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BREAKING BATNAS: NEGOTIATION LESSONS FROM WALTER WHITE

Jennifer W. Reynolds*

INTRODUCTION

Walter White could teach us many things: how to read the periodic table; how to destroy a tub with hydrofluoric acid; how to build a battery; how to make poison out of castor beans; how to build a bomb under a wheelchair; how to use the remote control of the car to operate a machine gun; and how to coordinate multiple assassinations of prison informants within thirty seconds of one another. But these are niche skills at best. Is there anything useful we can learn from Walter White?

As it turns out, Walter White can also teach us how to negotiate—or, to be more precise, watching Walter White negotiate in *Breaking Bad* helps us think more clearly about what we are doing when we negotiate. For the student of negotiation, *Breaking Bad* is an absolute treasure trove, producing an incredibly complex and varied array of bargaining parties and negotiated transactions, episode after episode. What’s so fascinating about these transactions is that they draw on familiar, foundational negotiation concepts in the service of less familiar, usually illicit ends. Put another way, when we watch Walter White negotiate, we watch a mega-criminal anti-hero implement the same “value-neutral” strategies that we teach lawyers and businesspeople. Learning to negotiate from Walter White, therefore, allows us to engage in an analytical exercise that explores the conventional wisdom around negotiation in a fresh, modern context, while implicating more critical conversations around value neutrality and other normative concerns in negotiation theory and practice.

Breaking Bad ran for five seasons. This article examines five negotiations, one from each season, each featuring Walter White. The close readings provided show how the five negotiations demonstrate and/or disrupt foundational negotiation concepts or skills. The Article then sug-

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gests some possible takeaways for negotiators and analysts and concludes with a brief thought about ethical implications in negotiation theory and practice.

I. LESSON ONE, SEASON ONE: BE TRUSTING— BUT NOT TOO TRUSTING

A. *The Rule*

Experienced negotiators say that the ability to build rapport and trust promotes success in negotiations.¹ Although trust is not always necessary to arrive at a negotiated agreement,² the quality of outcomes generally correlates with the level of trust between the parties.³ This is because high trust and good relationships often equate to high levels of information sharing, which in turn makes value creation possible.⁴ Parties who can share information are better equipped to develop creative options that address both sides' interests. Additionally, negotiating parties who trust one another are better positioned in the distributional phase of the negotiation. To the extent that parties can frame the distributional question as a joint problem to solve, it is more likely they will come to creative and fair apportionments.⁵ By contrast, parties who do not trust each other are less likely to share information, which can lead to bargain-

1. See, e.g., Roy J. Lewicki, *Trust and Distrust*, in *THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR* 191 (Andrea Kupfer Schneider et al. eds., 2006) (arguing that trust is critical to negotiation because it makes negotiation possible, it saves time and money, and it "enhances the enforcement of deals" by allowing parties to rely on their relational goodwill instead of incentives or penalties).

2. "Unless you have a good reason to trust somebody, don't." ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 132 (2d ed. 1991) (recommending in such cases to rely on objective criteria).

3. *Id.* at 158 (pointing out that a "good working relationship tends to make it easier to get good substantive outcomes").

4. *Id.* at 70–76 (examining the ways in which negotiators can invent options from both shared and differing interests between the parties).

5. See ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 40 (2000) (recommending that negotiators "[t]reat distributive issues as a shared problem"); see also FISHER & URY, *supra* note 2, at 38 (remarking that "you and I are better able to reach an amicable reconciliation of our various interests when we accept that task as a shared problem and face it jointly").

ing over positions, haggling, impasse, strained relationships,⁶ and/or suboptimal agreements that leave money on the table.⁷

People who trust one another are more likely to share information and, conversely, people who share information are more likely to trust one another. This is true not only of information related to substantive interests within the proposed transaction but also of information that is more personal and social in nature. Negotiators sometimes refer to this latter type of information as the “schmooze factor”—the strategic deployment of small talk in the early stages of negotiating.⁸ Friendly small talk fosters trust, in part because people tend to want to trust and do business with friendly people.⁹ In literature related to conducting email negotiations, commentators recommend that email negotiators be extra solicitous and warm in their email exchanges to compensate for the lack of personal interaction and thus cultivate trust between the parties.¹⁰ Doing so promotes creative problem solving and helps prevent the other side from drawing negative conclusions about one’s motives and trustworthiness.¹¹

From the foregoing discussion a general rule emerges: early in the negotiation, share personal information and small talk with a negotiating counterpart in an effort to develop trust and create the conditions for information sharing, option generation, and joint problem-solving around distributional questions. Generally speaking, this approach will make it easier to reach an acceptable negotiated agreement.

6. See FISHER & URY, *supra* note 2, at 6.

7. See *id.* at 5. The paradigmatic illustration is the parable of the orange, in which two sisters fight over an orange, the mom cuts it in two, and each sister gets one half. The first sister eats the fruit and throws away the peel. The other sister zests the peel and throws away the fruit. Had the sisters talked about their (as it turned out, differing) interests instead of fighting, each could have had exactly what she sought: an entire orange. The parable is used to illustrate how the simple act of uncovering interests (e.g., asking “Why do you want the orange?”) can promote better outcomes and even win-win results. See MNOOKIN ET AL., *supra* note 5, at 17.

8. See Noam Ebner et al., *You’ve Got Agreement: Negoti@ting Via Email*, in RE-THINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 103 (C. Honeyman, J. Coben & G. De Palo eds. 2009).

9. See, e.g., RONALD M. SHAPIRO & MARK A. JANKOWSKI, *THE POWER OF NICE* (2001).

10. See Ebner et al., *supra* note 8, at 102.

11. *Id.* at 98 (noting the “increased tendency toward sinister attribution” in ambiguous contexts); see also DEAN G. PRUITT & SUNG HEE KIM, *SOCIAL CONFLICT: ESCALATION, STALEMATE, AND SETTLEMENT* 107 (3rd ed. 2004) (emphasis in original) (stating that “when Other is distrusted . . . its ambiguous actions are seen as threatening”).

B. *The Set-Up*

Consider the application of this rule in one of the most high-stakes negotiations imaginable: bargaining for one's life. In an episode titled ". . . and the Bag's in the River,"¹² Walter and his partner Jesse Pinkman capture and imprison a rival methamphetamine dealer named Krazy-8 in Jesse's basement. Convinced that Krazy-8 (whose real name is Domingo) will kill them if they let him go, Walter and Jesse flip a coin to decide which of them will commit murder. Walter loses the coin flip and reluctantly prepares himself for the task. His heart is not in it, though, and after bringing Krazy-8 a sandwich and a beer, Walter engages him in conversation:

- WALT: So, Domingo, you from around town here or some-place else?
- KRAZY-8: Look Walter, you getting to know me is not going to make it easier for you to kill me. Not that I mind, you understand.
- WALT: You know, you keep telling me that I don't have it in me. Well maybe, but maybe not. I sure as hell am looking for any reason not to. I mean, any good reason at all. Sell me. Tell me what it is.
- KRAZY-8: [Pauses] I guess I'd start off by promising that if you let me go, I won't come after you. That you'd be safe. I guess I'd say what happened between us never happened, and what's best for both parties is we forget all about it. But you know that anybody in my situation would make promises like that. Even though in my case they happen to be true, you never know for sure. So what else can I tell you?
- WALT: I don't know. But you gotta convince me, and you're going nowhere until you do.¹³

Here Krazy-8 neatly lays out the obstacle to any negotiated agreement: the only reason Walter will let Krazy-8 go is if Walter believes that Krazy-8 will not hurt him or his family afterward. But there is no way for Krazy-8 to make that case convincingly since he and Walter have no pre-existing or ongoing relationship. They have no reason to trust the other's character and no stake in the other's well-being, as one might trust or have a stake in the continued well-being of a friend, relative, or business partner. When Krazy-8 evaluates the probable bargaining outcomes, he

12. *Breaking Bad: . . . and the Bag's in the River* (AMC television broadcast Feb. 10, 2008).

13. *Id.*

concludes that Walter will kill him; indeed, that is the action Krazy-8 himself would take under the circumstances.

Walter is not as certain. Accepting Krazy-8's logic means that he must commit an act (murder) that he would rather not do. In the above exchange, Walter is wondering if he can trust Krazy-8. Trust has been defined as "a willingness to become vulnerable to another based on confident positive expectation of the other's conduct."¹⁴ Freeing Krazy-8 indeed would make Walter vulnerable, so Walter is looking for evidence that he can reliably have a "confident positive expectation" of Krazy-8's promises not to harm him and to forget the whole thing.¹⁵ If Walter can trust Krazy-8, then he can let him go and avoid committing murder. Hence Walter's attempt at a more personal, trust-promoting conversation—and Krazy-8 quickly catches on:

KRAZY-8: Hey yeah, yeah. I'm from here in town, man. ABQ. Born and bred. Never left. Studied business administration over at UNM. Got my degree.

WALT: Really? [Chuckles] Does that, uh, come in handy in the drug trade? [Sits back down]

KRAZY-8: Doesn't hurt. I was gonna study music originally. Maybe even try out for Oberlin or Berkeley. My pops talked me out of it. Said there was no money in it unless I wound up some bullshit rockstar, and I had a snowball's chance of that.

WALT: What does your dad do?

KRAZY-8: He owns Tampico Furniture over on Menaul.

WALT: Wait a minute. I know that place.¹⁶

As it turns out, the reason Walter knows Tampico Furniture is that sixteen years ago, he and his wife Skyler bought their son Walter Jr.'s crib there. Krazy-8 observes that he worked at the store every day after school and may have helped ring up Walter at the checkout line. Walter and Krazy-8 then sing the store's late-night commercial jingle together. As they drink another beer, Krazy-8 gently asks whether Jesse or Walter's family knows that Walter has been diagnosed with cancer. Walter admits that the only person he has told is Krazy-8. Krazy-8 again encourages Walter to let him go, this time as one friend to another: "Like I said Wal-

14. Lewicki, *supra* note 1, at 191.

15. *Id.*

16. *Breaking Bad: . . . and the Bag's in the River* (AMC television broadcast Feb. 10, 2008).

ter, this line of work doesn't suit you. Get out before it's too late."¹⁷ Walter agrees to get the key.

Viewers of the show know what happens next. While retrieving the key from the kitchen, Walter notices the shards of a dinner plate that he accidentally dropped in the basement earlier, before the beers and the conversation. A hint of doubt forms in his mind. He fishes the shards out of the trashcan and fits them together like a puzzle. All the pieces are accounted for except one: a large pointy piece shaped like a knife blade. Having thus "put the pieces together," Walter concludes that Krazy-8 was deceiving him all along and hiding the shard in order to kill Walter as soon as he was unlocked. Applying this additional information to the situation, and believing that he has exhausted the possibilities offered by negotiation, Walter returns to the basement and chokes Krazy-8 to death.

Note that Walter's conclusion that Krazy-8 intends to kill him is not the only possible conclusion supported by the evidence. Krazy-8 is relatively immobile given that he is secured to a metal pole with a bike lock around his neck. The shard may have skittered across the basement floor when the plate smashed. The shard may have cracked into multiple pieces when it broke off the plate, making it unusable as a weapon. The shard may indeed be in Krazy-8's possession, but only for defensive reasons—after all, Krazy-8 is the one locked to a pole by his throat. Of course, when Walter starts choking Krazy-8 with the bike lock, Krazy-8 pulls out the shard and swings it wildly around, stabbing Walter in the leg. Even that action, however, could be justified as a normal response to being choked.

But Walter has no interest in thinking through alternative explanations. For him, the missing shard can mean only one thing: Krazy-8 is hiding information and therefore cannot be trusted. Trust was absolutely necessary to any negotiated agreement here, because Walter had no other leverage or post-deal protections. The trust that grew out of Walter and Krazy-8's basement conversation was fragile, and it disappeared the moment Walter realized that the shard was missing.

This scene illustrates how an otherwise good person may start "breaking bad." To survive in the underworld, Walter must learn whether and how he can trust others. In terms of the narrative arc of the show, Walter's decision to piece together the plate and interpret the hidden shard as evidence of hostile intention symbolizes the early stages of his transformation into a criminal. When situations are ambiguous, given the deadly nature of the drug trade, distrust is the safer course.

17. *Id.*

C. *The Takeaway*

Finding the balance between trust and too-much-trust is important, even in less dramatic negotiation situations. Commentators refer to this problem as “the Negotiator’s Dilemma”: how can a negotiator share information and thereby make value creation possible without exposing herself to potential exploitation?¹⁸ How can negotiators tell if the other party is dealing with them honestly, or instead is playing on sympathies or an existing relationship to gain an advantage?¹⁹ Conventional wisdom suggests that negotiators should default to cooperative stances, but be ready to respond appropriately and proportionately should the other side betray them.²⁰ To this conventional wisdom, Walter appears to offer some extra advice: even if the evidence of betrayal is not dispositive or even all that clear, do not give the other party the benefit of the doubt when the stakes are high.

Seeking trust while protecting yourself, then, is the primary takeaway from this scene. The corollary takeaway is the value of recognizing the potential cost of hiding information in any negotiation that depends heavily on trust. The risk that the other side may discover the hidden information and draw negative conclusions about trustworthiness must be factored into the decision to hide the information. Depending on the circumstances, it is possible (or even likely) that the other side will not take the time to seek clarification around your good or neutral reasons for hiding the information. Remember, the psychological tendency for adversaries in negotiation is to assume the worst in the face of ambiguity.²¹

II. LESSON TWO, SEASON TWO: KNOW YOUR ENEMY, KNOW YOURSELF

A. *The Rule*

Sharing interests and building trust are the foundation of “interest-based negotiation”—an approach that attempts to break down positions into interests on the theory that focusing on interests will help generate options that map more closely to the parties’ actual concerns and needs.²²

18. See MNOOKIN ET AL., *supra* note 5, at 17.

19. See, e.g., Roger Dobson, *Women Who Flirt Get Better Deal*, THE INDEPENDENT, July 29, 2012, <http://www.independent.co.uk/news/science/women-who-flirt-get-better-deal-7985212.html>.

20. See, e.g., ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

21. See *supra* text accompanying note 11.

22. See, e.g., FISHER & URY, *supra* note 2.

Some critics of interest-based bargaining theory argue, however, that an interest-based approach often wrongly assumes that we can know our own interests, which in turn presupposes a stable self with identifiable preferences that remain relatively consistent over time.²³ According to these critics, this assumption is problematic given that the classical economic model of the rational actor has utterly failed to adequately describe human behavior, at least to the level of precision required by negotiation. Such critiques have led to increasingly refined examinations of cognitive tendencies and irrational behaviors in negotiation, as well as analyses around the nature of the negotiating self and how the articulation of preferences tends to define and circumscribe that self within a particular set of neoliberal ideologies and practices.²⁴

That said, any negotiation instructor would advise students to think about interests. Interests are the goals, hopes, needs, and concerns relevant to the negotiation at hand.²⁵ The employee about to negotiate for a raise, for example, should think first about what her interests underlying the raise might be. Is she seeking recognition by her supervisors? Prestige among her peers? Parity with co-workers? Financial security to pay gambling debts? A negotiator who takes time to think through the interests that motivate a given negotiation—despite the philosophical and practical difficulties of pinning them all down accurately—is better equipped to brainstorm options that might lead to an acceptable negotiated agreement.²⁶

Likewise, negotiation instructors uniformly advise students to consider the interests of their negotiation counterparts.²⁷ Of course, these are even less knowable than one's own interests, but educated guesses are

23. See, e.g., Kenneth H. Fox, *Negotiation as a Postmodern Process*, in *RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE* 20–23 (Christopher Honeyman et al. eds., 2009) (contrasting the “individualist and rational” model of negotiation with an “emergent and dynamic” enterprise in which parties “‘co-create’ meaning”); see also Daniel T. Gilbert & Timothy D. Wilson, *Miswanting: Some Problems in the Forecasting of Future Affective States*, in *FEELING AND THINKING: THE ROLE OF AFFECT IN SOCIAL COGNITION* 178 (Joseph P. Forgas ed. 2000) (providing social psychology basis for assessing the phenomenon of how people routinely identify their own interests incorrectly).

24. See, e.g., Amy J. Cohen, *Negotiation, Meet New Governance: Interests, Skills, and Selves*, 33 *LAW & SOC. INQUIRY* 503, 523 (2008) (arguing that most modern negotiation scholars still “believe in the possibility, along with the value, of making individuals into [rationally acting] self-managers: purposive, self-reflexive, and able to think clearly and act creatively in conditions of uncertainty”).

25. See *MNOOKIN ET AL.*, *supra* note 5, at 28–29; *FISHER & URY*, *supra* note 2, at 40.

26. See *FISHER & URY*, *supra* note 2, at 41.

27. See *id.* at 40–41.

better than nothing. The employer in the previous example likely wants to save money, along with wanting a satisfied and motivated staff and a reputation for being both a fair boss and a capable budget manager. The employer probably has other interests as well, but for the purpose of preparing for a negotiation, simply identifying some possible interests of the other party puts the negotiator in the right posture of curiosity for finding out more about these interests at the bargaining table and elsewhere.²⁸

Identifying the interests on both sides of the table are exercises in a larger strategic initiative: knowing oneself and knowing the other party. Negotiators cannot dictate what happens; that is why they are negotiating. Rather, negotiators work through transactions in which they need something from another person that that person has the power to withhold. To the extent that negotiators seek power and leverage in negotiation, they are often seeking knowledge including (but not limited to) knowledge of the parties, knowledge of the relationship between the parties, knowledge of personality and conflict management styles, knowledge of reputations, knowledge of potential tactics and responses, and finally knowledge of the customs and norms of the negotiating context. Knowing both oneself and the other party thus become, particularly in light of the shifting and contingent nature of identity mentioned above, deep multifaceted inquiries that take a substantial amount of emotional intelligence, social intuition, context analysis, and reflective practice to pursue.

B. The Set-Up

For Walter White, knowing oneself is a special challenge because his identity is a work in progress. On the one hand, he is Mr. White, mild-mannered chemistry teacher and devoted family man. On the other, he is Heisenberg, meth cook extraordinaire and criminal mastermind. The inconsistency of these identities makes “knowing oneself” challenging for Walter; further complicating the situation is the varied negotiating contexts and partners that these two different identities tend to encounter.

Recall, for example, the scene taking place at a hardware store in the episode titled “Over.”²⁹ Walter has been working frenetically on home improvement projects. He goes to the hardware store to purchase two cans of sealant. He sees a shopping cart standing alone, full of items. Walter starts to walk away but then notices that the cart contains acetone, kerosene, lye, and tubing. These items are recognizable to Walter as the

28. Knowing interests is key to value creation. *See id.* at 70–76.

29. *Breaking Bad: Over* (AMC television broadcast May 10, 2009).

basic materials for a home meth lab. A tweeker³⁰ approaches the cart and puts six big boxes of matches inside. Walter says:

WALT: You're buying the wrong matches.
 TWECKER: What?
 WALT: Those matches. They're the wrong kind. That phosphorus is found in the striker strips, not the matches themselves. You need to get the big 200-count box of individual matchbooks. [Looks around, lowers voice conspiratorially] More striker strips, you understand? Those only have the one. [Suddenly exasperated] And don't buy everything in one place. Do it piecemeal. Different items. Different stores. Attracts less attention. Are you following me here?³¹

The bewildered tweeker runs away. Walt chuckles and carries his cans to the checkout line, then pauses and stands stock-still. The viewer then sees a sequence of four identically timed shots that change with each beep of the register: a long shot of Walter in line; Walter from the knees up; a medium close up focused on his expression of intense thought; and finally a close up of Walter's eyes looking the other way. The pacing and sequence of the shots suggest a dawning recognition. For Walter, something has clicked. He sets down the cans and leaves the store. He walks toward the tweeker, now talking with a burly fellow in a parking lot. The burly fellow gets into Walter's face and tries to stare him down, but Walter stares back—motionless and unblinking—radiating a murderous, ruthless energy.

WALT: [Breaking the silence] Stay out of my territory.³²

It is a thrilling moment, the final scene of the second season, depicting Walter's transformation from the teacher/parent advising a young person on the best way to approach a particular problem, to the criminal drug lord menacing potential competitors so that they know who is in charge. In that moment, Walter's knowledge of himself and the kinds of people he will be dealing with crystallize into perfect clarity. He knows

30. Identifiable as such by his stringy hair, knit cap, and red-rimmed eyes. See *twecker*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=twecker> (last viewed Feb. 7, 2015) ("A methamphetamine user. Tweekers are known for their extreme paranoia, flagrant dishonesty, and lack of non-twecker friends. A tweeker will steal your stuff and then help you look for it.").

31. *Breaking Bad: Over* (AMC television broadcast May 10, 2009).

32. *Id.*

who he is, what he wants, and how he should conduct himself appropriately as a big-deal player in the meth subculture.

Although Walter's self- and other-knowledge has crystallized, it is still reflective of the complexities and contingencies insisted upon by the critics mentioned above. Walter may have fused his previous and present identities together, but he still exists within overlapping contexts that dictate in part his priorities and behaviors in the moment. For example, when Walter realizes that he must confront the tweeker in the parking lot, he puts down the cans of sealant first. Even though he has just had a eureka moment—I am a dangerous criminal!—that does not mean he is going to steal the sealant. Instead, he responds just as a law-abiding member of the prevailing context in which he finds himself, which happens to be a hardware store. So the camera zooms in on the cans being properly set down before Walter leaves the store.³³

This point about setting down the cans may seem minor, but it provides insight into Walter's trajectory over the series. Walter is not simply a drug lord who pretends to be a loving father, a dedicated teacher, a careful chemist, and a responsible member of civil society. He is all of these things at once, although the emphasis in his personality changes depending on the situation. These shifts complicate our understanding of what it means to be a hero, or a good father, or someone with a successful career. Likewise these shifts show how difficult it can be to pin down interests in negotiation accurately. All the same, a more complicated understanding of identity is helpful, though, because it provides nuance and precision to our efforts to know and understand our own interests and the interests of others. Negotiators must be able not only to read situations and other people accurately, but also to respond as authentically as they can.³⁴

C. *The Takeaway*

For the regular negotiator, the takeaway here is two-fold. First, identity and interests are not fixed quantities. Therefore, negotiations based on assumptions about previous identity and interest-based prerogatives can lead to suboptimal results that do not meet present needs. The negotiator who seeks an understanding of self and other must be willing to investigate, question, visit, revisit, complicate, and develop provisional

33. The zoom-on-the-cans reveals the brand name of sealant, KILZ, on the cans. The brand name perhaps underscores Walter's self-knowledge related to the imminent danger that he represents.

34. See, e.g., Andrea Kupfer Schneider, *Teaching a New Negotiation Skills Paradigm*, 39 WASH. U. J.L. & POL'Y 13, 32 (2012) (describing importance of social intelligence and social intuition in negotiation).

conclusions that remain open to reexamination and change. Second, even if it is impossible to know oneself, there is an undeniable power derived from achieving clarity related to who one is, what one wants, and in what context one operates. Note that this power is not necessarily freeing—in fact, the price of this clarity may be commitments that negatively constrain—but nevertheless can be helpful in the more narrow sense of influencing negotiation outcomes toward one’s desired aspiration.

III. LESSON THREE, SEASON THREE: MAKE THEIR BATNA WORSE

A. *The Rule*

A fundamental part of any negotiation strategy is recognizing your BATNA. BATNA stands for “Best Alternative To a Negotiated Agreement” and is roughly equivalent to a walkaway position.³⁵ When negotiating the terms of a lease, for example, the would-be renter should consider what will happen if she fails to reach agreement with her potential landlord. Does she have another good apartment available in her price range that she would be happy to take (strong BATNA)? Or are her spouse and children shivering downstairs in the lobby with nowhere to sleep if this apartment does not work out (weak BATNA)? The answers to these questions have a considerable impact on how she approaches the negotiation with the landlord, including what terms she agrees to or rejects. Knowing one’s BATNA and working to improve it when possible are fundamental to negotiation preparation and process.³⁶

B. *The Set-Up*

In an attempt to expand his business, Walter begins working with Gus Fring—a drug kingpin with an extensive distribution network. Gus recognizes the high quality of Walter’s product and Walter needs Gus’s infrastructure, suggesting that the two should be able to come to a mutually beneficial working relationship. Yet they quickly find themselves at odds. The biggest point of contention in the relationship is Walter’s drug-addicted meth cooking partner Jesse Pinkman. Gus finds Jesse’s increasingly erratic behavior to be unacceptably risky.

35. FISHER & URY, *supra* note 2, at 100. Fisher and Ury advise against thinking about BATNA in terms of a “bottom line,” *id.* at 98–99, but instruct that “[i]nstead of ruling out any solution which does not meet your bottom line, you can compare a proposal with your BATNA to see whether it better satisfies your interests.” *Id.* at 100.

36. *Id.* at 100.

Gus decides that his best business move is to kill both Walter and Jesse, thus eliminating further complications with Jesse as well as future competition with Walt, and also minimizing the potential legal risks that Walt and Jesse, as disgruntled ex-associates, might represent. Before Gus can do so, he must find a replacement chemist who is capable of producing the same high-quality product without interrupting distribution. Finding a replacement chemist is not easy, but Gus finds a candidate named Gale Boetticher. Gale is docile, has a chemistry background, and is non-plussed by the illegal nature of the work. Moreover, Gale is excited to apprentice under someone as talented as Walter, and is unaware of Gus's intentions to use Gale as a permanent replacement.

After Gale has learned Walter's formula and method for making the high-quality blue meth, Walter is no longer indispensable. In an episode titled "Full Measure,"³⁷ Gus sends his most trusted henchman, Mike Ermantraut, to kill Walter. The murder is to take place in the hidden methamphetamine lab located below a laundry facility owned by Gus. Once Walter realizes what is about to happen, the following conversation takes place.

WALT: Please don't do this. Mike, you don't have to do this.

MIKE: Yeah. Unfortunately, I do, Walter. Downstairs.

WALT: I'll cook. I'll cook for free. And there won't be any more trouble, I promise you.

MIKE: No. No.

WALT: Okay, if I could just talk to Gus. I know I can make him understand. Please! If I could talk to Gus, I can, I can convince him, okay? Just let me—please, please, please let me talk to him!

MIKE: Shut up! Shut up. I can't do it. I'm sorry.³⁸

Here we have the classic negotiation: Walter is offering something of value (to cook the meth for free and not to cause any trouble) in exchange for something else (to not be killed). Mike does not accept this offer, however, because his BATNA is better than Walter's offer.

Gus and Mike's BATNA is Gale—the quiet and talented replacement cook who possesses comparable chemistry talent, works alone, and causes no trouble. When Walter tries to bargain for his life with Mike by offering to cook for free, Mike is not persuaded because the BATNA (using the agreeable and modest Gale as the cook) is better than Walter's offer (staying with the egoistical and demanding Walter, not to mention the unpredictable Jesse). Additionally, Mike's personal stake in the situa-

37. *Breaking Bad: Full Measure* (AMC television broadcast June 13, 2010).

38. *Id.*

tion—his reputation for taking care of business as instructed—would be jeopardized if he allowed Walter to call Gus. As such, on behalf of both his employer and himself, Mike rejects Walter’s initial offers.

So Walter must up the ante:

WALT: I’ll give you Jesse Pinkman. Okay? Like you said, he’s the problem. He’s always been the problem. And without him, we would – And, and he’s, he’s in town, all right? He’s, he’s not in Virginia or wherever the hell you’ve been looking for him. He’s right here in Albuquerque, and I can take you to him. I’ll take you right to him. What do you say?³⁹

Now Walt’s offer includes Jesse. Since Gus also desires to kill Jesse and has been searching for him, his location has value as a bargaining chip. If Mike can deliver Jesse to Gus, this would satisfy both Gus’s interest in eliminating a problem and Mike’s interest in pleasing his employer. Mike does not, however, believe that he needs to negotiate for Jesse. Instead, Mike simply demands (from a position of apparent power) that Walter turn Jesse over, without offering anything in return.

MIKE: Where is he? Right now. You give me an address.

WALT: I – I don’t – He moves. He moves around, but if you let me call him⁴⁰

Mike has now made a demand, and Walter seems to have agreed to it. To facilitate their agreement, Mike allows Walter to call Jesse. But instead of instructing Jesse to come to the lab, as Mike expects Walter to do, Walter starts giving Jesse instructions in a calm, authoritative voice:

WALT: Listen to me. You’re closer than we are. You’ll have about a twenty-minute lead. They’ve got me at the laundry, and they’re going to kill me. [MIKE snatches the phone away. WALT shouts so that JESSE can hear] Jesse, do it now! Do it!

MIKE: Son of a bitch!

WALT: [Shouting] Do it fast! Do it Jesse! Do it!

MIKE: [Closes the phone and points his gun at WALT] Just what the hell was that, exactly?

WALT: [All signs of agitation gone] You might want to hold off.

MIKE: Yeah? [Cocks trigger] Why?

WALT: Because your boss is gonna need me.⁴¹

39. *Id.*

40. *Id.*

41. *Id.*

Mike realizes that Walter has instructed Jesse to kill Gale, thus destroying Gus's carefully crafted BATNA. Until Mike knows that Gale is safe, it is impossible for Mike to kill Walter. Unfortunately for Gus and Mike, Jesse arrives at Gale's apartment and shoots Gale in the head.

In this situation, Walter's strategic move against Gus's BATNA depended on Mike allowing Walter to use his cell phone. If Mike had not done so, then Walter would be dead. So how does Walter turn Mike into his unwitting ally? From the perspective of negotiation analysis, three possibilities exist to explain Mike's tactical error.

First, Mike is overconfident about his BATNA.⁴² It does not occur to him that Walter—who has been acting distraught and helpless throughout the scene—might have the knowledge and wherewithal to harm Gale, if given a chance. This is an analytical mistake that is exacerbated by the cognitive tendency to overlook data that do not confirm one's own conclusions. Mike has concluded that his BATNA is strong, and so he is less able to perceive vulnerabilities. Second, Mike misreads the transactional dynamics over the negotiation around the cell phone. He demands Jesse's address, and Walter's response appears to be an attempt to comply. When Walter asks to use his phone to call Jesse, Mike believes that Walter's request follows from Mike's demand. Had Mike considered the possibility that Walter's request to use the phone could be animated by an alternative agenda, Mike might have been more cautious. For example, Mike might have called Jesse himself. Again, Mike's overconfidence in his negotiating position appears to be the reason that he failed to take into account Walter's interests and resources.

Third, although Mike does not take the time to analyze how Walter's interests are affecting the negotiation, Walter certainly realizes how Mike's interests are engaged here. Walter is able to use Mike's interests, namely that Mike wants to impress Gus through the performance of his duties, against him. To achieve his goal, Walter wisely does not offer Mike something that Mike wants. He instead offers Mike something that Gus wants, and is thereby able to exploit Mike's loyalty to Gus and manipulate Mike more easily.

C. *The Takeaway*

For negotiators in law and business, the concept of BATNA is familiar. General principles of negotiation include strengthening one's BATNA before going into negotiation, spinning a weak BATNA so that it looks better than it is, and attacking the other side's BATNA so that they

42. See FISHER & URY, *supra* note 2, at 105.

capitulate to demands.⁴³ What makes Walter's BATNA maneuver in this scene so remarkable is the way he leverages the other side's interests to worsen their BATNA, even though he is structurally powerless. When Walter offers Jesse to Mike, Mike mistakenly thinks that Walter is proffering a trade—one life for another—instead of recognizing that Walter may have other motives. Mike mistakenly elects to accept this trade because he believes it will satisfy both Gus's interests (getting rid of Walter and Jesse), and his interests (impressing Gus). Mike does not worry about being taken advantage of, because he is overly reliant on his BATNA for protection.

The mainstream negotiator should take two lessons from this interaction, both of which build on Part II's theme of knowing one's enemy. First, never overestimate the strength of the other party's bargaining position, even if they appear to have the structural upper hand. Leverage can change quickly. Second, never underestimate how your own knowledge of the other party's interests can be beneficially leveraged. With respect to this second item, recall that Walter's BATNA-bashing move was not pure improvisation. He had already done significant reconnaissance work in advance to track down Gale's home address, and he had prepared Jesse for this possibility.⁴⁴ Had he not done so, he would not have been able to destroy Gus's BATNA at the key moment.

IV. LESSON FOUR, SEASON FOUR: BUILD AND MAINTAIN COALITIONS

A. *The Rule*

Coalitions are strategic alliances between two or more people, often founded on common interests, shared values, and/or personal relationships.⁴⁵ Coalitions are helpful in integrative (expanding the pie) phases of negotiation because they provide new resources and perspectives that can

43. Rereading Fisher and Ury's classic advice around BATNAs after watching this scene is chilling. "If they appear to overestimate their BATNA, you will want to lower their expectations. . . . [I]f their BATNA is so good they don't see any need to negotiate on the merits, consider what you can do to change it. . . . Sometimes it is possible, quite legitimately, to worsen the other side's BATNA. . . . The tactic of worsening the other side's BATNA can be used to coerce or exploit, but it can also help insure a fair outcome." *Id.* at 105, 184. Of course the legitimacy of using murder as a tool to worsen the other side's BATNA is up for debate.

44. *See id.* at 170 ("[S]trategy is a function of preparation. If you are well prepared, a strategy will suggest itself.").

45. *See, e.g.,* G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE* 105 (1999).

lead to additional value-creating options.⁴⁶ Coalitions are also useful in distributive (dividing the pie) phases of negotiation because they can bring added pressure to bear on uncooperative counterparts or uncertain decision-makers.⁴⁷ Ideally coalition partners look out for one another's interests, compensate for one another's strategic weaknesses, and help sustain one another's morale in negotiations that are long or complex.⁴⁸

Yet coalitions can pose substantial difficulties in negotiation as well. Very few parties are ever perfectly aligned with respect to timing, interests, and values. Therefore, even strong alliances can disintegrate under internal pressures (such as disagreements among allies caused by incommensurate priorities) or external pressures (such as a changing business climate, or the potential new partners). Such disintegration becomes more pronounced as the coalition grows in number and strength. More people means more chances for mismatched priorities, strained relationships, strategic disconnects, substantive disagreements, and betrayals.⁴⁹ The three-party coalition, for example, is notorious for its tendency to devolve from three aligned members into two against one.⁵⁰ Someone who desires to break up a two-person alliance might strategically choose to enter as a third party, target one of the original alliance members, and

46. *See id.* at 106 (describing the tendency for coalitions to create momentum behind a position, validate positions, and to provide opportunities to develop better alternatives).

47. *See, e.g.*, DAVID A. LAX & JAMES K. SEBENIUS, 3-D NEGOTIATION: POWERFUL TOOLS TO CHANGE THE GAME IN YOUR MOST IMPORTANT DEALS 5562 (2006) (recommending that strategic dealmakers sort potential participants into high-value, potentially influential, decision-making, and other categories).

48. *See generally* SHELL, *supra* note 45.

49. *See, e.g.*, HOWARD RAIFFA, THE ART OF SCIENCE OF NEGOTIATION: HOW TO RESOLVE CONFLICT AND GET THE BEST OUT OF BARGAINING 257 (1982) (noting that “[s]ignificant conceptual complexities arise when even a single new party is added to a two-party negotiation: coalitions of two parties can now form”). Simply managing multiple parties is a Herculean task. *See id.* at 254 (“Many-party negotiations can be chaotic.”); *see also* LAX & SEBENIUS, *supra* note 47, at 67 (“Sometimes, when you make a sincere effort to include all potential stakeholders, however minor, the process simply gets out of hand.”).

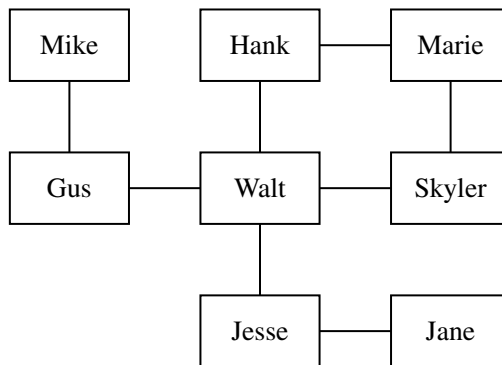
50. *See, e.g.*, Lawrence E. Susskind, *Consensus Building and ADR: Why They Are Not the Same*, in THE HANDBOOK OF DISPUTE RESOLUTION 366 (Bordone & Moffitt eds. 2005) (pointing out that in many multiparty scenarios “each side moves to find a partner (in a two-against-one game) to help him or her form a winning coalition”); *see also* Theodore Caplow, *A Theory of Coalitions in the Triad*, in MULTIPARTY NEGOTIATION (Larry Crump & Lawrence E. Susskind eds. 2008) (noting empirical support for the oft-observed “tendency of the triad to become a coalition of two against one”).

either form a new two-person alliance with that person or simply work to disrupt or destroy the original alliance.⁵¹

B. *The Set-Up*

In *Breaking Bad*, alliances between characters provide the framework for the narrative. As those alliances evolve and change, the storyline recalibrates. Table 1 (below) diagrams some of the primary one-on-one alliances in the show. Walter has four central strategic alliances: with Skyler, his wife and money-laundering partner; with Jesse, his former student and methamphetamine cooking partner; with Gus, the kingpin and Walter's employer; and with Hank, a Drug Enforcement Administration agent and Walter's brother-in-law. Walter must maintain a close connection with each so that he can avoid betrayal, detection, and arrest. These alliance partners also have their own alliances, founded either on personal relationships or on business interests.

Table 1. Snapshot of alliances.



Note that Table 1 does not indicate the status or health of the alliance at any given time, just the existence of stronger or weaker coalitional bonds between the parties. Additionally, the diagram does not provide a sense of the kinds of impacts or distortion effects that separate alliances might have on one another. Walter's alliances with Jesse and Gus do not include Skyler, for example, but her alliance with Walter is deleteriously affected by the existence of those alliances all the same. Yet even weak and degrading coalitional bonds, as the show often illustrates, can serve the strategic ends of one or both of the partners.

51. See, e.g., RAIFFA, *supra* note 49, at 252 (observing that as a strategic matter, negotiators should recognize that although alliances may appear “monolithic” in fact alliance partners may “fuse or fractionate” depending on the situation).

Table 2. Schematic of various attempted interference.

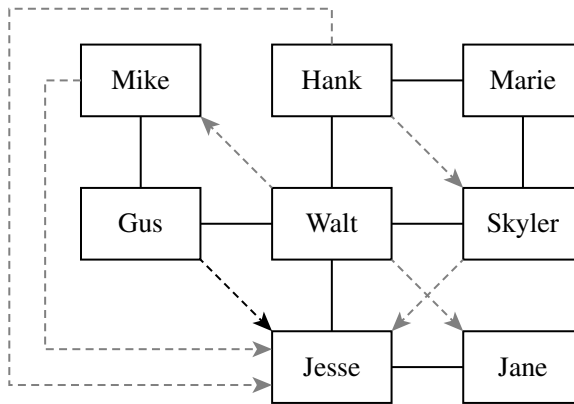


Table 2 (above) diagrams attempted interferences by various parties attempting to advance their own interests over the interests of another previously allied individual. The dashed lines in Table 2 represent one party's effort to interfere with someone else's alliance by targeting one alliance partner.⁵² Over the series many characters have, for example, targeted Jesse in an effort to peel him away from Walter. The schematic highlights (in black) Gus's efforts to disrupt Walt and Jesse's alliance, because that is the example to be used in this section.

Much of the dramatic tension in the show comes from Walter's inability to strengthen one of his alliances without debilitating another. His original motivation to form his criminal business alliances (with Jesse and then Gus) arose from his desire to provide for his family in the case of his premature death from cancer. Of course, the decision to become a drug dealer in turn imposes significant risks and harms upon Walter's family. Walter's choices thus simultaneously support and destroy his family alliances. The potential financial payoff of his activities is staggering, but may never actually materialize given the various dangers posed both by market players and law enforcement. The contradiction is not lost on Skyler, who observes that "[s]omeone has to protect this family from the man who protects this family."⁵³

Additionally, these alliances provide abundant opportunities for analysis of persuasion, leverage, and coalition dynamics. Characters in the show often use an existing alliance to manipulate one another (in classic negotiation terms, "holding the relationship hostage"⁵⁴) or work to

52. The targeted partner has the arrow pointing at him/her.

53. *Breaking Bad: Cornered* (AMC television broadcast Aug. 21, 2011).

54. MNOOKIN ET AL., *supra* note 5, at 52.

weaken or isolate another character by injecting themselves into an existing coalition. As Table 2 depicts, at various points in the series one character will seek to interfere with or destroy another's alliance for strategic purposes. This often takes the form of targeting the other's ally.

Consider the example of Gus. After Jesse kills Gale, Gus still needs a cook who can produce the high quality blue meth, but Walter has become impossible to control. Jesse is a potentially attractive option, given that he seems to be a nice kid and has learned Walter's blue meth recipe. However, Jesse is strongly affiliated with Walter. If Gus wants Jesse to be his cook, he will have to break the Jesse-Walter alliance first.

Gus approaches this challenge in two ways, one structural and one interpersonal. First, as a structural matter, Gus separates Jesse and Walter by sending Jesse on jobs with Mike while Walter works in the lab. Walter and Jesse's alliance is largely based upon the teacher-student (with father-son characteristics) dynamic that existed prior to and continued to develop after their business enterprise was launched. Preventing Walter and Jesse from working or talking together limits Walter's ability to maintain his alliance with Jesse. If Jesse is not physically present to play the role of student (and child), Walter is unable to reinforce this dynamic.

Second, as an interpersonal matter, Gus intends to shift Jesse's loyalties from Walter to Gus. Some of Mike and Jesse's "jobs" are actually prearranged schemes, such as a phony robbery attempt on Mike and Jesse that Jesse heroically manages to thwart.⁵⁵ Gus designed these schemes to give Jesse a low-risk opportunity to demonstrate competence and build self-esteem. Indeed, whenever Jesse completes one of these tasks, Gus is generous with approval and encouragement. Such generosity creates a stark contrast between Gus and Walter, since Walter is more prone to berate Jesse than to praise him. In this way, Gus seeks opportunities to further degrade the teacher-student (father-son) dynamic that holds together the alliance between Walter and Jesse, so that he might replace Walter in a new Gus-Jesse alliance.

After implementing this strategy for a while, Gus has Walter taken out into the New Mexico desert with a black sack over his head.⁵⁶ Gus drives up, gets out of his car, and rips the sack off Walter's head.

GUS: You are done. Fired. Do not show your face at the laundry again. Stay away from Pinkman. Do not go near him. Ever. Are you listening to me?

WALT: [Long pause] Or else you'll do what?

GUS: [Blinks] What did you say?

55. *See Breaking Bad: Shotgun* (AMC television broadcast Aug. 14, 2011).

56. *Breaking Bad: Thirty-Eight Snub* (AMC television broadcast July 24, 2012).

WALT: Stay away from Pinkman or else you'll do what? Kill me? If you could kill me, I'd already be dead. But you can't. You can't kill me because Jesse wouldn't cook for you if you did. That's it, isn't it? No matter how hard you tried to turn him against me, to screw with his head so that he would hate my guts . . . and he still won't let you do it.

GUS: [Pause] For now. But he'll come around.⁵⁷

From this scene, the viewer finds out that Gus's strategy to break up the Walter-Jesse alliance is not working. Jesse may be positively affected by the new attention, but he is still unwilling to abandon his original alliance. Gus is bluffing, trying to convince Walter to give up on the coalition, as a strategy to push Jesse to flip. Walter sees through the bluff right away, correctly guessing that his alliance with Jesse still protects him.

The scene does not feature a very impressive negotiation, considering that it consists basically of a failed bluff. What is noteworthy here is the resilience of the underlying Walter-Jesse alliance—one that is under duress and yet keeps Walter alive in the desert. Gus's attempt to break up the Walter-Jesse alliance fails, as do other third-party attempts to destroy alliances throughout the series. In an episode titled "Cat's in the bag . . .," Skyler, under the mistaken belief that Jesse is selling marijuana to Walter, goes to Jesse's house and demands that he end the relationship.⁵⁸ Later, when Walter's relationship with Gus becomes untenable, Walter tries to convince Mike to betray Gus.⁵⁹ Finally, after Hank discovers that Walter is Heisenberg, he attempts to persuade Skyler to testify against Walter.⁶⁰ None of these third-party intrusions into these various alliances are successful.⁶¹

C. *The Takeaway*

As a matter of coalition dynamics, it is instructive that Walter's most resilient alliances are rooted in human relationships. Walter may be a

57. *Id.*

58. *Breaking Bad: The Cat's in the Bag . . .* (AMC television broadcast Jan. 27, 2008).

59. *Breaking Bad: Thirty-Eight Snub* (AMC television broadcast July 24, 2012).

60. *Breaking Bad: Buried* (AMC television broadcast Aug. 18, 2013).

61. Although Gus and Skyler were unable to flip Jesse, he does actually work against Walter on three different occasions: when he allows Jane to blackmail Walter; when he aligns with Mike around quitting the business; and when he becomes an informant for Hank and the DEA. Each time Jesse makes a new coalition partner, that person, through the acts or omissions of Walter, ends up dead shortly thereafter. Small wonder that Jesse thinks his alliance with Walter is an alliance with "the devil" himself. *Breaking Bad: Rabid Dog* (AMC television broadcast Sept. 1, 2013).

megalomaniacal criminal mastermind, but he is still Skyler's husband and Jesse's teacher—relational statuses that apparently predispose Skyler and Jesse to protect Walter, even when he creates unacceptable levels of risk in their lives. The Walter-Gus alliance is different. It arose only for business reasons, and when the business context changed, the alliance was no longer necessary. But the Walter-Skyler, Walter-Jesse, and Walter-Hank alliances have an independent existence that is deeper than parties simply acting in the service of their own narrow selfish interests. Alliances based in human relationships create additional analytical complexities and advantages for negotiators, because they have the potential to lead negotiating parties to act outside, or even in opposition to, what would appear to be their own interests.

Even Walter himself occasionally acts against his own self-interest for the benefit of a coalition partner. In an episode titled "To'hajiilee,"⁶² Hank and his partner Gomez corner Walter and prepare to take him into custody. Walter's violent partner Jack moves to intervene, but Walter stops him, even though Walter knows that he will be arrested. Although Walter is ultimately unable to control Jack, it is notable that Walter chooses to suffer the negative consequences of arrest and trial rather than to expose Hank to the threat presented by Jack and his gang. Clearly, even highly fraught and dysfunctional human relationships can exert tremendous force on decision-making processes and outcomes.

V. LESSON FIVE, SEASON FIVE: USE WHAT LEVERAGE YOU CAN

A. *The Rule*

If respected business professor and negotiation expert Richard Shell was a *Breaking Bad* viewer, he likely would have argued that many of Walter White's remarkable negotiating feats were made possible through a masterful use of leverage. Leverage is "your power not just to reach agreement, but to obtain an agreement *on your own terms*."⁶³ It arises

62. *Breaking Bad: To'hajiilee* (AMC television broadcast Sept. 8, 2013).

63. SHELL, *supra* note 46, at 90 (emphasis in original). Many commentators have observed that in the series finale, Walter managed to die entirely "on his own terms"—in other words, exerting superhuman leverage over a wide array of events and people in the final minutes of the series. Whether this on-his-own-terms-ness made for a good ending has been the topic of much conversation on the web. Some critics found the closure cathartic and satisfying. See, e.g., Hank Stuever, '*Breaking Bad* Finale': What Happened to Walt—and to Us, WASH. POST, Sep. 29, 2013, http://www.washingtonpost.com/entertainment/tv/breaking-bads-last-episode/2013/09/29/c6bd9fe6-292d-11e3-8ade-a1f23cda135e_story.html. Others argued the extent of Wal-

from “the balance of needs and fears at the bargaining table.”⁶⁴ Negotiators who use leverage well are attuned to what motivates the other party. Negotiations are not static and/or linear events between parties with pre-determined quantum of power who are working through an algebra-like problem of interests, resources, and distributional rubrics. Rather, Shell argues, power in negotiation is in constant flux and its shifts are not purely a function of resources or structural power.⁶⁵

B. *The Set-Up*

By the end of the final season, Walter’s time has almost run out. His cancer has returned, he is hiding from the authorities, his former primary alliances (Jesse and Skyler) are debilitated and nonfunctioning, and he is living under an assumed identity in a lonely New Hampshire cabin. Walter possesses a great deal of money, but law enforcement surveillance prevents him from giving it to his family. Yet even with these disadvantages, Walter maneuvers himself into position to secure his family’s financial well-being, say goodbye to his wife and children, wipe out his enemies, avoid arrest and prosecution, and die on his own terms.

An example from the series finale illustrates the point.⁶⁶ Walter breaks into the swanky New Mexico home his former business partners Gretchen and Elliott Schwartz. Walter and the Schwartzes had a falling out earlier in the series and Gretchen and Elliot are not happy to see him waiting for them with a gun. In this episode, Walter has driven from his hideout in New Hampshire, carrying millions of dollars in cash. He forces Gretchen and Elliott to fetch the money from his car and stack it on a coffee table in their living room.

WALT: All right. That is nine million seven hundred and twenty thousand dollars.

GRETCHEN: Where did it come from and why is it here?

WALT: I earned it, and you’re going to give it to my children.

GRETCHEN: What? Why?

ELLIOTT: Walt, I don’t think—

WALT: On my son’s eighteenth birthday, which is ten months and two days from today, you will give

ter’s ability to wrap up every loose end “on his own terms” strained credulity. See, e.g., Emily Nussbaum, *The Closure—Happy “Breaking Bad” Finale*, NEW YORKER, Sep. 30, 2013, <http://www.newyorker.com/culture/culture-desk/the-closure-happy-breaking-bad-finale>.

64. SHELL, *supra* note 45, at 92.

65. *Id.* at 93.

66. *Breaking Bad: Felina* (AMC television broadcast Sept. 29, 2013).

him this money in the form of an irrevocable trust. You will tell him that it is his, to do with as he sees fit, but with the hope that he uses it for his college education and for the betterment of his family.

ELLIOTT: Walt I, I, I'm not sure that we follow. Why, uh, I mean why in particular would we—

GRETCHEN: [Outraged] If you want to give your kids drug money, go do it yourself.

WALT: I can't. My wife and son hate me. They won't take my money. Even if they did, the federal government wouldn't let them. But two rich benefactors who are known for their charitable endeavors, who think nothing of for instance writing a twenty-eight-million dollar check to help victims of methamphetamine abuse, well, I'd have to think that your money would be very welcome.

GRETCHEN: It wouldn't make any sense coming from us.

WALT: It certainly would. My children are blameless victims of their monstrous father, a man who you once knew quite well. Call it a beau geste, call it liberal guilt, call it whatever you want, but do it. And you are not to spend a single dime of your own money. If there are taxes or lawyer's fees owed, you will take it right from here. They use my money, never yours.

ELLIOTT: Okay, Walt, sure, that sounds reasonable. So what happens next?

WALT: I guess we shake on it. And I leave. [Shakes ELLIOT's hand. Shakes GRETCHEN's hand, but only after she is prompted by ELLIOT] I can trust you to do this?

ELLIOTT: Yes. Absolutely you can.⁶⁷

The terms of this negotiation are simple. Walter promises to leave Gretchen and Elliott's house in exchange for their promise to place the money into an irrevocable trust for Walter Jr. on his 18th birthday.

As agreements go, this one does not appear particularly durable. The courts will not enforce an illegal agreement like this one. All the parties know that Walter will either be dead or in prison soon. Gretchen and Elliott, therefore, have no apparent incentive to follow through on their end of the bargain once Walter leaves their house. Walter needs

67. *Id.*

leverage to hold them to their agreement, but at this point he does not appear to have any.⁶⁸

What Walter does secure, as an initial matter, is Elliot and Gretchen's handshake and promise that he can trust them. These types of negotiating maneuvers are referred to as "normative leverage." Normative leverage is an appeal to shared values and norms, as well as to the other party's desire to conduct herself in a manner consistent with her beliefs.⁶⁹ When Walter asks them to shake hands, and when Elliott and Gretchen are willing to participate in this custom most people recognize as an honest commitment of oneself to a promise, then that is a form of normative leverage. When Walter asks them if he can trust them and they say yes, that too is a kind of normative leverage tending to support the implementation of the agreement in the future.

Here, however, the normative leverage seems weak at best. Gretchen does not voluntarily shake Walter's hand and when she does take Walter's hand, she pulls hers away quickly, not bothering to hide her revulsion. Furthermore, when Walter asks if he can trust them, only Elliott answers in the affirmative. Gretchen says nothing, possibly because she does not intend to keep the agreement. Even if she had agreed, there would likely still not be sufficient normative leverage to hold the deal together. Other considerations, like distancing themselves from nine million dollars in drug money or wanting to forget about Walter altogether would become more salient with the passage of time. These concerns would tend to take priority over a promise made at gunpoint months before.

A better example of effective normative leverage occurs later in the same episode, when Walter is about to be executed inside the compound owned by his former business partner Jack Welker.⁷⁰ Walter has armed his car with a remote operated machine gun, but had to place the remote on a table when he entered the room where Jack was located. Since Walter has no weapon and is surrounded by Neo-Nazi thugs, he must find a way to buy time. Walter accuses Jack of renegeing on a promise to kill Jesse and suggests that Jack has instead made Jesse a partner in the ongoing

68. As Danny Ertel and Mark Gordon argue, skillful negotiators must think about not just agreement but also implementation, and take steps designed to help the parties follow through on their commitments down the line. DANNY ERTEL & MARK GORDON, *THE POINT OF THE DEAL: HOW TO NEGOTIATE WHEN YES IS NOT ENOUGH* 114 (2007) ("There is simply no substitute for looking past the signing of the deal and considering what happens next to be an integral part of getting the deal done.").

69. SHELL, *supra* note 45, at 43.

70. *Breaking Bad: Felina* (AMC television broadcast Sept. 29, 2013).

methamphetamine production enterprise. Jack takes offense to this suggestion (perhaps because he always keeps his word, or would never work with a police informer), so he refrains from executing Walter until Jesse can be brought up from the lab and thus set the record straight. This delay gives Walter a chance to access the remote control and fire the machine gun—killing everyone in the room (except Jesse) and exacting his revenge. In that case, normative leverage (the appeal to Jack’s honor as a criminal) provided an opening for Walter to take control of the situation and follow through on two agenda items: killing the Neo-Nazis and freeing Jesse.

Returning to the previous negotiation, we know that Walter’s normative leverage over Gretchen and Elliot is weak. Therefore, he must employ another strategy.

WALT: [Points towards the living room window into the blackness outside. Red dots appear on ELLIOTT’s and GRETCHEN’s chests]

GRETCHEN: Oh! [She and ELLIOTT are both terrified]

WALT: Don’t move. Don’t dare move a muscle. You don’t want them to think you’re trying to get away. Just breathe. Just this afternoon I had an extra two hundred thousand dollars that I would have loved dearly to leave on top of this table. Instead, I gave it to the two best hit men west of the Mississippi. Now, whatever happens to me tomorrow, they’ll still be out there, keeping tabs. And if, for any reason that my children do not get this money, a kind of countdown will begin. Maybe a day or so later. Maybe a week, a year. When you’re going for a walk in Santa Fe or Manhattan or Prague or wherever, and you’re talking about your stock prices, without a worry in the world, and then suddenly you’ll hear the scrape of a footstep behind you, but before you can even turn around, pop!

GRETCHEN: [Shrieks]

WALT: Darkness.⁷¹

In addition to normative leverage, two other types of leverage exist: positive and negative. Positive leverage is the ability to give the other party something he or she wants.⁷² The parent who promises cookies to a

71. *Breaking Bad: Felina* (AMC television broadcast Sept. 29, 2013).

72. SHELL, *supra* note 45, at 102.

child who refuses to eat broccoli is attempting to use positive leverage.⁷³ Negative leverage, by contrast, is the power to foist something unwanted on the other party.⁷⁴ If the promise is not cookies but an undesirably early bedtime instead, then negative leverage is in play.

Here, Walter employs negative leverage. Walter presents Gretchen and Elliot with the ever-present possibility of being murdered if they fail to keep their word. Shell notes that threats must be credible to be effective as negative leverage.⁷⁵ Walter knows this and has taken care to make his threat as credible as possible. The red laser dots, the story of the hit men, Walter's gun pointed at them, and knowledge about Walter's larger-than-life reputation as a ruthless criminal—all of these factors together make Walter's threat on their lives credible.⁷⁶

Note that it does not matter that Walter's story is a lie, and that the red dots are harmless laser pointers aimed through the window by Jesse's buffoon friends, Badger and Skinny Pete. Walter need not spend his resources hiring real hit men when he can just as easily craft a plausible story and get the same result. "Leverage is based on the other party's *perception* of the situation, not the facts."⁷⁷ As long as Gretchen and Elliott believe that the story about the hit men is true, or just that it might be true, then they have a negative incentive to follow through on the agreement.

Walter does not use positive leverage in this scene, probably because there is nothing he can give to the wealthy and successful Gretchen and Elliott. All they get from Walter is a pointed parting shot:

WALT: Cheer up, beautiful people. This is where you get to make it right.⁷⁸

But Walter understands how to use positive leverage, as demonstrated later in the episode when he visits Skyler. He wants to say goodbye to her, and to see their daughter Holly one last time. After sneaking past police into the apartment, but before going in to say goodbye to the baby, Walter gives Skyler two things. First, he gives her a lottery ticket that

73. *Id.* at 108 (describing a child who refused to eat broccoli as an example of the leverage that even a structurally powerless individual (like a child) has over others).

74. *Id.* at 103.

75. *Id.* at 95–96.

76. We assume so, anyway. Because the show ends with Walter's death, we do not know what happened ten months later. It seems safe to say, however, that Gretchen and Elliott are more likely to do what Walter wants after the red dots than they were before the red dots.

77. SHELL, *supra* note 45, at 111 (emphasis in original).

78. *Breaking Bad: Felina* (AMC television broadcast Sept. 29, 2013).

contains the GPS coordinates where Hank's body is located. These numbers provide Skyler positive leverage to negotiate with the prosecutor, who will want to know where that body is buried. Second, Walter gives her an almost-apology—an admission that everything he did, he did for himself.⁷⁹

It may seem odd to fit an apology, which is supposed to be freely given, into a transactional framework of leverage and concessions. For the White family, however, this exchange makes emotional and interpersonal sense, especially given the time constraints under which they were meeting. For her part, Skyler needed the bargaining chip and wanted the apology/admission. For his part, Walter wanted to say goodbye to her and to the baby. A trade is thus negotiated. On this view, positive leverage makes it possible for Walter and Skyler to bring some closure to their relationship.

On first glance at these three interactions (with Gretchen and Elliot, with Jack, and with Skyler), one would think that Walter could not possibly have enough power to negotiate for his goals in any of these situations. Gretchen and Elliot could simply keep the money. Jack could simply shoot him. Skyler simply call out to the police officers outside the house. Each time, however, Walter manages to get what he wants—even death on his own terms, by planning to be shot by his own machine gun in the compound before the police arrived. Walter is able to make these things happen through the use of positive, negative, and normative leverage, along with his ability to harness the incentives afforded by his negotiation counterparts.

C. *The Takeaway*

The dramatic depictions of Walter White's leverage in the final episode serve as a useful reminder that most negotiations are not strictly predetermined by static power structures, but instead have room for significant play. Even two-party negotiations have opportunities for leverage, if only because of the differentiated incentive structures (both conscious and unconscious) that people bring to the bargaining table. Walter is able to overcome numerous structural disadvantages in the final episode by thinking carefully about the people with whom he is negotiating and then by employing specific, targeted and leverage-based strategies to exploit the other party's weaknesses and priorities.

79. *Id.* (“I did it for me. I liked it. I was good at it. And I was really [pause], I was alive.”).

CONCLUSION

Walter White's negotiations related to his participation in the world of methamphetamine production and distribution may seem far afield from our own. Yet he draws on the same concepts and strategies (BATNAs, alliance building, etc.) that are commonplace in negotiation theory and practice. His ability to use conventional negotiation techniques in unconventional ways reminds us that negotiation techniques do not come with ethical guidelines for use. Indeed, when we ourselves negotiate, it is easy to start thinking about the people on the other side instrumentally—as pawns that need to be moved into position, or as obstacles that need to be eliminated, or as resources that need to be utilized. This creates an inevitable ethical tension. To the extent that we imagine our negotiations happening between people of good character pursuing respectable goals, we can downplay or avoid this tension. In fact, in these circumstances we may even comfortably commend the relative “value neutrality” of standard negotiation practices (gathering interests, brainstorming options, and so on) as supportive of party empowerment and self-determination. We are comfortable doing this because we assume, at least at some level, that good, respectable participants will set appropriate ethical boundaries on the process.

But when we watch negotiators like Walter White, we are reminded that the method we teach and practice does not have explicit ethical guidelines or norms built in.⁸⁰ This may mean that we are overemphasizing, without an adequate ethical counterbalance, the importance of promoting one's agenda, protecting oneself against others, worsening the other side's alternatives, making and breaking alliances, and exploiting weaknesses through leverage. Watching Walter White ruthlessly manipulate his way through bargain after bargain challenges us to take moral, ethical, interpersonal, and community considerations into account when we evaluate the effectiveness of negotiation strategies.

80. Lawyers who negotiate are bound by state rules of professional ethics, but as many scholars have pointed out, these rules are a rather low bar for what constitutes ethical behavior. Moreover, lawyers' ethical rules do not necessarily promulgate what most people would consider honest treatment of issues or counterparts. *See, e.g.,* Art Hinshaw & Jess K. Alberts, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics*, 16 *HARV. NEGOT. L. REV.* 95, 98–99 (2011) (footnotes omitted) (“Certainly, a degree of dissembling and misdirection is to be expected in the negotiation realm. Consistent with these expectations, Model Rule 4.1 legitimizes some deceitful negotiation techniques and only prohibits fraudulent misrepresentations about material matters.”).

