

Commentary

The Shifting Role of Agents in Interest-Based Negotiations

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In "Toward a Theory of Representation in Negotiation," Joel Cutcher-Gershenfeld and Michael Watkins argue that "where representatives attempt interest-based bargaining without complete understanding by constituents, they risk having their 'creative' agreements rejected. When they seek the mandate to attempt interest-based bargaining, they risk rejection" (p. 48). If they are right, this is cause for serious concern. Those of us trying to encourage individuals and organizations to shift away from positional bargaining toward a "mutual gains approach" to negotiation would have to think twice about pushing in this direction when agents or representatives are involved.

Cutcher-Gershenfeld and Watkins suggest that representatives or agents face three dilemmas, and these are the cause of "role confusion" that, in turn, makes it hard for agents involved in mutual gains negotiations to succeed. As they say in their chapter, agents must constantly address the ambiguity about whether they are advancing their own interests or those of their constituents. Second, they face a continuing challenge around whether to advance interests as stated by constituents, or instead attempt to transform those interests. Finally,

they must balance their desire for internal consensus with the harsh realities of internal splits and the external need for flexibility. I explore each of these dilemmas and argue that they are not really as difficult to handle in practice as Cutcher-Gershenfeld and Watkins suggest.

I think there is substantial evidence that skilled agents deal with these pressures quite effectively most of the time. Moreover, I do not agree with the assertion that "agency" or "representation" is, in and of itself, a particularly significant cause of difficulty in interest-based negotiations. Perhaps the reason we see things so differently is that Cutcher-Gershenfeld and Watkins concentrate heavily on distinguishing among the roles that representatives play in each negotiation, when, in my experience, representatives actually move through a range of roles in each negotiation precisely because that is the way to handle the tensions Cutcher-Gershenfeld and Watkins describe.

■ WHOSE INTERESTS IS AN AGENT WORKING TO ADVANCE?

Cutcher-Gershenfeld and Watkins frame the "trust dilemma" as follows: If representatives are trusted by constituents, they will be better able to create value, but the more extensively that they are involved in creating value, the harder it is to persuade constituents that these activities are appropriately advancing their interests. This is an extension of what Lax and Sebenius (1986) first called "the negotiator's dilemma"—how to handle the tension between creating and claiming value.

Based on my own practice as a mediator, I've always felt that this tension was overdramatized by Lax and Sebenius as well as by other commentators. If the parties in a negotiation (of any kind) can create sufficient value—well beyond what any of the parties expected at the outset and well above what each of them requires beyond his or her best alternative to negotiated agreement (BATNA)—why should there be a problem working out an acceptable distribution of the value created? It is only when the parties fail to create much value and settle for a total that prevents one or both from exceeding their BATNAs by very much that the task of distributing value becomes difficult.

So, in a simple two-party negotiation (involving agents), the agents are always conscious of how much value they are creating because they are really involved in two simultaneous negotiations—a real one with the parties/agents on “the other side” and a putative negotiation between themselves and their principal(s) about how much of the value created will go to the agent. Thus, agents are always working to advance the interests of their principals because it is in their own interest to do so.

When there is a real trade-off between advancing the interests of the agent and advancing the interests of the principal, I would argue that the agent has no choice but to put the interests of the principal first. If agents fail to do this, they won’t be agents for very long. The impact on an agent’s reputation of being seen as working to advance his or her own interests at the expense of a principal’s interests could be devastating. Working to do this in a surreptitious way would be unethical.

I therefore do not accept the trust dilemma as being particularly difficult. Agents make their reputations by helping their principals “get more” than they ever expected, not by meeting their own needs at the expense of their principals but by working hard to expand the pie. There should not be a substantial conflict between the agent’s interests and the principal’s interests.

■ ARE INTERESTS OF PRINCIPALS GIVEN, OR CAN (AND SHOULD) THEY BE TRANSFORMED?

Cutcher-Gershenfeld and Watkins define the “transformation dilemma” as follows: “The more that a representative seeks to transform the stated interests of constituents, the greater the likelihood of producing an agreement that is responsive to external realities; however, the same efforts to transform stated interests also increase the risk to the representative, either from internal constituents who question legitimacy or from external counterparts who assume yet more capacity” (p. 37). Why would an agent or a representative try to transform the stated interests of his or her constituents? I can think of two reasons. First, the agent might acquire new information that leads the agent to realize that the principal has made a miscalculation. Perhaps a key assumption on which the principal’s priorities were based is

wrong. Second, the agent might realize that his or her own (unstated, selfish) interests can be met only by convincing the principal to recalibrate his or her interests.

Cutcher-Gershenfeld and Watkins talk about representatives who see themselves as champions or visionaries (as opposed to traditional agents), but I question the significance of these distinctions. Either you represent someone or you don't. A union negotiator must (by law) represent the interests of the rank and file. A diplomat represents the interests of his or her country (or, at least, the government in power). Representatives who think they know better what the interests of their constituents are than do the constituents themselves probably should run for office. At the very least, they should seek a different role.

If the principal has made a miscalculation, it is the agent's responsibility to help the principal see that such is the case. If the principal (or the constituency) doesn't agree with the agent's analysis, I believe the agent must either resign or move forward in a fashion consistent with the mandate he or she has received. Any attempt to subvert the interests of the principal in favor of the selfish interests of the representative would, I believe, be unethical and entirely unacceptable, regardless of how ennobled the agent believes his or her vision to be.

To some extent, I think that Cutcher-Gershenfeld and Watkins are really talking about positions, not interests. I can imagine a great many situations in which an agent quickly realizes that his or her principal's interests will be better served if the principal will back off from a publicly stated position and give the agent more room to maneuver. This is not, however, about transforming interests. Although interests can be informed through the give-and-take that occurs during the process of negotiation, it is not usually the case that information is revealed that causes the hierarchy of basic interests and values to shift. More often than not, interests (i.e., priorities) are static. For these reasons, I don't think the transformation dilemma is a serious problem.

■ HOW SHOULD INTERNAL DIFFERENCES WITHIN A CONSTITUENCY BE HANDLED?

Cutcher-Gershenfeld and Watkins frame the "flexibility dilemma" in these terms: "Representatives require sufficient internal agreement to

understand the interests they represent and protect against divisive power tactics, but increasingly specific and focused internal agreements will constrain flexibility in external negotiations" (p. 38). I see this problem as the most serious of the three they raise. I think they are exactly right in their formulation of the difficulty facing any representative or agent; however, there are several things that agents and representatives can do to handle this tension.

First, agents need to do what all skilled negotiators do (and what Roger Fisher and Wayne Davis spell out in their chapter in this volume). They must segment the negotiation into at least two parts: an inventing phase that is primarily cooperative and a committing phase that is more likely to be predominantly competitive. During the early stages of any negotiation, agents should be willing to explore wildly different options without implying any commitment. This is best accomplished by agreeing to ground rules that clearly distinguish between the exploration of alternatives and the formulation of binding commitments. Once such ground rules are in place, an agent should have complete flexibility during the early stages of a negotiation.

As the negotiation comes to a close, it is natural to move toward a narrow formulation of the final agreement. By this time, however, if an agent has done his or her job, internal disagreements within the constituency should have been worked out or bridged, usually by adding to the overall package that the agent must have to reach agreement with the other side. Prior to starting the negotiation, an agent should have worked with his or her principal(s)—regardless of how internally diversified—to formulate a clear statement of the principal's (i.e., constituency's) BATNA and its interests. Options considered along the way should be presented for review by the principal (or the constituency). Before any final agreement is reached, internal disagreements within the constituency (and with the agent) should be worked out. Such differences should not be allowed to compromise the agent at the point at which commitments must be made.

A second way of handling the flexibility dilemma is to insist on a contingent agreement. If there are disagreements within the principal's side (i.e., constituency) based on different forecasts of what is likely to occur in the future (or different risk orientations), contingent agreements can be used to cover a range of possible futures. In this way, internal disagreement within the principal's side can be handled without undermining the flexibility the agent requires.

A skilled agent or representative knows how to broker agreement internally on what the principal's BATNA and interests are. With internal agreement in hand, the agent enters the value-creating stage of a negotiation with substantial flexibility. As interesting options and a provisional package begin to take shape, the agent takes these back to the principal for review. Further internal mediation may be necessary. Contingent agreements may be used to bridge remaining internal disagreements. In the end, there should not be a need to constrain flexibility in the external negotiations as a means of coping with internal disagreements.

■ THE SHIFTING ROLE OF AGENTS IN INTEREST-BASED NEGOTIATION

At the outset of any negotiation, an agent needs to be a clearheaded analyst, helping his or her principal deal with internal disagreements, examining the BATNA, and clarifying interests. The agent and the principal ought to talk honestly about overlaps and possible divergences in their interests. During negotiations, an agent ought to be unabashedly partisan on behalf of his or her principal's interests, in part because the agent's interests will almost always be well served by such a strategy. Because the early phase of any negotiation should be focused on creating as much value as possible, however, agents ought to be collaborative in their styles, each helping the "other side" create as much value as possible.

During the later stages of a negotiation, an agent must be in close contact with his or her principal(s). When commitments are sought (whether in a contingent form or not), these must be clearly understood by the principal (or factions in the principal constituency). Commitments must be made by the principal and not just the agent. For example, if the agent thinks the principal is making a mistake (or clinging to misguided interests), that should be discussed. In the end, an agent (of whatever type) must be accountable to his or her principal and must put the principal's interests first. These are the key steps in an interest-based or mutual-gains-style negotiation. In the final analysis, I see nothing to suggest that interest-based negotiations will be more difficult if agents are involved.

I am impressed with Cutcher-Gershenfeld and Watkins's effort to broaden and deepen our thinking about the roles that representatives play in various types of negotiations. All told, they examined seven different roles: advocate, partner, principal, agent, champion, visionary, and mediator. I think it will help us build a more robust theory of negotiation if we keep all these roles in mind. I do not believe, though, that the involvement of agents makes it particularly difficult to move toward a more interest-based approach to negotiation or dispute resolution. Although agents or representatives can, and probably should, play a variety of roles, all the roles described by Cutcher-Gershenfeld and Watkins call for behaviors that are consistent with the key steps in a mutual gains approach to negotiation.

REFERENCE

- Lax, D. A. and J. K. Sebenius. 1986. *The manager as negotiator: Bargaining for cooperation and competitive gain*. New York: Free Press.



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Major Themes and Prescriptive Implications

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When we began our year-long seminar "Agents in Negotiation," we had no idea how we would conclude. Our strategy was to consider agents as a "complicating factor," that is, as one of approximately half a dozen features that make a negotiation complex. Such factors might include the cultural diversity of the parties, the presence of neutrals, the gender of the parties, the scientific or technical complexity of the issues under discussion, and the number of stakeholding group—any factor, that is, that may require elaboration of the basic model(s) or theory upon which negotiation practice is based. We were also committed to bringing together as many disciplinary perspectives as we could. If we were going to enrich the basic theory of negotiation, including the work generated by the Program on Negotiation over the past decade and a half, why not reach out in as many directions as possible for assistance and advice? Our mission was to figure out how best to adapt or modify the interest-based model of negotiation that typically assumes two monolithic parties seeking to advance their own interests, to take account of problems and opportunities presented by the involvement of agents.

As our discussions evolved, three themes emerged. First, agents appear to have different roles to play and to add value in different ways, depending on the scope and content of the negotiation. The expertise offered by a lawyer, for example, representing his or her client in a contract negotiation is quite different from the "assistance" a diplomat provides to a country involved in a treaty negotiation or the added value a union negotiator contributes on behalf of the rank-and-file. We spent a considerable amount of time trying to parse the different roles that agents (or representatives) play.

Second, it quickly became clear that communications between agent and principal and among agents is crucial to exploiting the added value that agents can generate. We explored the advantages and disadvantages of "full and completely truthful" communications between agents and principals at various points in different kinds of negotiations. Ultimately, we discovered that the alignment of interests (and not just the quality and completeness of communications) was really what we were concerned about.

Third, there was agreement early on that the mandate(s) given to (or assumed by) agents can substantially add to or detract from their effectiveness. This generalization stood as seminar participants attacked it from their very different vantage points and as we tested its relevance in a wide range of practice situations.

The chapters in this volume examine these three themes in some detail. From our own standpoint, we are convinced (although others in the seminar may have reservations) that we can say some things with confidence about agents in negotiation. A number of my colleagues, who are more patient researchers and in less of a rush to squeeze out prescriptive advice, will be more than satisfied with the testable propositions that also appear in the final chapter of this book. On behalf of a more intrepid few, we are prepared to go a step farther and offer summary statements and prescriptive advice based on what we have already discovered about the three themes listed above.

■ ROLES PLAYED BY AGENTS

Agents play many roles in negotiation. The choice of the role they play ought to reflect the interests of the principal, the relative bargaining power of the principal vis-à-vis other principals, the skill and knowl-

edge of the agent, and the agent's reputation. The agent should not be calling the shots, and principals should think long and hard about what they want from an agent before choosing someone to represent them in a negotiation. A lot depends on the match between the skills and style of the agent they select and the circumstances surrounding the negotiation—particularly the relative power of the parties. For example, if a principal has a weak best alternative to a negotiated agreement (BATNA) and his or her counterpart has a strong BATNA, it would be best to find an agent who has had experience (and success) operating in such a situation.

One key role of an agent, in almost any negotiation, is to expand the zone of possible agreement (ZOPA) between or among the principals as far as possible. This involves not just creativity and substantive knowledge about the issues under discussion but also good listening skills and a quality of mind that permits simultaneous exploration of many options. Agents who are good only in the competitive clinches and are afraid that any sign of cooperation will undermine their ability to walk away with the larger "piece of the pie" when it comes time to distribute value are not likely to succeed in expanding the ZOPA. Of course, an agent had better be able to ensure that his or her principal receives an appropriate share of any and all value created. The more inclined principals are to jump at the first offer, the more they need skilled "value claimers" as their agents.

The role an agent plays must take account of the authority assigned to that agent by the principal. The less authority ceded by the principal, the less responsibility the agent has for evaluating options or making decisions. An agent who is accustomed to wielding substantial authority throughout a negotiation probably would be the wrong person to select for an assignment involving little if any authority. A limited grant of authority does not necessarily limit an agent's creativity; however, the ground rules must be clear—both internally between the agent and the principal and externally between the agents and between the principals. Agents with limited authority can still work, especially at the early stages of a negotiation, to gather information and generate options for their principals. They can still help their principals analyze each option objectively.

In the final analysis, the role of the agent and the role of the principal are intertwined, or at least they ought to be. Most principals, from time to time, are forced to play the role of agents in that they, too,

have constituents to whom they must account; they understand what is involved. Problems seem to emerge when agents are "one-trick ponies," unable to make adjustments to the needs of their clients or the circumstances, and their principals (but not their counterparts!) are intimidated by the agent's competitive style and reputation.

ALIGNMENT OF AGENT-PRINCIPAL INTERESTS

Principals can enhance the effectiveness of their agents by ensuring that agent-principal interests are carefully synchronized. Interests can be realigned by altering the incentives given to agents. Altering the instructions alone will not do it. Incentives can include more than a fixed fee or a share of the deal; they can encompass promises of future assignments as well as promises of the kind of publicity that can make or break an agent's reputation.

Complete alignment of interests between agents and principals is not necessarily helpful. Indeed, at the earliest (inventing) stages of a negotiation, nonalignment (or at least the appearance of nonalignment) may be advantageous. For example, if agents really throw themselves into brainstorming wildly different options (and the agents involved are looking out for their own interests even if those are somewhat different from their client's interests), they are more likely to end up with "packages" that fully exploit differences and leave their principals better off. Too many assumptions early on about what the principals will and won't accept can inhibit useful brainstorming.

In the international treaty-making arena, when top country representatives are empowered to do nothing more at a meeting than read preapproved statements (aimed at mollifying factions back home), the chances of generating real solutions to pressing global problems are minimized. When the same representatives are empowered to participate, on their own responsibility, in a brainstorming process in which no commitments are sought, their levels of creativity can be truly astonishing. When commitments must be ratified, nonalignment of interests between principals and agents in the final stages of a negotiation can undermine the prospects of agreement (or at least its likely implementation). Prior to that, though, less concern about complete alignment of interests can be a plus. We are not arguing that nonalignment is, in and of itself, an advantage; rather, experience has dem-

onstrated that less concern on all sides about whether there is complete alignment can free the parties to be more creative.

It is sometimes advantageous for principals and agents to collude in presenting a "false nonalignment" of interests so as to maximize gains when value is being distributed. This is especially true when principals put substantial emphasis on maintaining long-term relationships with other principals but feel strongly that they do not want to be pushed to take less on the grounds that, by being greedy, they are threatening the relationship. Under these conditions, a principal would love to be able to say that he or she is staying out of it and leave the "nasty" part of the negotiation completely in the hands of the agent. Of course, this does not always work. A knowledgeable principal on the other side will say that the first principal should not let his or her agent make the important decisions and that the first principal will be held accountable anyway.

MANDATES GIVEN TO AGENTS

As the seminar progressed, we became more convinced that it is best to put the authority granted to agents in writing and to disclose these instructions to the other agents. It appears to be helpful for an agent to show another agent exactly what his or her mandate is. Whether these written instructions are accepted at face value, of course, is another matter. At the outset of a negotiation, it seems as if an agent is more likely to be effective if he or she has no explicit authority to make binding commitments on any substantive issue, especially if it is clear in the instructions that this is likely to change as the negotiation progresses. Principals, not agents, should have the final say over the choice of objective criteria used to argue for a particular distribution of value. Indeed, principals as well as agents have reputations at stake, and the choice of objective criteria has a lot to do with the kind of reputation that both the principal and the agent will create for themselves. Those who choose to supply no objective criteria at all—classic hard bargainers engaged in a test of will—earn a well-deserved reputation as unyielding and not very creative negotiators. In sum, the authority, autonomy, breadth, and adaptability of an agent's mandate should be carefully set to increase the size of the ZOPA, to maximize the likely

implementability of the agreement, and to benefit the reputations of both the agent and the principal.

■ PRESCRIPTIVE ADVICE TO PRINCIPALS VIS-À-VIS AGENTS

Although the same research findings can be used to generate advice to agents vis-à-vis principals, we really did not focus very much on that side of the equation. Instead, we concentrated almost entirely on the best advice we could give principals about dealing with agents. Moreover, the seminar as a whole did not try to reach consensus on the kind of prescriptive advice offered below. These notions are based on our understanding of the seminar discussions and the commentaries of our colleagues.

Presume that the agent on the other side may not be portraying his or her principal's interests accurately. If one assumes that an agent's interests diverge from the principal's interests, he or she will ask a lot more questions, evaluate what is heard in a different light, and press for more direct evidence that the other principal has, in fact, heard a proposal before accepting an agent's claim that it has been rejected. One might also frame offers or proposals in a contingent fashion. For example, one might propose multiple packages, each offering a lot more on one thing and less on several others, and ask the agent to indicate which is more attractive to his or her principal and why. One would do this before indicating which package is preferred and would not accept a mere rejection of all the packages. Rather, one would keep pressing for clarification by offering additional "if-then" options. My presumption is that an agent will feel obliged to take "if-then" offers back to the principal (even if the agent does not like one or another of them), because the potential upside of one or more of the "if-then" choices could be too good from the principal's standpoint for the agent to have rejected out of hand.

The more one assumes that there is a divergence between an agent's interests and his or her principal's interests, the more one is likely to rely on written summaries of discussions and written responses to proposals. In addition, one is likely to press for a face-to-face meeting with the other principal(s) before an agreement is finalized. When it comes time for implementation, the agent could be long gone, so it

is necessary to see the other principal's reaction when one asks, point blank, for a personal endorsement of the "deal." Of course, this has implications for how to deal with an agent representing one's own interests as well. The principal should be there in person to ensure that everyone understands the final agreement as well as the obligations and commitments it implies. It is important to see written versions of offers and responses from the other side.

Try to find out the structure of the financial relationship between the agent and the principal on the other side. A principal should not be shy about asking directly what the financial relationship is between the other principal and his or her agent. After all, it is likely to directly affect the negotiation. It would not be surprising if the agent would not reveal this information. One might still want to put the question to the other principal (and risk being told the same thing again). In the book publishing business, agents receive a fairly standard rate of payment for helping to get a manuscript published. Does the fact that the rate is well known in the industry undermine or help increase the effectiveness of literary agents? We suspect it helps them. If both sides are aware of the structure of these relationships, it allows each side to better estimate the value of offers and proposals to the principals.

In most instances, a principal would be willing to share information about the nature of his or her financial arrangement with the other side's agent. It is not clear how the principal's interests are served by keeping this secret. If others do not agree, however, and asking directly does not produce what the principal wants to know, he or she might offer to exchange this information with his or her counterpart. If that does not work, the principal might be willing to reveal unilaterally the relevant information about his or her own case and hope this encourages the other side to do the same. If it doesn't, the principal would not be at much of a disadvantage. In fact, having revealed this information (which should help both parties), a principal might also be able to trade the revelation for something else later on in the negotiation.

Try to make the other agent an ally. The principal may not get to talk directly to the other side. In that case, the only person who can transmit a principal's proposals, along with the arguments to back them up, is the agent on the other side. If a principal treats this person as an enemy,

the agent may misrepresent the principal's statements in an effort to "get even" or undermine the principal. If the principal tries to work around the agent, he or she may not only fend off such efforts but even may actively work to undermine the principal's chances of getting what the principal wants. In the end, there is no alternative but to treat the other agent as an ally.

What does this mean? First, an agent should not try to drive a wedge between the agent for the other side and his or her principal. Second, agents should treat one another as they would like to be treated themselves. Third, agents should help each other to meet their interests (to the extent possible) insofar as these are not inconsistent with the interests the agent is trying to meet. Fourth, each agent should negotiate in a way that seeks to enhance his or her relationship with the other agent and not just the principal. Finally, each agent should work to enhance, not undermine, the reputation of his or her counterpart.

In his preface to this volume, Abram Chayes suggests that everyone involved in any kind of negotiation is really an agent of some kind and not just a principal. That is, there are very few negotiators who do not have someone else to whom they are accountable. Everything presented in this book, therefore, actually can be construed not just as specialized advice to agents or to people involved in the complexities of agent-principal interaction but as general advice to everyone participating in any kind of negotiation.

Chayes's observation came as something of a revelation to the participants in our seminar. The more we savored his suggestion, the more it made sense. When we review the prescriptions above in light of this interpretation, it does not seem necessary to change or qualify anything. One should always assume that the person with whom one is negotiating with is an ally, not an enemy (at least until proven otherwise). Furthermore, it should be assumed that this person is the only one in a position to get the "powers that be" to accept the proposals of the other side. Each side should try to give the other the evidence and arguments it needs to get a "yes" from its second table (i.e., the people to whom they report but who are not part of the direct communications). In the final analysis, assuming that almost all negotiation is done on behalf of "others," it is crucial that we have a good idea of how to incorporate agents into a basic theory of negotiation.