereby grant to the Press the first option to publish your next work, whether of similar nature or otherwise. You shall promptly submit the proposal or manuscript thereof, upon first availability, to the Press and shall not submit or offer the proposal or manuscript to third parties until the Press has notified you of its decision. If the Press fails to notify you within thirty (30) days of the date of its receipt of your submission that it wishes to exercise its option to publish, the Press shall be deemed to have refused the submission and you shall be free to submit the proposal or manuscript to third parties. If the Press notifies you within such period that it does wish to publish, the parties shall negotiate in good faith the terms of publication. If the Press and you fail to reach agreement within a further thirty (30) days, you may submit the manuscript to third parties.

Changing the Game 2

Negotiating the Contract for Negotiation

I contacted Princeton University Press and let them know about *The Game Has Changed*. I sent them the draft chapters and proposal, and started the sixty-day process specified in clause 10. Both sides understood that I could simply wait out the sixty days and then hire an agent to run an auction or run one on my own. Instead, we both negotiated in good faith, traded across issues, and reached an agreement that I perceive to have been satisfactory to both sides. With its clause, Princeton effectively turned my auction plans into a bilateral negotiation.

I changed the game on the *Complicit* contract, and Princeton changed the game on *The Game Has Changed* by adding clause 10 to the *Complicit* contract. Together, the stories highlight that we often have opportunities to define the rules of the game—yet often miss out on them.

Changing the Game 3

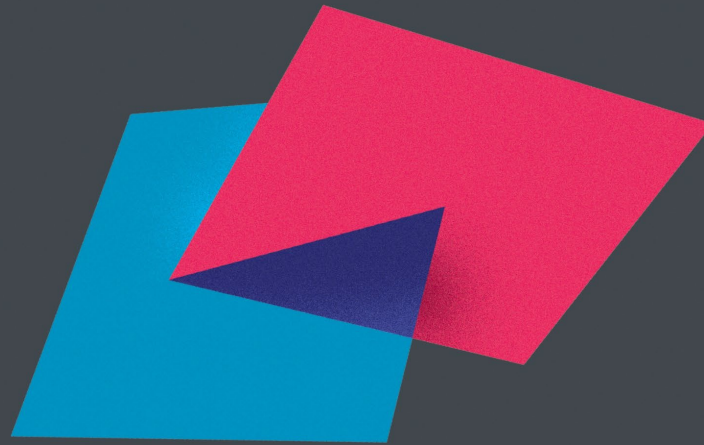
The Final Offer Arbitration Challenge

Carl Stevens and Final Offer (baseball) arbitration

Use in baseball

The costs of lawyers in insurance claims

The final offer arbitration challenge (published in HBR with Danny
Kahneman)



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Links from Talk

Negotiating Rationally by Max Bazerman and Margaret A. Neal (1992)

<https://www.pon.harvard.edu/shop/negotiating-rationally/>

Negotiation Genius by Max Bazerman and Deepak Malhotra (2007)

<https://www.pon.harvard.edu/shop/negotiation-genius-how-to-overcome-obstacles-and-achieve-brilliant-results-at-the-bargaining-table-and-beyond/>

BATNA and Reservation Point:

Best Alternative to a Negotiated Agreement (BATNA) and reservation price are both concepts that help negotiators understand their options and leverage.

ZOPA:

The zone of possible agreement (ZOPA) is the range of options where two or more parties in a negotiation can find common ground. It's also known as the bargaining range or zone of potential agreement.

Anchoring:

Anchoring in negotiation is a tactic that involves setting an initial reference point to influence the other party's perception of what's reasonable. It's a common cognitive bias that can be used to frame a negotiation in the negotiator's favor.

Galinsky and Schweitzer are Adam Galinsky and Maurice Schweitzer, two prominent researchers and authors who co-wrote the book "Friend and Foe: When to Cooperate, When to Compete, and How to Succeed at Both," focusing on the dynamic between cooperation and competition in various social and professional situations; Galinsky is a social psychologist at Columbia Business School, while Schweitzer is a professor at the Wharton School, both specializing in leadership, negotiation, and decision-making research.

Watch a PON Live! book talk with Barry Nalebuff titled Split the Pie: A Radical New Way to Negotiate
<https://www.pon.harvard.edu/events/pon-live-split-the-pie/>

Watch a PON Live! book talk with Max Bazerman on his book Complicit: How We Enable the Unethical and How to Stop.

<https://www.pon.harvard.edu/events/pon-live-complicit-how-we-enable-the-unethical-and-how-to-stop/>

Complicit: How We Enable the Unethical and How to Stop by Max Bazerman (2024)

<https://www.pon.harvard.edu/shop/complicit-how-we-enable-the-unethical-and-how-to-stop/>

“Dealmaking: The New Strategy of Negotiauctions” by Guhan Subramanian (2010)

<https://www.pon.harvard.edu/shop/negotiauctions-new-dealmaking-strategies-for-a-competitive-marketplace/>

How to Make the Other Side Play Fair by Max Bazerman and Daniel Kahneman, Harvard Business Review (September 2016)

<https://hbr.org/2016/09/how-to-make-the-other-side-play-fair>