Excerpt

Introduction

Should you bargain with the Devil?

In an age of terror, our national leaders face this sort of question every day. Should we negotiate with the Taliban? Iran? North Korea? What about terrorist groups holding hostages?

In private disputes, you may face devils of your own. A business partner has betrayed you and now wants to negotiate a better deal. A marriage is ending and a divorcing spouse is making extortionist demands. A competitor has stolen your intellectual property. You are furious. You may not see your adversary as evil, but your gut tells you to fight it out in court. To negotiate with this person would give him something he wants. It would reward him for his bad behavior. You want your rights vindicated, and the thought of negotiating with your adversary seems wrong.

This book is about these kinds of conflicts, which pose some of the most challenging questions in negotiation. A disputant must decide: Should I bargain with the Devil, or resist? By “bargain” I mean attempt to make a deal – try to resolve the conflict through negotiation – rather than fighting it out. By “Devil,” I mean an enemy who has intentionally harmed you in the past or appears willing to harm you in the future. Someone you don’t trust. An adversary whose behavior you may even see as evil.

These days it is not fashionable to talk about evil, particularly among professionals concerned with dispute resolution. It smacks of smug moralism and religious fundamentalism. It has religious overtones connected with notions of sin. Moreover, many dispute resolution professionals would argue that it has no stable definition or inherent meaning. Many believe that the concept is entirely subjective: an individual who is involved in a conflict will often perceive the adversary as evil, but it is only a perception; a detached observer might disagree. Others would add that the notion of what is evil can vary greatly depending on time and place. That is not simply an academic debate about definitions. In my field, an air of taboo hangs around the word evil. It is considered a slippery and explosive term, much overused, loosely deployed, and too often exploited by religious and political leaders to malign their enemies and lead their followers into battle.

While I agree these dangers exist, and demonization can get in the way of clear thinking, the concept of evil is incoherent or meaningless. In my view, intentionally inflicting grievous harm on human beings without a compelling justification is evil. The Nazis’ persecution of the Jews, the Hutus’ slaughter of the Tutsi, and the Taliban penchant for throwing acid in the face of girls who dare to go to school — all of these are evil acts. So were the attacks of September 11, 2001 when suicidal terrorists intentionally and without justification killed nearly three thousand innocent civilians.
My question, and this book, have their roots in September 11. In the fall of 2001, less than a month after the attacks, Harvard Law School’s Program on Negotiation sponsored a public debate at Harvard on whether President Bush should be prepared to negotiate with the Taliban. This debate led me to begin thinking about a more general question: In any particular conflict, how should you decide whether it makes sense to negotiate or not?

At the time of our debate, events were moving quickly. Bush had just issued an ultimatum to the Taliban government in Afghanistan: Shut down al Qaeda’s training camps and turn over Osama bin Laden and his lieutenants, or we will invade.

The Taliban, surprisingly, had responded by inviting President Bush to negotiate. In addressing a council of clerics on September 19, Taliban leader, Mullah Mohammed Omar said, “If the American government has some problems with the Islamic Emirate of Afghanistan, they should be solved through negotiations (emphasis added).”

My colleague Roger Fisher and I were invited to discuss how Bush should respond to this offer. Roger Fisher is probably the best-known negotiation guru in the world. He is the leading proponent of what is called interest-based or “win-win” negotiation. His seminal book, Getting to Yes, has sold over three million copies. I am his successor as chair of Harvard’s Program on Negotiation.

Roger and I share common views on many important issues.

But not in this case.

Roger took the position – as I knew he would — that President Bush was wrong to issue an ultimatum and that the United States should accept the Taliban’s invitation to negotiate. His argument was consistent with his view, expressed in many of his books, that one should always try to resolve conflict through a problem-solving approach to negotiation based on the interests of the parties.

Essentially, Roger supports the categorical notion – prevalent in the field of dispute resolution — that you should always be willing to negotiate.

The core argument is straightforward and appealing. Before you resort to coercive measures – like warfare or litigation — you should try to resolve the problem. To negotiate doesn’t mean you must give up all that is important to you. It only requires that you be willing to sit down with your adversary and see whether you can make a deal that serves your interests better than your best alternative does. People and regimes are capable of change. You can’t hope to make peace with your enemies unless you are willing to negotiate.

You’ve also heard the categorical answer on the other side. The Faustian parable suggests you must never negotiate with the Devil. He’s clever and unscrupulous. He will tempt you by promising something that you desperately want. But no matter how seductive the possible benefits, negotiating with evil is simply wrong; it would violate your integrity and pollute your soul.
I must confess a natural aversion to categorical claims of “always” or “never.” There are usually examples that can puncture such arguments wrong. In my debate with Roger, I explained that my two greatest political heroes of the 20th century are Winston Churchill and Nelson Mandela. Each had to decide whether to negotiate with an oppressive and evil enemy. In May of 1940, Churchill refused to negotiate with Adolf Hitler, even though Nazi forces had overrun Europe and were about to attack a weakened Britain. In 1985, on the other hand, Nelson Mandela chose to initiate negotiations with a white government that had erected and enforced a racist regime.

If there is no easy, categorical answer – if sometimes you should bargain with the Devil and other times you should refuse – how in particular circumstances should you decide? How should you think about the problem? What are the considerations? The challenge is making wise decisions. This book addresses that challenge.

We will explore eight real, concrete cases in which a disputant had to decide whether to negotiate or resist. These are hard cases that cover a broad range of situations. Some are international conflicts involving evil regimes. Others involve business and family conflicts.

In all of them, the stakes are high and at least one party is enraged by the other side’s behavior. Demonization is rampant. Primal emotions, such as a desire for revenge, may be hard to distinguish from moral impulses: a deep aversion to the ideal of “legitimating” the enemy or rewarding bad behavior; a strong desire for vindication and justice. How do you make a wise decision in the face of such strong feelings?

We won’t look at these decisions in hindsight and ask, Did it turn out well? That would be too easy, and unfair to the protagonists of these stories. We will go back in time, follow the action as it unfolds, and evaluate the decision based on what the decision-maker knew at the time.

The stories of Churchill and Mandela have each become an archetype, a stock narrative that people tend to use as a convenient rationale for a decision they have already made. When they don’t want to negotiate, they tell the story of Churchill and the failure of appeasement. When they want to negotiate, they tell the Mandela story.

With the benefit of hindsight, both of these decisions look obviously right. But what if you go back to the time when the decisions were made? Do they still seem wise?

These were much harder decisions than they might at first appear, and I devote a chapter to each. In Churchill’s case, the war was going so badly that the American ambassador thought Britain would soon be overrun. Although Churchill always proudly maintained that his government never even considered negotiating with “that man,” the truth is very different. He and his War Cabinet ministers secretly debated — for three days — whether to pursue peace negotiations with Hitler. Powerful arguments were made in favor of negotiation. Mandela, too, made an enormously difficult and risky decision. In order to initiate negotiations with the apartheid regime, he had to figure out a way to keep the talks secret from his own colleagues.

We also explore the stories of two individuals caught in evil regimes. Both faced decisions in which lives were at stake. One refused to negotiate with the KGB and lived to be celebrated. The
other chose to negotiate with the Nazi Adolf Eichmann and saved hundreds of lives — only to be later condemned as a Nazi collaborator. Each in his own way was heroic.

The four business and family cases are all based on real disputes that I observed first hand. They involve two giant computer companies fighting over software rights, a symphony orchestra torn by labor conflict, a bitterly divorcing couple, and three siblings in combat over an inherited vacation home.

There are, of course, some big differences among these cases. The most important distinction has to do with what I mean by “evil.” I don’t believe in the Devil, but I do believe that Hitler and Eichmann were evil, as were the KGB and the apartheid regime. By contrast, none of the antagonists in our private disputes was evil, in my view, although they were demonized and in some cases perceived as evil by their adversaries.

Another distinction relates to what was at stake. The chapters concerning international devils involve matters of life and death. The business and family cases, by contrast, involve money and relationships — very significant relationships that had completely broken down. The alternatives to negotiation are different as well. In business and family disputes, there is typically an enforceable legal remedy: the disputants can go to court if necessary. This was not true in our international cases.

Given these differences, why consider these cases together? First, because this is a “how to think” book designed to show you how to “think outside the box.” In my many years of teaching I’ve learned that it’s often easiest to get students to embrace a new set of ideas by thinking about them in an unfamiliar context, and then applying them to contexts they are more familiar with. Second, because all eight cases involve demonization and its by-product: distorted thinking. Through these stories, I will examine how people in intense conflict decide whether to negotiate. What role do emotions play? What is the relationship between analysis and intuition? Are there common traps that interfere with wise decision-making? And is there an approach that can improve the likelihood of making wise decisions?

I think there is. In this book I will offer a framework — a disciplined way of thinking – that you can apply to any situation. As part of that framework, I will delineate two opposing sets of traps that can stand in the way of a wise decision. The “negative” traps – particularly demonization — stoke our anger and tempt us to refuse to negotiate when we probably should. The “positive” traps – although far less common in disputes like these — may tempt us to negotiate when perhaps we shouldn’t. My framework will help you avoid both sets of traps.

We are going to face some moral quandaries as well. What if, emotions aside, your own moral compass suggests that doing business with this Devil is simply wrong, even though it might provide some pragmatic benefits? Suppose you could foresee a deal that would serve your own interests but would harm others?

In each chapter, you will see a protagonist struggling with the decision of whether to bargain or resist, and the influence of the traps. You will see how they made their decision and why. I will
tell you whether I think they made a wise decision. I will also give you enough information to
draw your own conclusion. You may not agree with me, but you will know where I stand.

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