
CHAPTER 2

Business Ethics Perspectives on International Negotiations

Robert E. McNulty

CENTER FOR BUSINESS ETHICS, BENTLEY UNIVERSITY
WALTHAM, MASSACHUSETTS

W. Michael Hoffman

CENTER FOR BUSINESS ETHICS, BENTLEY UNIVERSITY
WALTHAM, MASSACHUSETTS

1. Introduction

1.1 Negotiation from the Perspective of Business Ethics

The purpose of business ethics has been to help in the positive transformation of business. Negotiation is crucial to this process because negotiators have a critical role as engineers of business change. In this paper we will suggest that business ethics has been crucial in the reconceptualization of the practice of business, and that as part of this rethinking of the nature of business, we also need to think anew about the process of negotiation. In this regard, we see negotiation not as a form of hostile struggle, but as a process of guided transformation, the power of which can be greatly enhanced when conducted according to sound principles of business ethics.

The practice of business and negotiation is rendered more problematic when we move into the international realm. Our judgment becomes less certain when we are dealing with people whose customs are foreign to us. Whenever our understanding is clouded, we open the door to potential problems. To minimize the risks associated with transcultural negotiation, skillful negotiators will seek to learn as much as they can about the culture and values of their co-negotiator and work from a space of shared aspiration so as to arrive at a mutually beneficial outcome. The possibility of arriving at such an outcome is greatly enhanced when the negotiators recognize that there is a common ethical ground that they share with people from around the world. It is this shared ethical common ground that is central to business ethics and that greatly improves the chances for successful international negotiations.

2. On the Ethics of Business

The contribution of business ethics has not been (as some might think) to stand with moral imperiousness and scold business for its transgressions. To the contrary, the great value of business ethics has been to help business leaders see that their job is not to be perpetuators of the tried-and-true business practices, but to guide businesses to flourish as responsive and responsible social/economic actors.

2.1 *Learning the Lessons of Business Ethics*

Because social change is often imperceptible, many valuable lessons can be overlooked. A striking example of this “proximity blindness” pertains to business ethics. Business ethics began to take shape as a formal discipline in the United States in the mid-1970s and in the intervening years the field has exploded and spread around the world. Today, virtually every major corporation has a code of ethics and an officer responsible for advising the company on matters of ethics and legal compliance.

It is important because we often tend to assume that the way business is conducted today is essentially the same as it was in the past. However, business has changed drastically from its meager roots in bartering on the margins of subsistence to its current form as the engine of a multitrillion-dollar global economy. In this long history, however, the most dramatic and rapid change has occurred over the last few decades since the advent of the discipline of business ethics. A vivid example of this change is illustrated in an article published in 1968 entitled *Is Business Bluffing Ethical?* In this article, which appeared in the prestigious *Harvard Business Review*, the author, Albert Carr, claimed quite brazenly that businesses were perfectly justified in lying, cheating, and bribing, all in the name of achieving business objectives. According to Carr, the ethics of ordinary life were inapplicable to business because the latter was governed by its own “gaming” morality that required the businessman to leave at home the Golden Rule and his commitment to principles such as honesty and fairness. To make his point, Carr quotes a Midwestern executive who had “given a good deal of thought to the question.” According to this person, “If the law as written gives a man a wide-open chance to make a killing, he’d be a fool not to take advantage of it. If he doesn’t someone else will. There is no obligation on him to stop and consider who is going to get hurt. If the law says he can do it, that’s all the justification he needs. There’s nothing unethical about that. It’s just plain business sense.”¹

¹ Albert Z. Carr, *Is Business Bluffing Ethical?* HARV. BUS. REV., Jan.–Feb. 1968, at 143, 146.

In the same article, Carr goes on to assert the legitimacy of lying on one's résumé, engaging in industrial espionage, and deceptively adulterating the contents of consumer goods in order to increase profits. Carr's view is a clear example of the problem that arises when one attempts to reduce ethics to compliance with the law. He may claim that if an action is not illegal, it is fair game. However, by providing these examples, Carr demonstrates that he himself recognizes that these actions are unethical. He tries to deflect culpability by claiming that personal morality does not apply to business, but the error of this position is evidenced in at least two ways: First, since the publication of this article, people in all sectors of society have squarely turned against such scurrilous behavior. The idea that business operates in a morality-free zone is universally recognized as a self-serving fallacy. Secondly, Carr's position depends on the view that when a person enters an office he abandons his human identity. Not only is this impossible, but this view attributes an autonomy to business that it simply does not have. It is not businesses that make decisions, but people. And, like it or not, because our moral status as human beings is neither suspended nor absolved when we engage in business, the conduct of business occurs always within a moral domain that is integral to our human nature.

2.2 Seeking Normative Standards for Business: The Protocols of Business Ethics

Some have suggested that the idea of "morality" is simply a function of what we like or desire as individuals or as communities. Yet we know that what is good or right to do is often not what we want to do, and that we get in trouble when we give free rein to our wants at the expense of what we know to be right. It is this idea that is behind not only business ethics but also human rights. Indeed, before the field of business ethics was established, it was germinating and taking root in the ideas of universal human rights. Once the concepts of human rights and business ethics took root, they grew in strength and sophistication as they were given new expression in a series of protocols pertaining to the ethical rights and duties of persons and organizations. The following is a list of some prominent codes on the ethical duties of organizations:

2.2.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights² (UDHR) was adopted by the UN General Assembly in 1948. Although it was not intended specifically to be a guide for the ethical conduct of business or negotiations, it is the most important international expression of the rights that are deemed to apply to all human beings. As such it provides guidance

² Available at <http://www.unhchr.ch/udhr>.

that can be of direct applicability on what is and is not permissible business activity. For example, the UDHR states that all human beings have the right to freedom, to property, to education, and to work, and that elementary education for all children not only is a right but should be universally compulsory. What is profoundly significant about the UDHR is that it was an expression of moral claims on individuals, organizations, and even countries irrespective of their consent. The Declaration expresses a view in which morality is coextensive with humanity and moral duties apply not only to individuals but also to human institutions including governments and businesses.

2.2.2 The Sullivan Principles

The Sullivan Principles³ were first published in 1977 by Rev. Leon Sullivan as a way of providing guidance on how international businesses could conduct business in South Africa without supporting the apartheid regime of that time. Then in 1999, with the support of the UN Secretary General Kofi Annan, Sullivan published the Global Sullivan Principles of Social Responsibility. These eight essential principles are as follows:⁴

1. Support universal human rights and, particularly, those of employees, the communities within which businesses operate, and those with whom a business does business.
2. Promote equal opportunity for all employees, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse.
3. Respect employees' voluntary freedom of association.
4. Compensate employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities.
5. Provide a safe and healthy workplace and promote sustainable development.
6. Promote fair competition including respect for intellectual and other property rights, and not offer, pay, or accept bribes.
7. Work to improve the quality of life in the communities in which a business operates and seek to provide training and opportunities for workers from disadvantaged backgrounds.
8. Promote the application of these Principles by those with whom we do business.

³ Available at <http://muweb.marshall.edu/revleonsullivan/principled/principles.htm>.

⁴ See THE GLOBAL SULLIVAN PRINCIPLES (1999), available at <http://www.thesullivanfoundation.org/gsp/principles/gsp/default.asp>.

2.2.3 The Caux Round Table Principles of Business

The Caux Round Table (CRT) was founded in 1986 as an international network of business leaders working to promote a moral capitalism for a fair, free, and transparent global society. Central to the CRT are seven philosophical propositions,⁵ followed by six stakeholder principles. The essence of the propositions is as follows:

1. Beyond Shareholders toward Stakeholders
2. Economic and Social Responsibility
3. Beyond the Letter of the Law toward Trust
4. Beyond Trade Friction toward Cooperation
5. Beyond Isolation toward World Community
6. Beyond Environmental Protection toward Enhancement
7. Beyond Profit toward Peace

The central business “stakeholders” are defined by the CRT as:

1. Customers
2. Employees
3. Owners/Investors
4. Suppliers
5. Competitors
6. Communities

The principles are general and aspirational, and include tools for self-assessment.⁶

2.2.4 The United Nations Global Compact

The United Nations Global Compact was announced in 1999 by then United Nations Secretary General Kofi Annan, in order to encourage businesses to align their operations and strategies with ten universally accepted principles in the areas of human rights, labor, the environment, and anti-corruption. These principles are as follows:⁷

Human Rights
Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.

⁵ See CAUX ROUND TABLE, PRINCIPLES FOR BUSINESS (1994), available at <http://www.cauxroundtable.org/principles.html>.

⁶ Kenneth E. Goodpaster, *The Caux Round Table Principles: Corporate Moral Reflection in a Global Business Environment*, in GLOBAL CODES OF ETHICS: AN IDEA WHOSE TIME HAS COME (Oliver F. Williams ed., 2000).

⁷ See THE TEN PRINCIPLES, available at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (last visited Sept. 7, 2008).

Labor Standards
Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labor;
Principle 5: the effective abolition of child labor; and
Principle 6: the elimination of discrimination in respect of employment and occupation.
Environment
Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies.
Anti-Corruption
Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

2.2.5 ISO 26000

The International Organization for Standardization (ISO) is currently developing an international standard on social responsibility (SR), which is to be known as ISO 26000. The final form of the ISO SR is not expected to be published until 2010. It is noteworthy that an organization as influential as ISO has included social responsibility among the areas that it is attempting to define. In so doing, ISO is taking a stand that social responsibility is a subject that is neither subjective nor discretionary, but rather something with sufficient definition that international standards can be identified and promulgated.⁸

Two things that all of the proposed standards mentioned above have in common are that they are all voluntary and none of them involve outside certification.

⁸ See International Organization for Standardization, Social Responsibility, <http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html> (last visited Sept. 7, 2008). For an informative discussion of this emerging standard, see Han-Kyun Rho, Assistant Professor, Coll. Bus. Admin., Kookmin Univ., Korea, Understanding the Nature of ISO 26000, Paper prepared for an international conference on Combining Sustainability Management and Governance Structure at Nankai University, China (Dec.7-9, 2007), available at <http://ssrn.com/abstract=1275586>.

3. Universal Dignity: The Foundational Principle of Business Ethics

Since none of the above-listed protocols have the binding force of law and each of them consists in a different set of principles, one might argue that this is evidence that business ethics lacks substance. That view is incorrect for at least two reasons. First of all, the lack of formal certification has no bearing on the ethical validity of these protocols any more than a lack of certification would somehow render gravity less a force of nature. Secondly, an essential characteristic of ethics is that it is a function of our nature as human beings and its validity does not depend on legislation. Murder, slavery, and deception are wrong regardless of what any individual or group says, does, or legislates.

Most importantly, despite the lack of perfect uniformity, what these various protocols demonstrate is that across a broad spectrum of regions, societies, and institutions, a clear and definitive ethical consensus is emerging. We would suggest that these protocols all follow from a foundational principle, which we would express as follows:

All human beings, irrespective of the ethnicity, gender, economic or social status, or any other factor, have intrinsic worth or dignity by virtue of their being a person, i.e., their humanity, and no individual or group has the authority or capacity to deny them of their inherent dignity.

Ethics in business as expressed through the various protocols, as well as other branches of professional ethics such as medical ethics or legal ethics, gives expression in a variety of ways to this foundational principle.

Inasmuch as negotiation can be considered an integral business practice, the following principles should also be seen as applicable to the ethical conduct of negotiation.

3.1 Some Essential Ramifications of the Ethics of Universal Dignity

Let us look at some important ideas that follow from the principle of universal dignity. As we will see later in this paper, all of these ideas are relevant in the rethinking of negotiation from the perspective of ethics.

3.1.1 From a Shareholder to Stakeholder

Model: Reconceptualizing Business

As we have stated, in recent decades the general understanding of the nature of business has changed significantly, and the gist of this change is captured in the shift from the shareholder to stakeholder model of business. Let us take a quick look at this.

It was only a few decades ago that the Nobel Prize–winning economist Milton Friedman infamously gave voice to the prevailing business misconception of that time, which was that the sole responsibility of a business is to maximize profits for its shareholders.⁹ This view is based on an incomplete understanding of business that fails to recognize that businesses depend on and are responsible to a collection of groups, all of whom have a stake in it. Responding to this view, R. Edward Freeman articulated the “stakeholder” model of the corporation, in which the corporation was recognized as a social organization in which a variety of groups have significant and authentic stakes in a business, to some extent necessitating businesses to conduct their affairs in such a way as to respect its community of stakeholders.¹⁰

The beauty and strength of stakeholder theory is that it recognizes businesses as entities embedded in a complex web of social dependencies. Moreover, in the idea of “stakeholder” we recognize a worth or dignity that applies to the various members of the business ecology who are affected by the business’s actions. With the globalization of business, we can see in the stakeholder theory an implied affirmation of the dignity of all people, be they customers, employees, shareholders, or even competitors, not only at home but also around the world.

3.1.2 Injustice and “the Other”

The idea of the universal dignity that follows from our shared humanity is an ancient and universal insight. However, one of the predominant characteristics of moral transgressions is that they often arise from regarding “the other” as wholly different from oneself or one’s group and as such lacking in the characteristics of humanity. When one strips another of his or her status as a fellow person, the “other” is deemed unworthy of moral reciprocity. The universal dignity of personhood is thereby proscribed and selectively applied to oneself or one’s own community, nation, ethnic group, etc. This unwillingness to acknowledge the shared worth of others is one of the primary sources of injustice and often follows from a collective resentment associated with past conflicts or the desire to justify accruing to oneself or one’s group unfair access to resources.

The business ethics outlook firmly rejects this perspective and never loses sight of the fact that no matter how intense the competition, our counterpart in business is no less of a human being than ourselves, and, as such, is worthy of our respect.

⁹ Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970, Magazine, at 32.

¹⁰ See R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH (1984).

3.1.3 Aiming at Human Flourishing

Our moral awareness is often expressed in negative terms as prohibitions on deception and unfair action. But ethics is equally concerned with the positive manifestations of morality, or that which is deemed “good.” The term “good” is used in a variety of ways, but in this context, given the shared dignity and worth of all, we understand good to be that which constitutes an optimal outcome for all. This may seem to be an overly idealistic aspiration, but we would suggest that, to the contrary, it is a simple and practical idea, the essence of which is this: In seeking our own best interests we should never lose sight of the validity of the interests of other. To put it otherwise, we see “the good” as a commitment to our own personal flourishing in the context of the shared interest we have with others in their own personal and community flourishing. Applied to business, this implies that our work should not be solely in our own interest but be respectful of the interests of others as well.

3.1.4 Transparency

The development of civilization has been possible in large part because of the remarkable capacity human beings have for communication. Our communicative capacities are an essential aspect of our human experience. Therefore, when one communicates in a way that deliberately misrepresents what one understands to be the truth, that is a violation of the dignity of another because it undermines our ability to rely on the communicative process that is essential for all human cooperation. Applied to commerce, this implies that business should be conducted as transparently as possible. While there are legitimate trade secrets, most information about corporate dealings, especially as pertains to finances, must be publicly disclosed in order to safeguard against corruption. Without transparency, businesses run the risk of showing unjust favoritism or discrimination, or at least the appearance of such unjust actions. Transparency is needed to maintain much-needed trust necessary for healthy and strong business-stakeholder relations, without which businesses cannot flourish.

4. Applying Business Ethics Perspectives to Negotiations

Negotiation is one of life’s crucial skills: from birth, children negotiate with their parents; on a macro level, human civilization has been shaped in large part through the negotiations of our civic leaders; and when faced with the seeming inevitabilities of fate, man has sought to negotiate with God. It is in business, however, where negotiation has taken on a particularly important and institutionalized role—negotiation is one of the vital organs of business. Good negotiation skills are central to business, and without them, business will fail. This simple idea, however, is complicated by the fact that business has changed

significantly in recent decades and these changes are relevant to the practice of negotiation. Why? Because just as business was earlier misrepresented as a kind of economic warfare that was somehow situated outside the moral domain, so too negotiation has been described as an essentially amoral activity.

We will argue that just as business is unable to escape from the moral domain, the same holds true for negotiation. Let us provide a provisional definition of ethical negotiation:

Ethical negotiation is a process of guided transformation that occurs through dialogical exchange aiming at an optimal agreement that responds fairly to the co-negotiators' aspirations as persons of equivalent moral worth.

This is a view consistent with the understanding of business ethics. We will explicate and defend this view on negotiation in the section after the next.

In this section, we will first consider some well-established views on negotiation and suggest that these views suffer from attributing to the process of negotiation characteristics that are not essential to it. We will then identify what we see as the essential characteristics of negotiation, and consider how the potential of negotiation as a process of guided transformation is greatly enhanced when it is conducted in light of ethics.

4.1 Standard Views on Negotiation

There are many definitions of negotiation, but the interpretations provided in a well-known article by Roy Lewicki and Robert J. Robinson is representative of a standard interpretation.

Lex and Sebenius define negotiation as "a process of potentially opportunistic interaction by which two or more parties, with some apparent conflict, seek to do better through jointly decided action than they could otherwise." Lewicki, Litterer, Minton and Saunders state that a negotiation situation has the following parameters: (a) two or more parties who are interdependent; (b) a conflict of interest; (c) the parties are attempting to use one or more form of influence to obtain a "better" set of outcomes; and (d) the parties expect that there will be some "give and take," or concession making, to resolve their conflict.¹¹

In this article, Lewicki and Robinson state that "those who have written about effective negotiation strategies have often suggested that some types of dishonest behavior may be appropriate or even necessary

¹¹ Roy J. Lewicki and Robert J. Robinson, *Ethical and Unethical Bargaining Tactics: An Empirical Study*, 17 J. Bus. ETHICS 665, 665–66 (1998).

to be an effective negotiator."¹² They then state, "Information is one of the most dominant sources of power, particularly in negotiation. Information control enhances power. Since negotiation is primarily a process of exchanging and communicating this information in a persuasive manner, the opportunities for unethical conduct are ones of dishonest communication."¹³ They go on to identify the various forms of lying that negotiators use that they affirm constitute a continuum ranging from "ethically appropriate" to "ethically inappropriate." The tactics they identify are:

1. Misrepresentation of one's position to an opponent
2. Bluffing
3. Falsification
4. Deception
5. Selective disclosure or misrepresentation to constituencies.¹⁴

Besides the various forms of lying, another group of tactics negotiators may draw on is "inappropriate information collection," which includes such activities as bribery, seduction, and threats. Although these tactics were recognized as representing a range of available tactics, most were deemed morally unacceptable to the participants in the study.

This article and its five-point analysis are both widely referred to in the negotiation literature. Here and in many other pieces we find scholars attributing to negotiation characteristics that are not essential to it. Let us review some common associations:

1. **Hostility:** Negotiation is frequently described as a hostile struggle. However, although negotiation may involve a struggle, it need not be hostile. To the contrary, it could be an amicable exchange.
2. **Opponents:** Many scholars describe the negotiators as "opponents." This implies hostility, but as we just asserted, hostility is not an essential attribute of negotiation.
3. **Deception:** To some degree, all of the negotiating techniques described involve either some form of deception or coercion (see below). Although deception is seen as pervasive to the negotiation process, it is inimical to negotiation because it destroys trust, and in so doing imposes extra costs on the negotiators, as they will have to expend extra effort trying to discern the veracity of their co-negotiators.
4. **Coercion:** Negotiation is described as frequently involving coercion. Coercion is a strong form of hostility that involves threatening the security of one's counterpart. However, rather than being essential to negotiation, coercion is antithetical

¹² *Id.* at 665.

¹³ *Id.* at 666.

¹⁴ *Id.* at 666-67.

to it, as coercion transforms the encounter between the two negotiators into an exercise in domination.

4.2 Essential Characteristics of Negotiation

When reflecting on negotiation as ethicists, we need to begin by trying to be as clear as possible on the essential constituents of our subject matter. After stripping away common preconceptions, we would suggest that the following are essential characteristics of negotiation.

4.2.1 Dialogical Exchange

Negotiation is a process that involves an exchange. That exchange need not be hostile, but it does necessarily involve the give and take that we associate with “dialog”; thus we say that negotiation is a process that involves a “dialogical exchange.”

4.2.2 Exploration and Discovery

In order for the process of negotiation to be a true dialogical exchange, each side should come to understand something new, such as what would constitute an acceptable outcome. Although this exploration might imply a lack of perfect transparency, it need not denote deception, because often the optimal outcome may not be fully understood in advance by either party and instead is something that is discovered in the exploratory process of negotiation.

4.2.3 Co-negotiators

To have a dialogical exchange, there must be two or more parties (individuals or groups of people joined together as corporate entities, such as businesses or governments). Because the relationship between these parties may range from the amicable to the hostile, the emotional quality of the relationship is not essential. What can be said with certainty, however, is that no one can negotiate alone. Negotiation requires at least two parties. The most neutral term to describe these parties, we would suggest, is “co-negotiators.”

4.2.4 Aimed at an Agreement

The purpose of negotiation is to achieve some kind of agreement. If one of the co-negotiators does not share in the aim of reaching an agreement, then the exchange may be interesting and informative, but it cannot be considered a negotiation.¹⁵

¹⁵ We should note that if the outcome is not one that is mutually agreed upon, but one that is forced, then the activity should not be considered negotiation but coercion. From this perspective, therefore, there may be various exchanges, which are conducted as if they were negotiations but which in fact are forms of coercion. Ury et al. (*infra* note 16) describe “power” as one approach to negotiation, and while we agree that power is a factor in negotiation, if the use of power does not leave open the possibility of respectful exchange leading to an agreement, the exchange is a negotiation in form only and would more accurately be viewed as structured domination.

4.2.5 Guided Transformation

Bringing these various characteristics together, it can be seen that in the exploratory process of dialogical exchange, the co-negotiators are not simply participating in a conversation, but are directed toward a concrete agreement that will affect both sides. As such, negotiation is a process of “guided transformation.”

According to this interpretation of negotiation, we can see it as a kind of “due diligence” in which co-negotiators explore the mutually determined limits of the possible and permissible in order to arrive at a mutual agreement. This view holds true even if negotiations break down. In such a case, what the parties discover is that the expected value of the outcome is deemed insufficient to justify the cost.

In this regard, we can see in negotiation the essence of communication in which the give and take of the dialogical exchange leads the negotiators from a position of relative ignorance to one of greater knowledge and understanding. As such, we see negotiation as a process that provides optimal circumstances for ethical or unethical communication.

4.3 Ethics and the Guiding Parameters of Negotiation

Quite a number of scholars have adopted the heuristic framework proposed by Ury, Brett, and Goldberg (hereinafter, “Ury et al.”), according to which negotiations are understood to be carried out along one or more of three parameters, namely, “interests,” “rights,” and “power.”¹⁶ This framework can be very helpful in analyzing the parameters that are at play in motivating negotiators. However, we also would suggest that this analysis does not adequately appreciate the place of ethics in negotiation.

To illustrate their theory Ury et al. give an example of a miner whose boots were stolen. The miner demands that he be reimbursed. The shift boss, however, citing company regulations, refuses. Infuriated, the miner rallies his fellow miners to strike. The mine’s superintendent says that under similar circumstances he had replaced the boots and the shift boss should have done the same. According to Ury, the superintendent was negotiating based on “interests,” the shift boss relied on “rights,” and the disgruntled miner relied on “power.” According to Ury et al., the job of the negotiator is to decide on which parameter to choose in trying to negotiate a settlement. To choose among these options, Ury et al. suggest that there are four criteria:

- **Transaction costs**, according to which what is optimal is that which minimizes the cost of disputes

¹⁶ WILLIAM URY, JEANNE BRETT & STEPHEN GOLDBERG, *GETTING DISPUTES RESOLVED* 3–19 (1988).

- **Satisfaction with outcomes**, which is the mutual satisfaction the parties have with the result
- **Effect on relationship**, which refers to the long-term effect of the negotiation on the relationship
- **Recurrence**, by which is meant the durability of the resolution

By defining “better” in terms of these four characteristics, Ury’s criteria are practical, and yet we find them insufficiently sensitive to ethics. Let us take another look at the three guiding parameters he identifies.

4.3.1 Interests

Ury et al. state, “A focus on interests can resolve the problem underlying the dispute more effectively than a focus on rights and power.”¹⁷ However, while negotiating competing interests might be cost effective, that does not make it the right position to take.

Let us take an example of a drug dealer and a narcotics officer. The dealer’s interest may be in selling as much heroin as possible. The officer’s interest is to get heroin entirely off the street. An interests-based negotiation might lead to a compromise of allowing the dealer to sell a portion of his supply. The officer would have succeeded in reducing the sale of heroin, the drug dealer would end up selling much less than he would have, but according to the compromise he might avoid jail time and still earn an adequate amount. However, from the perspective of business ethics, we would see any sale of heroin (outside of its use in legitimate pharmaceutical applications) to be unethical and therefore non-negotiable. One might ethically negotiate various issues with a drug dealer, such as the terms for his exiting the market, rewards for information about his drug network, etc., but such proposals would follow from an understanding not of what was cost-effective but of what was morally good for the various stakeholders, including the drug dealer himself. Given the devastating effects of drug addiction, we would see the officer’s compromise as a violation of the worth or dignity of both the buyers and dealers and therefore impermissible.

4.3.2 Rights

Although it may generally seem pragmatic to try to resolve disputes by addressing interests, Ury et al. state that “resolving all disputes by reconciling interests alone is neither possible nor desirable.”¹⁸ They state, “Although reconciling interests is generally less costly than determining rights, only adjudication can authoritatively resolve questions of public importance.”¹⁹ To illustrate this point, they refer to the 1954

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 17.

Supreme Court case *Brown v. Board of Education*, outlawing racial segregation in public schools. Ury et al. are right that this was a landmark case, but as we see it, what made this case so important was not that it was backed by a particular court, but that it was the morally correct position that overturned previous unjust Jim Crow laws. Both the Jim Crow laws and *Brown v. Board of Education* were examples of adjudication but only the latter had the weight of moral rectitude, and it was the moral strength of this decision and not the fact of adjudication in itself that ensured that this ruling achieved its landmark status.

This case is also illustrative of the fact that when forced to choose between adherence to solid ethical principles and compliance with the law, ethics trumps compliance because it is the job of ethics to serve as the touchstone against which laws are judged to be just or unjust.

4.3.3 Power

Ury et al. recognize that costs associated with settling a dispute by power can be high. A typical example of negotiation by power would be when negotiations break down and the labor union calls for a strike. Ultimately, the outcome of the negotiation is likely to be determined by whichever group has more power: if the determination and financial reserves of labor are sufficient, they may be able to outlast management; otherwise, the advantage would be management's. But here again, while power may determine who will win a particular instance of negotiation, it does not determine whether the negotiations are good or just.

A vivid example of this can be found by contrasting the treaties that ended the First and Second World Wars. After the Allies won the First World War, their power was such that they could virtually dictate the terms of the treaty, which is what they did. These terms were so onerous that they all but ensured that Germany would be humiliated and embittered and primed to seek vengeance. In these negotiations, the seeds for the next world war were sown. By contrast, in the wake of the Second World War, Germany was again defeated. However, in the negotiations that followed, instead of wielding power with impunity, the United States launched the Marshall Plan that aimed at rebuilding Europe, including Germany. In the treaties that followed both wars, the victors negotiated from positions of power. However, in the treaty that ended the First World War, power was used in a way that violated the dignity of the Germans and showed a lack of the compassion that would follow from a spirit of reciprocity. As for the treaty that ended the Second World War, power was wielded in a way that followed from ethical principles of respect and reciprocity. Not only were the economic and political outcomes much better following the Second World War, but the generally respectful manner in which the United States exercised its power in the negotiation and execution of this treaty laid

the foundation for a strong and lasting friendship between Germany and the United States.

All three of the parameters identified by Ury, Brett, and Goldberg represent legitimate modes for analyzing negotiations, but we would suggest that interests, rights, and power are all ethically neutral and are in need of ethical criteria in order to be heuristically useful as parameters of negotiation.

4.4 Ethical Negotiation

Bringing these ideas together, we can see that the standard view of negotiation has much in common with the shareholder view of business, according to which the negotiator seeks to serve the interests of his or her side only. And like Albert Carr's view of business as an activity conducted in a morality-free zone, negotiation is often depicted as if it were an essentially amoral activity. By contrast, negotiation from the perspective of business ethics is comparable to the stakeholder view of business. Rather than being amoral, the dialogical exchange that is at the heart of negotiation is a quintessentially moral activity because in it we are engaged in an encounter with the other in which we are faced with either affirming or denying the intrinsic shared worth or dignity of the other. We affirm the dignity of our "co-negotiators" by seeing them as such, rather than as "opponents" to be defeated. And from this perspective, we aim for an agreement that is optimal for all parties—or to use the popular negotiation term, an agreement that is "win-win." Finally, rather than seeing deception and coercion as legitimate negotiation tactics, we see these as violating the dignity of our co-negotiators because they vitiate the entire communicative process that permits negotiation to serve as a valid form of communication. Rather than seeing deception as a standard negotiation tactic, we can view it as a perversion of negotiation that robs it of its capacity to achieve its intended function.

5. Negotiating in the International Sphere

An additional level of complexity is added to negotiation when it involves people from different cultures. In Thomas Donaldson's words, "When we leave home and cross our nation's boundaries, moral clarity often blurs."²⁰ Why? To begin with, people of different cultures generally speak different languages. If a person were to say to us in Urdu something as simple as "The cat is on the mat," we would have no idea what was being expressed. If he continued to speak in his language,

²⁰ Thomas Donaldson, *Values in Tension: Ethics Away from Home*, HARV. BUS. REV., Sept.–Oct. 1996, at 29, 48.

our bewilderment would grow. Add to that variations in physical appearance including attire, culturally influenced mannerisms such as etiquette, and differences in religion, and the “foreignness” of the other can appear quite pronounced. As we discussed earlier, a source of moral trouble occurs when one fails to recognize the humanity of the other and, as a result, denies them the moral reciprocity that one would want to see accorded to oneself were one in a similar situation. It has been our observation that this is a human problem that occurs without regard for geography or income level. Consequently, the ethical risks associated with negotiation escalate when our co-negotiators are perceived as “foreign.” Alex C. Michalos quite clearly made this point, noting that several studies show that “most people think most people are not as nice as they are themselves and, therefore, cannot be trusted to behave as well.”²¹

Over the last decade there have been a number of studies that tried to identify the cultural characteristics that could serve as impediments to international negotiations. These studies make claims that cultures can be categorized according to various dimensions and that these analyses will contribute to the creation of culturally specific sets of values, each of which can influence the way in which the negotiators will respond.²²

These studies shed light on the complexity of negotiation in the international sphere, but as we see it, they are of limited value. While they may alert us to a general predisposition to be found in one group or another, it is hard to see how any such study could paint a picture that was adequately complex and subtle to be of much practical value. Moreover, as we see it, such studies may indirectly show how prone we are to see cultural stereotypes in others. One of the contributions of business ethics in this regard is that it challenges us not to be misled by what may be superficial differences among people of different cultures. Yes, perhaps there is some truth to the idea that the Chinese tend to be more collectivistic in their negotiating style than Americans, but from an ethical perspective they are of identical moral worth. Therefore,

²¹ Alex C. Michalos, *The Impact of Trust on Business, International Security and the Quality of Life*, 9 J. BUS. ETHICS 627 (1990).

²² See, e.g.: GEERT H. HOFSTEDÉ, *CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS, AND ORGANIZATIONS ACROSS NATIONS* (2001); Roger Volkema, *Demographic, Cultural, and Economic Predictors of Perceived Ethicality of Negotiation Behavior: A Nine-Country Analysis*, 57 J. BUS. RES. 69 (2004); Anna Zarkada-Fraser & Campbell Fraser, *Moral Decision Making in International Sales Negotiations*, 16 J. BUS. & INDUS. MKTG. 274 (2001); John B. Ford, Michael S. LaTour, Scott J. Vitell & Warren A. French, *Moral Judgment and Market Negotiations: A Comparison of Chinese and American Managers*, 5 J. INT'L MKTG. 57 (1997); Mohammad N. Elahee, Susan L. Kirby, & Ercan Nasif, *National Culture, Trust, and Perceptions About Ethical Behavior in Intra- and Cross-Cultural Negotiations: An Analysis of NAFTA Countries*, 44 THUNDERBIRD INT'L BUS. REV. 799 (2002).

when engaging in transcultural negotiations our goal should be to exert our best efforts so as to minimize the risk that cultural differences will detract from the outcome.

An important job of business ethics is to help keep business leaders from falling into the trap of mistaking differences in form (such as attire or conventions of etiquette) with matters of substance. On the negative side, the ethical outlook calls on us to eschew positions that in any way deny the essential humanity of the other. This does not mean that we should presume our counterpart is guided by high standards of virtue. However, even if the negotiating tactics of the other are unacceptable, bad behavior is not grounds for denying the essential humanity of one's co-negotiator.

In this way, the contribution of business ethics to the process of international negotiation is to challenge us to find the ethical common ground with our co-negotiator when our first reaction might be to adopt a combative position with someone we may be inclined to see as failing to belong to the group we consider essentially human. Ultimately, by seeking to guide international negotiations with ethical principles, negotiators create a context of trust that not only will be conducive to win-win exchanges, but will also lay the foundation for a long-term relationship. We cannot control whether our co-negotiator will reciprocate. What we can do, though, is to undercut the basis for their assuming the worst in our behavior.

6. Ethical Universalism in a Culturally Pluralistic World: An Emerging Consensus

From the business ethics perspective, negotiation is a process whereby we are navigating in unknown territory, but guided by the belief that we can conduct our international exchanges in a context of shared ethical principles. In this regard, business ethics, as we understand it, is founded on a universalist view of ethics that has important implications for our understanding of the nature of negotiation. Ethical universalism does not mean that people will universally follow a particular ethical norm. Rather, it means that regardless of a person's geographic location or period in history, all people are endowed with certain basic moral dispositions that they may or may not choose to respect. This is crucial, because if we cannot trust that fundamental principles of morality hold up across cultures, then negotiation will have no substantive value and we will be left simply with power as the only substantive factor.

Despite its widespread appeal, moral relativism is false. The credibility that is unjustifiably accorded to this view reflects a shallowness in understanding the natures of culture and morality. Ethical universalism may be best illustrated through an example. Irrespective of culture, it is recognized that automobile driving can be dangerous. As a

result, in every country, drivers are expected to respect the principle of safe driving. However, conformity to this principle leads drivers in North America to drive on the right side of the road, whereas drivers guided by the identical principle will drive on the left in Indonesia, the U.K., and various other countries. While drivers in all these countries are governed by the same principle of safe driving, local conventions will lead to variations in behavior. Moreover, the universality of the principle of safe driving in no way precludes the fact that some people will choose to drive recklessly regardless of their ethical obligation.

Let us turn to a somewhat more challenging example from the world of business: bribery. It was not long ago that bribery was commonly justified as a “pragmatic cost of doing business,” and because bribery has been so widespread, that fact has been used to justify the practice. Such rationalizations are ethical mistakes. Bribery is a form of deception used to gain unfair advantage over those who act according to the norms governing transactions. If bribery were simply a cost of doing business, then the cost of the bribe ought to be stated clearly and openly in the contract, and if that were done, it would no longer be a bribe. Bribery is not disclosed in this way because this would deprive it of the unfairness that leads people to engage in it. It is for this reason that bribery brought to light, irrespective of the country, is a scandal and source of shame. To combat this form of unethical practice, the government of the United States promulgated the Foreign Corrupt Practices Act in 1977. However, because this is not simply a concern of American businesses, the Organisation for Economic Co-operation and Development (OECD) member countries adopted a similar antibribery measure in 1997.²³ The important point here is that bribery is not unethical because it is illegal, but the illegality of bribery is legitimate because it is unethical. Business ethics has not eliminated bribery, but it has cast a bright light on the unacceptability of this practice and revealed the hollowness of arguments that seek to justify it.

7. On the Power of Ethical Negotiation

We have all heard the hackneyed saws that the successful negotiators are wily and unwilling to be bound by any rules, least of all the niceties of ethics. Such have been the myths associated with the “captains of business.” We read, for example, of John D. Rockefeller that “[t]o ensure that he won, he submitted to games only where he could dictate the rules.”²⁴ Such an approach to business is inherently unfair and is sustainable only so long as one group can take advantage of others. We now are aware of much better models of leadership.

²³ Gerald F. Cavanagh, *Global Business Ethics: Regulation, Code, or Self-Restraint*, 14 *BUS. ETHICS Q.* 629 (2004).

²⁴ RON CHERNOW, *TITAN: THE LIFE OF JOHN D. ROCKEFELLER, SR.* 18.

To provide a brief illustration of the power of ethical negotiation, we would like to take a look at two people who are paramount examples: Mohandas Gandhi and Nelson Mandela. The work of these men is highly relevant to our discussion because it was by virtue of their power as ethical negotiators that they were able to shepherd change of historic proportions. In this regard, we want to emphasize two points: First, the principles that guided their work were consistent with the ideas we associate with business ethics described in this piece: namely, upholding a commitment to universal dignity, reciprocity, transparency, and social flourishing. Secondly, both of these men confronted powers that categorically outweighed their own and yet they succeeded in engineering colossal societal transformations, above all because of the ethical strength of their positions.

When Mohandas Gandhi challenged the British Crown, it was the world's undisputed imperial power. Gandhi, by contrast, lacked a formal political power base, had no army, and had no wealth. The challenge to the United Kingdom was monumental because if Gandhi succeeded, the entire empire would be at risk. The significance of his accomplishment is that he did not lead India to independence through armed struggle, but based on the power of principled negotiation. The essence of Gandhi's approach to negotiation was *satyagraha*, variously translated as "passive resistance," "nonviolent resistance," "nonviolent direct action," and even "militant nonviolence."²⁵ The following list, drawn from the analysis of Thomas Weber, represents some of the key principles at play in *satyagraha* as an approach to negotiation:²⁶

- To "convert" the opponent²⁷ so that you both end up on the same side;
- To avoid humiliating and provoking the other;
- To seek clarity on the purpose of the negotiation;
- To discern what are the common interests of both parties;
- To judge one's opponent in a way that is not more harsh than how one would judge oneself;
- To not exploit the position of weakness of one's opponent.

Let us now consider Mandela, whose approach to negotiation bears great similarity to that of Gandhi. Although Mandela was confined to prison for some twenty-seven years, he succeeded in negotiating the end of the apartheid regime by virtue of the unquestioned integrity with which he comported himself, the respect he showed to his nego-

²⁵ Thomas Weber, *Gandhian Philosophy, Conflict Resolution Theory and Practical Approaches to Negotiation*, 38 J. PEACE RES. 494 (2001).

²⁶ *Id.* at 505–06.

²⁷ We retain Weber's language in which he refers to the two sides in the negotiation as "opponents."

tiation partners, and his unwavering commitment to social justice for all. As Mark Young put it:

[Mandela] had no particular political power. . . . He certainly commanded no significant military forces. . . . Financially, he was no match either for the South African government. . . . What Mandela did have and used brilliantly to his advantage was a power source often overlooked by the analysts: the power of ethics. Rightly or wrongly, he was perceived through it all—not just by his negotiation partners but by much of the outside world—as a man of unquestioned integrity. In the face of much unfairness and indignity, he stood by his principles and refused to play tit-for-tat. And so his mighty opponents, humbled by the strength Mandela gained by standing on “the high ground,” found themselves offering concession after concession, and finally ceding power completely to the new president of South Africa.²⁸

According to Anthony Sampson not only did Mandela negotiate with his captors, but against the advice of many comrades

Mandela himself studied Afrikaans systematically, reading many Afrikaans books, and spoke it quite well. . . . He acquired an understanding of the Afrikaner which colleagues in exile would later envy.²⁹

In short, he sought to understand them from the inside, and in so doing he was able to show his respect for them, and they in turn could not help but respect him.³⁰

Both Gandhi and Mandela were able to achieve historic changes by negotiating in a way that always respected the dignity of others, by acting with transparency, and by fighting for justice based on Golden Rule reciprocity. Their negotiating strength flowed from moral strength. This same strength is available to negotiators operating across all spheres, from the economic to the political, social, and personal. Gandhi and Mandela are both illustrative of the power of ethical negotiation.

8. Concluding Thoughts on the Power of Ethical Negotiation

Business is the ingenious way we humans have learned to survive and build our societies. This is an evolving process, and in recent decades,

²⁸ Mark Young, *Sharks, Saints, and Samurai: The Power of Ethics in Negotiations*, 24 *NEGOTIATION J.* 146 (2008).

²⁹ ANTHONY SAMPSON, *MANDELA: THE AUTHORIZED BIOGRAPHY* 26 (1999).

³⁰ See NELSON MANDELA, *LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA* (1994).

business has taken an enormous leap forward after the awareness grew among business leaders that the strength of business increases dramatically when it is conducted ethically. The lessons of business ethics need to be embraced by negotiators. In a period of rapid globalization such as our own, business and social leaders have a duty to evaluate business with a critical eye so as to ensure that business benefits all stakeholders. This is to say that business must be conducted in a manner sincerely respectful of the shared humanity, dignity, and worth of all people. The path of business development will be formed largely through the process of negotiation. By embracing ethics, negotiators will gain access to the capacity of guided transformation that empowered not only giants such as Gandhi and Mandela but also leaders everywhere whose work is informed by a commitment to the universal goodness of our common dignity.

Robert E. McNulty, Ph.D.
Director of Programs
Center for Business Ethics, Bentley University
112 Adamian Academic Center
175 Forest Street
Waltham, MA 02452
Phone: (781) 891-2501
Fax: (781) 891-2988
E-mail: rmcnulty@bentley.edu

W. Michael Hoffman, Ph.D.
Executive Director, Center for Business Ethics, and
Hieken Professor of Business and Professional Ethics
Bentley University
175 Forest Street
Waltham, MA 02452
Phone: (781) 891-3434
Fax: (781) 891-2988
E-mail: mhoffman@bentley.edu

The ABA Guide to International Business Negotiations

**A Comparison of Cross-Cultural Issues and
Successful Approaches, 3rd Edition**

*James R. Silkenat, Jeffrey M. Aresty,
Jacqueline Klosek—Editors*



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