

HOW TO BREAK DEADLOCKS  
AND RESOLVE UGLY CONFLICTS  
(WITHOUT MONEY OR MUSCLE)

# NEGOTIATING THE IMPOSSIBLE



**DEEPAK MALHOTRA**  
HARVARD BUSINESS SCHOOL

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**NEGOTIATING**  
**THE**  
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# Negotiating the Impossible

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For Aisha, Aria, and Jai

*Remember—every problem wants to be solved*

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## PREFACE

**I**F YOU HAVE NEVER faced a difficult deadlock or ugly conflict in your life, consider yourself to be among the lucky few. But if you are like most people, you have encountered negotiations that seemed impossible, and you have struggled with some tough questions: How can you defuse a situation in which no one seems willing to back down? Is it possible to negotiate effectively when you have no money or power? If your attempts at negotiating in good faith are failing, what can you do? How might you deal with people who are acting aggressively or unethically, or who are simply unwilling to negotiate? How can you resolve protracted or escalating conflicts?

Over the years I have worked with tens of thousands of business owners, executives, and managers. I have consulted on hundreds of high-stakes negotiations, deadlocked deals, diplomatic stalemates, and protracted conflicts. And I have advised countless people who were dealing with challenging situations or difficult people in their work or daily lives. One question that people in all of these environments ask is how they can learn to negotiate more effectively when things seem hopeless. And while many books carry nuggets of insight on the topic, I have struggled to come up with an answer when asked to recommend a book that deals with especially challenging situations. I have not found a way to share my conviction that even the most difficult of negotiation problems have potential solutions.

That is why I wrote this book. It is an acknowledgment of the fact that while those of us who study negotiation have written a lot that is extremely useful, we may have ignored some of the most persistent and important questions. This book provides answers to those questions.

The lessons in this book are brought to life through stories of people who managed to negotiate the seemingly impossible *without* having had the money or muscle to solve the problem. Each chapter tells a different story—from history, business, diplomacy, sports, or

popular culture—and each story yields a series of insights and principles. Whenever possible, I give additional examples of how these insights can be applied in other domains, whether you are negotiating with an employer or a spouse, a strategic partner or a child, a potential customer or a terrorist group. I have no doubt that you—the reader—will find additional, more personally relevant, applications.

I hope that the lessons in this book will help you resolve conflict, overcome deadlock, and achieve better outcomes in *all* of your negotiations—from the simple to the complex, and from the mundane to the seemingly impossible.

## INTRODUCTION

### *The Most Ancient Lesson in Peacemaking*

**A**MONG THE OLDEST PEACE treaties in history is the Treaty of Kadesh, which was negotiated between the Egyptian and Hittite empires over three thousand years ago, in the middle of the 13th century BCE. With neither party willing to continue incurring the costs of war, and with each side wary of looming conflict with its other neighbors, Pharaoh Ramesses II and King Hattusili III sought to negotiate an end to the conflict. Such attempts are difficult not only because the issues at stake may be contentious or complex, but because, often, neither side wants to make the first move. The side that comes asking for peace may look weak rather than wise or magnanimous, a signal that no leader can afford to send. And yet, a deal was reached. Despite having been drafted thousands of years ago, the treaty has many of the hallmarks of more recent agreements, including provisions proclaiming the end to conflict, the repatriation of refugees, an exchange of prisoners, and a mutual assistance pact if either side were to be attacked by others.<sup>1</sup>

One other characteristic makes this accord similar to what we often see today—in peace treaties, commercial agreements, and successful efforts at resolving conflicts ranging from international disputes to arguments between spouses. This feature is apparent in the Treaty of Kadesh only because it was recorded in two languages: hieroglyphics (the Egyptian translation) and Akkadian (the Hittite translation). A comparison of the translations reveals that the two versions are, as we ought to expect, very similar. But there is at least one important difference. The Egyptian translation states that it was the Hittites who came asking for peace terms. The Hittite version claims exactly the opposite.<sup>2</sup>

When it comes to deal making, diplomacy, and resolving disputes, it does not matter which culture you examine or what kind of negotiation

you investigate. It does not matter why people were fighting or why they chose to settle their differences. Some things never change: *the need for all sides to declare victory* is at least as old as recorded history itself.

The Treaty of Kadesh also exposes a more fundamental insight about negotiation and peacemaking—one that lays the foundation for this book:

Even seemingly impossible deadlocks and conflicts can be resolved if we shed the assumption that our only sources of leverage are money and muscle.

This is especially important to keep in mind when you are dealing with a situation that seems hopeless. When even your most generous offers are being rejected, when your well-intentioned attempts at addressing the issues are being thwarted, and when you have little power with which to impose a solution, you need a different approach and other sources of leverage. This book provides such an approach and reveals those sources of leverage.

## THREE WAYS TO NEGOTIATE THE IMPOSSIBLE

Some negotiations are easy. Others are more difficult. And then there are situations that seem downright impossible. These are ones in which you have little power and limited options. These are times when conflict is escalating, deadlock is worsening, and no one is willing to back down. These are situations where people are behaving in ways that seem irrational—or worse, with clearly hostile intent. These are problems without precedent, where even vast experience offers limited guidance.

But these are also the cases that, when handled skillfully, will become the stuff of legend.

This book is about such negotiations: deadlocked deals and ugly disputes that seemed completely hopeless. Until, that is, someone found a way to beat the odds *without money or muscle*. What might we learn from these stories and from those who lived them?

As anyone who has dealt with deadlock or conflict will attest, some of the hardest situations to resolve are those where your attempts at negotiating in good faith have failed and where you don't have the resources or power to bargain effectively. The reason people lose hope and begin to

see the situation as impossible is that they have already tried their best to address the substance of the dispute—they simply have no more money or muscle left. But what if there were other levers you could use?

In this book, we will focus on three crucial levers that negotiators often ignore, underestimate, or mismanage, especially when they are accustomed to thinking of power in terms of money and muscle:

- The Power of Framing
- The Power of Process
- The Power of Empathy

In my teaching and advisory work with thousands of business executives and company owners, I have heard countless tales of deal makers who were negotiating against the odds. In my work for governments and policy makers who are trying to negotiate with terrorists and armed insurgents, I have many times encountered the feeling of despair that comes from tackling the seemingly impossible. And, in my observations of even ordinary conflicts of everyday life, I have seen people struggle with how to manage hostile people, difficult situations, and thorny issues. In all of these places, people sometimes make a bad situation worse—or a difficult problem seem impossible—by pinning their hopes on money and muscle and failing to appreciate the power of framing, process, and empathy.

What insights might we share with people who are dealing with nasty conflicts in business, policy, diplomacy, or everyday life? What lessons might they learn from the most harrowing case of nuclear brinkmanship in world history? How might they emulate a young man of little clout or stature who managed to dominate one of the most important meetings of the last millennium? What might they take from the text of the most ancient peace treaty known to be in existence? What principles might they glean from comparing multibillion-dollar sports conflicts that were handled masterfully with those that ended in disaster? And what strategies might they borrow from a wide variety of high-stakes business disputes and deadlocks that were overcome without flexing muscle or throwing money at the problem?

The premise of the book is simple: there is much to be learned from situations in which people negotiated the “impossible.” First, the stories themselves—from history, diplomacy, business, sports, and popular culture—are inherently interesting, and readers will learn about how people lived and fought and negotiated in times and places both near and distant from where we sit today. Second, the stories offer tangible lessons that can be applied by anyone who is dealing with his or her own conflict or deadlock, whether it is seemingly impossible or more ordinary. Throughout, I give examples of how the lessons could be applied in other domains—ranging from job offers, to business deals, to personal relationships, to negotiating with your children, to engaging with terrorists. Finally, if we were to strip this book of all its trappings, frameworks, and organizational structure, we would find that it is, at the core, a book about human beings trying their best to get along with each other in situations that are not always easy. My hope is that the book instills optimism and provides another lens through which the reader can begin to appreciate the sometimes puzzling, occasionally disappointing or even exasperating, yet often inspiring thing we call humanity.

## **RETHINKING “NEGOTIATION”**

Before going any further, I will define *negotiation* as it is used in this book. In my experience, it is possible to think too narrowly about what negotiation is, what it entails, and when it is relevant—whereas I mean to use the word in its broadest possible sense. Too often, when people hear the word “negotiation,” they equate it with haggling or debating, or imagine people in suits hammering out a deal. They think of negotiation as something we do once in a while—or worse, as a daunting or unpleasant task that should be avoided if possible. We would benefit from thinking differently.

Having advised on multibillion-dollar deals, I can say with confidence that negotiation is not about dollars and cents. Having advised on how heads of state might manage peace processes that are on the verge of collapse, I can tell you that negotiation is not about lives lost or lives saved. Having advised on job negotiations and family disputes and



strategic partnerships and cease-fires, I can assure you that negotiation is not about career trajectory, or managing emotions, or finding synergies, or stopping bullets.

In short, negotiation is not about any one currency. Negotiation, regardless of the context or the issues involved, is fundamentally about *human interaction*. However simple or complex the issues, however well-intentioned or malicious the parties, however familiar or unprecedented the challenges, the question we are always trying to answer in negotiation is this: *How might we engage with other human beings in a way that leads to better understandings and agreements?* It does not matter whether the agreement is to be written down, as in a contract or treaty, or whether its enforcement is to be trusted to newly established goodwill, redesigned incentives, improved coordination, or merely the hope that accompanies a shaking of hands. It does not matter whether the understanding is between individuals or organizations, ethnic groups or countries. Negotiation is *always*, fundamentally, about human interaction. Sometimes these interactions are easy. Other times, they are tougher. And then, of course, there are the negotiations that interest us most in this book—the seemingly impossible ones.

Negotiation, then, is *the process by which two or more parties who perceive a difference in interests or perspective attempt to reach agreement*. The principles, strategies, and tactics that help us do so in extremely difficult situations are the focus of this book.

## **Deadlock and ugly conflicts**

The book includes dozens of stories from many different contexts.<sup>3</sup> In selecting the examples, I have focused on the kinds of problems that people often admit to facing in their own lives: deadlocks and ugly conflicts. *Deadlock* is a situation where people are making incompatible demands and neither side is willing to back down. We will look at situations where the deadlock is so severe that it threatens the entire deal or relationship, but we will also tie the lessons back to less extreme situations. A conflict is any situation in which people have competing interests or divergent perspectives. *Ugly conflicts* are those in which people are facing formidable

obstacles to achieving agreement—for example, mistrust, animosity, complexity, or a protracted history of hostility. We will see examples of each of these throughout the book as we extract lessons for managing conflicts of all kinds.

## HOW THE BOOK IS ORGANIZED

The stories and lessons in this book are organized across three sections, each emphasizing and exploring one of the three levers: framing, process, and empathy. Which one of these levers will be the key to solving your problem—or, whether you will need to use multiple levers—will depend on the situation. Alone, each of these is extremely effective. Together, they provide a comprehensive approach to negotiating the impossible.

- *Part I* focuses on the **amazing potential of framing**. Effective negotiators know that *how* you articulate or structure your proposals can be as important as *what* you are proposing.
- *Part II* focuses on the **decisive role of process** in determining outcomes. Negotiating the process astutely can be more important than bargaining hard on the substance of the deal.
- *Part III* focuses on the **tremendous power of empathy**. A dispassionate and methodical approach to understanding the real interests and perspective of all relevant players can help to resolve even the ugliest of conflicts.<sup>4</sup>

Of course, not all problems of human interaction will be solved quickly or easily. Many of the worst conflicts require tremendous effort, strategic perseverance, and fortuitous timing. But there are also times when what is most needed is something a bit different: the ability to control the frame, to shape the process, and to unearth possibilities where others see none.

With that—I hope you enjoy the stories. I hope you find the lessons to be of value. And I hope the book encourages you to see every problem of human interaction as an opportunity for achieving greater understanding and better agreements.

**Part I**  
**THE POWER OF FRAMING**

**Yes, I have tricks in my pocket. I have things up my sleeve. But I am the opposite of a stage magician. He gives you illusion that has the appearance of truth. I give you truth in the pleasant disguise of illusion.**

**TOM WINGFIELD, IN  
TENNESSEE WILLIAMS'S *THE GLASS MENAGERIE***

# 1

## THE POWER OF FRAMING

### *Negotiating in the NFL*

“YOU’VE GOT TO COME up with some new idea. You guys keep talking *past* each other instead of to each other.”<sup>1</sup> These were the exasperated words of United States Magistrate Judge Arthur Boylan, who had been tasked with helping to end an escalating conflict between players and owners in the National Football League (NFL). It was May 2011, and team owners had already locked out the players. Much of the action was taking place in courtrooms, as each side tried to gain leverage through legal maneuverings. Ultimately, if a deal could not be struck, the coming season would be in jeopardy. This was not just a theoretical possibility: in 2005, a prolonged dispute between owners and players had decimated an entire season in the National Hockey League, eliminating more than \$2 billion in projected revenue. The NFL had even more to lose, with approximately \$10 billion standing in the balance.

With so much money at stake in professional sports, you can be assured that, once in a while, the action at the bargaining table will rival anything fans get to witness on the field. At issue in 2011 was the fate of the new collective bargaining agreement (CBA), a multiyear contract between owners and the players’ union that governs the negotiation of individual contracts for all NFL players. The CBA also dictates, among other things, the revenue distribution between players and owners, the salary cap, minimum salaries, free agency rules, the terms of the annual draft, and working conditions. As in most CBA disputes in sports, one of the most salient and contentious issues in 2011 surrounded revenue sharing between owners and players. In other words, what percentage of the game’s revenue should go to players and what percentage to owners? In this case, the owners were demanding a \$2 billion off-the-top credit to

support investments before any split of revenues would take place, after which the players would receive approximately 58% of what remained. Players wanted no off-the-top credit for owners, and a 50–50 split of *all revenues*.<sup>2</sup>

How do you resolve a dispute in which the demands of each party add up to more than is on the table—and neither side is willing to concede?

## NEGOTIATING THE IMPOSSIBLE

The conflict escalated, and good faith bargaining gave way to legal maneuverings, heavy-handed tactics, and even appeals to the US Congress for intervention. Finally, there was a breakthrough. The resolution came when the parties agreed to a proposal (originating from the owners) that called for an entirely novel structure for revenue sharing. They decided that the way forward was to stop negotiating over “what percentage of all revenue” goes to each party. Instead, the parties would divide “all revenue” into three separate buckets that represented the different streams of NFL revenue. Then, they negotiated a different revenue sharing percentage for each bucket. The idea worked. The final agreement, signed August 4, 2011, states that players will receive:

- 55% of League Media revenue (e.g., revenue from TV rights)
- 45% of NFL Ventures / Postseason revenue (i.e., revenues from related businesses of the NFL)
- 40% of Local revenue (e.g., stadium revenue)

The solution, however, begs the question: What percentage of *all revenues* do the players receive from this deal? Running the numbers indicates that the three-buckets solution gives the players between 47% and 48% of all revenues in the first year of the contract. But wait! If that’s the case, why go to all the trouble of creating three buckets with different percentages for each? Why not avoid the hassle of creating a new accounting system and simply agree to the players getting ~47.5% of all revenues?

There is an economically rational explanation for why three buckets may be a wiser solution than one big bucket. For example, consider what happens after the first year of the contract. If the players expect that League Media revenue will grow faster and hence represent a larger share of all revenues in the future, and the owners project that Local revenue will grow more rapidly, then the three-buckets approach is a value creating solution: it gives each side a higher percentage of the bucket it values most. The only problem with this economically rational explanation is that it has very little to do with why the two sides actually agreed to three buckets. We can be sure that the economically rational explanation falls short because when you read further down in the CBA, there is another provision that contains the following language:

If, in any of the 2012–14 League Years, the Player Cost Amount . . . is greater than 48% of Projected “All Revenue” then the Player Cost Amount will be reduced to 48% of Projected “All Revenue.” . . . If, in any of these League Years, the Player Cost Amount is less than 47% of Projected “All Revenue”, the Player Cost Amount shall be increased to 47% of Projected “All Revenue.”

In other words, the two sides *are* agreeing to roughly 47.5% of all revenues going to players. If the percentage deviates in any meaningful way from 47.5% in any direction, it will be brought back to this relatively tight range.<sup>3</sup>

So we still have the same question: why go to the trouble of creating three buckets if the agreement is practically indistinguishable from what they could have achieved by agreeing to some specified percentage of all revenues for each year of the contract? To answer this, we need to first keep in mind that very few people actually look carefully at these kinds of contracts, and almost no media outlets comprehensively report or analyze the finer details of the deal. Second, while practically inconsequential, there is a small degree of movement possible in the revenue split in future years. Most importantly, the three-buckets approach is superior to the one-bucket approach in one essential respect: it allows each side to go back to its constituents and declare victory. It creates just enough room for league negotiators to report to the owners that they can keep a higher percentage of revenues where owner investments are greater (i.e.,

stadium-related revenues), and it lets Players Association negotiators announce that they get more than 50% of revenues whenever fans click on the television.

## CONTROL THE FRAME

As the NFL example illustrates, even in difficult negotiations where the parties are deadlocked, stalemate might be overcome without the use of money or muscle.<sup>4</sup> Even though the argument was over money, the league did not have to keep throwing more dollars on the table to get the players to agree to the deal. Instead, what they did is a great illustration of the power of *framing*: objectively identical proposals can be made more or less attractive simply by how they are presented.

The “frame” of the negotiation is a *psychological lens*. It is a sense-making apparatus that influences how people perceive each other, the issues at hand, and the options that exist. There is almost no limit to the number and types of frames that can emerge in a negotiation. For example, negotiators may look at a deal through a financial or a strategic lens, see it from a short-term or a long-term perspective, or regard it as a friendly or hostile engagement. Likewise, diplomats may look at a problem from a political or a security point of view, as being a central or a peripheral concern, or in a historic or present-day context. Deal makers may evaluate a proposal relative to their initial aspirations for the deal, or how well it compares to what others have achieved, or how it will be judged by others.

There are no “right” or “wrong” frames, but which frame takes hold has important implications for how the parties behave and what they will ultimately be willing to accept. For example, sometimes a low-stakes issue that neither side really cares much about becomes infused with so much political or symbolic significance that neither side is willing or able to back down. In recent years, Democrats and Republicans in the United States Congress have been confronting this problem extensively: compromise on the slightest issue is considered by many partisans to be akin to wholesale betrayal, making it harder to reach agreements even where there is a lot at stake and plenty of bipartisan support on the substance of an issue.

Importantly, negotiators almost always have the power to influence the frame, and as we will see, *reframing* can be a powerful tool for overcoming barriers to deal making. Regardless of the objective stakes, much of what determines how people approach a problem depends on how they (or their constituents) *subjectively* make sense of it. Deal makers are unwilling to make concessions to perceived adversaries but are more amenable to doing so when they perceive the task as a collaborative problem-solving effort. Negotiators who frame a conflict as “winner takes all” will have a harder time than negotiators who believe it is possible for everyone to “win.” Negotiators will be more or less willing to accept certain proposals when they adopt a short-term versus a long-term lens, or when the offer appears better versus worse than what they initially expected. As we discuss the power of framing throughout this section, we will pay particular attention to *how objectively identical proposals and options can be reframed to make them more attractive* to the other side. Paying attention not just to the substance of what is being negotiated, but also the lens through which parties are evaluating their options, can sometimes help break seemingly impossible deadlocks.

---

***Control the frame of the negotiation. The frame that takes hold will shape how negotiators make decisions, evaluate options, and decide what is acceptable.***

---

## **THE IMPORTANCE OF HELPING THE OTHER SIDE BACK DOWN**

The problems that negotiators face in early stages of deal making can be quite different from the problems they face as talks progress. One critical difference relates to the reasons why someone stubbornly insists on making demands that you cannot possibly meet. When this happens early in a negotiation, it is usually a sign that you have failed to set appropriate expectations for what *is* possible. This can lead the other side to ask for the impossible—that is, to demand concessions that are true deal breakers for you. This is why it is a good idea to educate the other side *at the outset* about the limits of what you can offer and about the areas where



you have more or less flexibility. Negotiators often fail to do this in the false belief that the other side is well-enough informed about the parameters of the negotiation, or because they are worried that discussing any limitations or constraints will raise doubts about their value as a partner. There may also be insufficient trust, making it harder for either side to believe that the other is genuinely so constrained, or that there is truly so little room for movement.

When people are *initially* deadlocked over incompatible positions, it usually means that their aspirations are unrealistic and there is simply not enough value on the table to meet them. If both sides want more than 50% of the pot, you have a serious problem, and the sooner you realize that it has nothing to do with poor math skills, the better off you will be. This was undoubtedly the case in the NFL. The same problem frequently surfaces in diplomatic negotiations and business disputes.

But at some point in the process, perhaps after weeks of interaction, or months of trust building, or years of impasse, one or both parties may come to the conclusion that their earlier demands are not possible, and that major concessions will be needed to avoid a truly disastrous outcome. When that day comes, you may find that people are *still* unwilling to lower their demands. Now, you no longer have an education or trust problem to solve. The problem is how to get the other side to *admit* that they initially asked for more than was reasonable, and to back down and accept what is *actually* possible. The problem is all the worse when the other side will have to back down publicly, because they have committed to aggressive positions in front of others (e.g., their constituents or the media). In my experience, it is often relatively easier to get people to understand that they have overreached and that their demands are impossible to meet; it is a lot harder to get them to acknowledge this and change course. This was the problem that the NFL negotiators faced—and ultimately solved.

---

***Convincing the other party that they will have to concede or withdraw from initial positions is not enough. You have to make it easier for them to back down.***

---

## NEGOTIATE STYLE AND STRUCTURE, NOT JUST THE SUBSTANCE

When the NFL negotiations were deadlocked, either side could have tried to make the deal more attractive to the other by reducing their own revenue demands. But this would have been a costly concession. As the solution they reached shows, you do not always have to throw money at the problem to move things along. Sometimes, wise concessions on style and structure can solve the problem more cheaply than costly concessions on substance. In this case, the three-buckets solution seems to have helped the parties accept a deal that did not seem palatable with a one-bucket structure, even though the objective value of the deal was almost identical. Negotiators who are mindful of style and structure are better positioned to overcome resistance, avoid impasse, and achieve better outcomes.

---

***Wise concessions on style and structure can help solve a problem more cheaply than costly concessions on substance.***

---

In the next chapter, we take a closer look at the various ways in which framing can help break deadlock without using money or muscle. In doing so, we derive more principles for resolving conflict of all kinds. We also devote particular attention to two factors that were at play in the NFL negotiations and that can make deadlocks especially difficult to break. First, there is the *audience problem*. The other side may be concerned not just with what they get from you, but also with how others will judge their acceptance of your offer. Second, there is the *zero-sum problem*. In a zero-sum situation the amount that one side gains must precisely equal what the other side loses.<sup>5</sup> When people are stuck negotiating over only one divisive issue, and there are no other interests involved, it becomes hard for them to make concessions without feeling they have lost and the other side has won. Let's see how these issues might be tackled.

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