5 essential strategies for creative negotiations

In negotiation, the creativity of the counteroffer appears to be the most significant variable influencing the success of the final deal.



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Negotiation is described as an art form, and for good reason. The successful outcome of a negotiation depends as much on the creativity of the participants' offers and counteroffers as

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it does on their relative positions of bargaining power. When creativity is lacking in a negotiation, results tend to be disappointing. Even when two counterparts negotiate a deal that should, in theory, be equally beneficial to both of them, the negotiations can end in deadlock.

Consider the following hypothetical example: A sports agency is representing an African soccer player called Demba Sweetstrike. At the age of 32, he is approaching the twilight of his career but is still a sharp and deadly striker.

However, competition for places at his current club is intense, and he is finding it increasingly difficult to compete with the club's younger strikers for a place in the first team. Rather than continue to warm the substitutes' bench, Sweetstrike has instructed his agent to seek a loan arrangement with another team.

During the January transfer window, a struggling club in the same league needs to find a replacement for its lead striker, Mr. Goalmachine, who recently tore his Achilles tendon.

Unable to find a promising youngster to fill in at such late notice, the club's manager is desperate to sign Sweetstrike, who played for the club at the beginning of his career and would take little time to settle back in.

Despite concerns that he may not be as prolific as Mr. Goalmachine, the club is prepared to offer Sweetstrike almost the same salary that he gets at his current club, despite the fact that it far exceeds Mr. Goalmachine's current wages.

For Sweetstrike's part, this mid-season switch offers the prospect of more first-team playing time and would improve his chances of revitalizing his career. What he most wants is to preserve his chances of playing for his national team in the World Cup in two years' time, which he sees as the perfect swan song to his career. Indeed, he wants the switch so badly that he has told his agent that he would even be willing to play for free, although he would never say no to more money.

What we have, in a nutshell, is the perfect win-win situation. Both parties may be oblivious to each other's precise demands, but they both want pretty much the same thing: for Sweetstrike to play for his old club.

In such a scenario, you'd think that signing on the dotted line would be a mere formality. But it's not, as I discovered when participants of a course I run on negotiation participated in a similar exercise. Each had only one side of the story, and their job was to negotiate a deal.

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In total, 207 dyadic negotiations were conducted, with one side taking the role of the buyer and the other, the seller. At the end of the exercise, participants were asked to write down the first offer, the counteroffer and the conditions of the final deal. In total, 193 of the negotiations resulted in some kind of deal, while the rest ended in stalemates.

Out of the 193 deals, 119 were classified as “creative” in that they included factors beyond price, while the rest were negotiations that ended simply on price.

The analysis of the results revealed that the creativity of the final deal was determined by the amount of creativity deployed in the tabling of the first offer and the resulting counteroffers. Most surprising, the creativity of the counteroffer appeared to be the most significant variable influencing the creativity of the final deal.

Most of the negotiation research that looks at the dynamics of offers and counteroffers concurs that the first offer plays an anchoring effect in the negotiations. However, my research shows that as far as the creativity of the deal is concerned, it’s the initial counteroffer that sets the tone.

This article discusses why creative offers and counteroffers play such a vital role in the negotiating process, and also proposes a number of strategies to help you improve your own negotiating skills.

Two types of negotiation: competitive or collaborative

From the corridors of political power to the boardroom, the ability to hold your own around the negotiating table is a vital element of success in today’s world.

Negotiation has witnessed a surge in scholarly interest. The research divides negotiations into two broad categories: distributive or competitive, and integrative or collaborative.

- **Distributive bargaining** refers to a fixed-pie phenomenon, in which one tries to get a bigger slice of the pie than the other.
- **Integrative agreements,** by contrast, seek to enlarge the pie by leading to solutions that would accommodate the interests of both parties involved.

In other words, in distributive bargaining, one’s win is the other’s loss, while in integrative bargaining, both parties work together to achieve a better mutual result.

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Creativity in the context of negotiation alludes to collaborative and integrative outcomes — the assumption being that for a negotiation to be creative, each participant must be prepared to work closely with the other to craft an outcome that is satisfying to both.

Peter Carnevale, an expert on negotiation, mediation, group problem solving and creativity, has identified three distinct types of creativity in negotiations:

- The creativity of the negotiator.
- The creativity of the process, i.e., the use or demonstration of different creativity techniques during a negotiation.
- The creativity of the outcomes, i.e., deriving results that are novel, useful and satisfying to all parties involved in the negotiation. This was the focus of our study.

Offers and counteroffers: using creativity to create a new anchor

Negotiation is not a static process; it's a dynamic progression of decisions, offers, deliberations, rejections, counteroffers and compromises.

In a creative negotiation, the negotiators are able to move from choosing among available alternatives to creating novel alternatives. They go beyond the typical fixation on obvious, immediate gains, and they frame the negotiation in terms of joint gains.

In the negotiation exercise I used for the purpose of my research, I found that some of the initial offers were, by nature, purely distributive: they focused on immediate, narrow gains.

Others included novel elements, some of which were unquantifiable in financial terms.

A creative first offer that includes elements other than price gives the counterpart more flexibility in the negotiation. It also provides vital information about the potential for value creation.

In a study, Simone Moran and Ilana Ritov focused on so-called logrolling — sacrificing something of low priority for the giver but of high priority for the other party, in return for something of high priority for the giver but of low priority for the other party. They found that such deals yielded higher combined profits for both parties.

This sort of negotiation also tends to produce a higher valued counteroffer from the initiator's

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perspective than most distributive offers. So, a combination of creative initial and creative counteroffers is more likely to lead to a more mutually beneficial final outcome and avoid deadlock.

In the study I conducted, the creativity of the counteroffer emerged as the most significant variable influencing the creativity of the final deal.

That said, the degree of creativity of a counteroffer hinges, to a great extent, on the degree of creativity of the original offer.

The probable explanation for the phenomenon is that the counterpart — that is, the one who doesn't make the initial offer — has more time available to focus on the first offer, exploring and gathering information not contained in the first offer. By using this additional information and incorporating it into the counteroffer, not only is it more likely to produce a better result, but it can nullify the advantage of being the one who makes the first offer.

This means that a creative counteroffer must either build on a creative first offer, or it must create an altogether new anchor in the negotiation process, thereby raising the prospects of reaching a more creative deal.

Breaking the deadlock: 5 strategies for more creative, dynamic negotiations

One of the reasons why many negotiators are unable to come up with a creative, integrative proposal is the failure to create trust among negotiators. Lack of trust prevents negotiators from taking a broader view of the other side; instead, they cling to their own deeply held assumptions. This leads negotiators to bargain hard on one particular variable — usually price — which may lead to a deadlock or even a complete breakdown in negotiations.

What can negotiators do to keep negotiations from descending into such an impasse? How can they overcome their single-minded obsession with short-term goals, in order to embrace a broader view of the other options available? And how can they keep negotiations alive through a process of creative give and take?

To address these questions and to offer a road map for more successful negotiating, I propose five strategies for developing a more creative, dynamic approach during the negotiation process.

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1. Do your homework

All too often, negotiators enter into a negotiation lacking a clearly defined outcome. This is not to say that you need to enter the negotiation with a fixed position in mind or your heart set on achieving one single objective — quite the opposite.

Instead, negotiators should establish a negotiating position that has two key elements:

- A minimum or resistance point.
- An objective or target point.

These two poles serve to establish the parameters of the bargain, while at the same time giving you room to maneuver.

The resistance point is the minimum outcome to be achieved through the negotiation; it is the point at which a negotiator would walk away rather than continue to negotiate.

In their best seller, *Getting to Yes*, Roger Fisher and William Ury coined the term BATNA (Best Alternative To a Negotiated Agreement) to refer to this concept. Having alternatives gives a negotiator certain leverage in making demands. But this requires a strong understanding of your alternatives beforehand.

It is also worth establishing some negotiating principles from the outset. Fisher and Ury make four recommendations:

- Separate people's problems from the issues.
- Focus on underlying interests, not stated positions.
- Generate options for mutual gain.
- Insist on objective criteria for measuring outcomes.

To focus on interests and generate options, you need to understand your counterpart. This means doing serious background work analyzing your counterpart's negotiating position, and learning as much as possible about their strengths and weaknesses, likes and dislikes.

As they say, knowledge is power. The more you know about the people sitting across the table from you, the greater your chances of making creative initial offers or counteroffers that will align their interests with your own. This will also avoid conflicts and provide the basis for developing integrative solutions.

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2. Listen carefully to the other side

It may sound obvious, but one essential factor in successful negotiation is the ability to listen to what the other party says.

Unfortunately, particularly when it comes to financial matters, negotiators make the mistake of focusing on their own position. They try to bargain on the basis of assumptions that go untested, due to the negotiator's inability or unwillingness to truly listen to what the other party is saying.

Listening is not the same as hearing. Listening is about understanding what is being said and grasping its implications for the negotiations at hand. It doesn't mean listening out only for what you want to hear. Negotiators should be attentive to everything their counterpart says, regardless of how trivial it may seem.

Chris Voss is a former international kidnapping negotiator for the FBI who teaches negotiation at business schools. In an interview, he explained the importance of active listening, which means "listening to the person you're negotiating with to find out what's driving them, what's important to them, what's motivating them. This way, you're really fleshing out where they're coming from in a three-dimensional way. A lot of times, the person you're talking with isn't completely aware of it themselves. There are things they're expressing indirectly."

By actively listening to the other party, a negotiator may stumble upon a bargaining chip that can unite both parties, raising the prospects of a more creative outcome.

An interesting case in point was the Brasilia Agreement of 1998, which finally settled a decades-long territorial dispute between Peru and Ecuador. As mentioned in the book *Negotiating With Giants* by Peter D. Johnston, it was the chance discovery by the chief negotiators that they both had disabled children that served to form a bond of empathy that eventually broke the deadlock in their negotiations.

This just goes to show that issues that may at first seem entirely irrelevant to the topic under negotiation can sometimes have an enormous impact on deliberations.

3. Incorporate what you have learned into your offers

Successful negotiation is not just about listening to what the other party says; it's also about acting upon the new information you've gleaned by incorporating it into an attractive counteroffer.

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Negotiations have often been compared to improvisational performing arts, like jazz or comedy. The key to successful improvisation is having sharp listening skills and being able to respond quickly to the information provided. In improvisation, an artist takes the information provided by the other artists, or even the audience, and integrates it into his or her own performance, thereby enhancing the work of the other players. Similarly, a negotiator needs to learn to incorporate the new information that emerges during the process of a negotiation. This requires identifying which information is important, and quickly making any necessary amendments to the original position, so as to create a better deal.

4. Overcome institutional resistance and find common ground

As any manager of a large corporation can tell you, it's one thing to reach a satisfactory outcome in a negotiation between two individuals; it's quite another when the two sides of a negotiation are corporate behemoths.

Corporate negotiations, in situations like mergers or joint ventures, take more time. They also tend to be more involved and may include larger groups of actors. Indeed, the closer corporate negotiations come to reaching a conclusion, the more tedious the process, as legal departments must review any paperwork prior to signature. This is simply a fact of corporate life.

A *Harvard Business Review* article by Jeff Weiss, Aram Donigian and Jonathan Hughes drew on the U.S. military's experience of negotiating in extreme situations of conflict. They proposed these strategies to help corporate managers navigate complex, fast-moving, high-stakes negotiations:

- Understand the big picture.
- Uncover hidden agendas and collaborate with the other side.
- Get genuine buy-in.
- Build relationships that are based on trust rather than fear.
- Pay attention to the process as well as desired outcomes.

Corporations, the same as any other negotiator, must commit themselves to communicating openly and taking a cooperative approach. Not doing so entails far greater risks.

For example, if only one side cooperates and the other competes, the cooperator will usually get the raw end of the deal. If each side is suspicious or uncertain of the other, they will both

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opt to compete; but if they both compete, both sides end up with mediocre outcomes or perhaps worse off.

However, when both sides cooperate, they both achieve good outcomes. This was a lesson that Steve Jobs learned during Apple's struggles with its larger competitor, Microsoft. Explaining his decision to enter into partnership with his longtime rival, Jobs said: "Apple was in very serious trouble. And what was really clear was that if the game was a zero-sum game, where for Apple to win, Microsoft had to lose, then Apple was going to lose."

Jobs realized that trying to drive a hard bargain with Microsoft would be of no benefit to Apple. Instead, he reached out to Bill Gates in the hopes that the two could forge an agreement that would be beneficial for both companies. The Mac Development Team at Microsoft became one of Apple's best developer relationships, according to Jobs.

This is a perfect example of integrative negotiation in action: seeking to find common ground, by listening to and understanding the interests of the other party. This is a far more effective way of reaching a creative outcome.

The Apple vs. Microsoft negotiations also underscore the usefulness of negotiating a group, or bundle, of interests together, as opposed to treating each issue separately, as I will discuss next.

5. Bundle your objectives

Bundling is a simple concept that has a lot of power when used correctly. Bundling is grouping items together and negotiating one combined value for the group rather than pricing each item separately.

This approach to negotiating is particularly appropriate when the negotiating parties seek to reach agreement on a broad range of issues, as is often the case, for example, in multilateral trade agreements.

One of the interesting findings of my study is that, in creative deals, there was a much smaller difference between the prices claimed in the first offer and first counteroffer than there was in non-creative deals. In creative deals, the negotiators tended to quote prices closer to the expectation of the other party, and tried to create value for themselves by including additional variables in their offers.

The shift from negotiating one issue to negotiating multiple issues changes the nature of the

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process dramatically. It gives the parties the opportunity to create value as well as to claim value. Put simply, the more options that are on the table, the more chances negotiators have of using creative processes to reach a satisfactory outcome.

One of the best examples of this was during the 1962 Cuban missile crisis. For 13 long days, the world awaited the outcome of intense diplomacy between the United States, the Soviet Union and Cuba. In the memoir *Thirteen Days*, Robert Kennedy wrote: "The final lesson is the importance of placing ourselves in the other's shoes. During the crisis, President Kennedy spent more time trying to determine the effect of a particular course of action on Khrushchev or the Russians than on any other phase of what he was doing."

Everyone ultimately succeeded in overcoming huge institutional resistance in order to strike a win-win solution. They were able to stifle the influence of advisers who were pushing for an escalation of tensions. By committing to Churchill's maxim of jaw-jaw rather than war-war, both Khrushchev and Kennedy were able to engage in an exchange of creative offers and counteroffers. Like Steve Jobs, they realized that seeking a win-lose outcome would have been fatal to everyone's interests.

By focusing on a win-win solution, and using all creative negotiation techniques at their disposal to achieve it, not only did they avert a disastrous outcome, but they also laid the foundations for much closer cooperation in the future. It's a lesson all business leaders would do well to learn.

Time to take to the dance floor

The anthropologist Edward T. Hall once spoke of a "perpetual ballet" in describing a Mexican marketplace with a number of pairs of buyers and sellers from different cultures engaged in bargaining.

For me, it is fitting that he would liken negotiation to a dance involving two skilled performers who need to understand each other, adjust to each other's steps and respond to the common music, in order to create an elegant choreography.

Problems arise when the dance partners don't listen to this common music. They need to find this music: to listen and discover that common ground, in order to arrive at a sustainable deal that satisfies the needs and requirements of both parties.

The best strategy is to prepare well, listen well and incorporate the information received

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during the negotiation.

As the well-known saying goes, “The most important trip you may take in life is meeting people halfway.”

Granted, all this is easier said than done. Negotiation is a skill, and one must practice the framework presented in this article in order to master it.

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