

# Coalitions and Representative Bargaining

GARY GOODPASTER\*

## I. INTRODUCTION

Coalitions<sup>1</sup> aggregate, catalyze, mediate, and forward interests. Like neurons in a neural net, coalitions are both junctures of communications and information processors, and through their interactions, connections, and field effects, they become nodes of influence and decision.

In bodies politic, coalitions play key roles in public policy negotiations and in organizational and corporate decision making. Alliances, groups, and federations, from informal to official and from spontaneous to planned, all engage in political and quasi-political negotiations in legislative politics at all levels. Coalitions clash, contend, and compete in the fields that regulatory boards and administrative agencies oversee and referee. Internationally, coalitions of nations, and coalitions of groups within and across nations, shape and determine the

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\* Gary Goodpaster is a Professor of Law, University of California at Davis.

1. Although coalitions are extremely important actors in many negotiations, there is not a lot of writing about coalitions in the dispute resolution literature. Game theorists, social psychologists, and political scientists have produced significant work on the theory of coalitions and coalition formation. Because it is theoretically oriented, much of the literature is concerned primarily with the question of what a rational actor would do in acting to form, and to divide the gains of, a winning coalition in highly constrained and competitive circumstances. This literature provides useful insights about what constitutes rational behavior under limited assumptions or in experimental game conditions. Without attempting to provide a review of this complex literature, I have selectively used some of its insights to suggest some of the complex dynamics that go into coalition formation.

In the dispute resolution literature, some works on mediation and public policy dispute resolution treat coalitions as bargaining actors, but do not detail coalition dynamics. Cf. SUSAN L. CARPENTER & W.J.D. KENNEDY, *MANAGING PUBLIC DISPUTES* (1988); CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS* (1986); LAWRENCE SUSSKIND & JEFFREY CRUIKSHANK, *BREAKING THE IMPASSE: CONSENSUAL APPROACHES TO RESOLVING PUBLIC DISPUTES* (1987).

Aside from the foregoing, the works I found most indispensable in helping understand coalitions were: SAMUEL B. BACHRACH & EDWARD J. LAWLER, *POWER AND POLITICS IN ORGANIZATIONS* (1980); HOWARD RAIFFA, *THE ART AND SCIENCE OF NEGOTIATION* (1982); David A. Lax & James K. Sebenius, *Thinking Coalitionally: Party Arithmetic, Process Opportunism, and Strategic Sequencing*, in *NEGOTIATION ANALYSIS* 153 (H. Payton Young ed., 1991). The last cited work is particularly valuable, and anyone interested in the subject should consult it. See also JAMES K. SEBENIUS, *NEGOTIATING THE LAW OF THE SEA* (1984).

terms of major multi-national treaties, such as the Law of the Sea Treaty<sup>2</sup> and GATT.<sup>3</sup> Coalitions also mold and influence decisions in other domains of international action. These grand joint exertions include: 1) the recent efforts to end the Serbian-Bosnian-Croatian crisis;<sup>4</sup> 2) the pursuits of private international corporations seeking business, government contracts, or favors abroad; 3) the humanitarian labors of non-profit international relief agencies; and 4) the struggles of nongovernmental organizations to influence the handiwork of nations. Within more private realms, coalitions sway and often control the internal and external decisions of a myriad of corporate bodies from boards of directors and faculties to corporate committees, task forces, and working groups, or gangs.

Coalitions penetrate and infiltrate all collective decision making, and anyone whose work engages the decision making of groups must understand how coalitions may affect group processes and decisions. In particular, negotiators, mediators, and consensus-seeking facilitators involved in multi-party negotiations - "focal negotiators" for ease of reference - must understand coalition formation and the nature and dynamics of coalition bargaining. Alliances and alliance activity affect both *how* decisions are made and *what* decisions are made. Alliances may both enable and disable effective and efficient bargaining. Alliances may facilitate agreements or preclude them. Alliances and coalitions, however, are neither fixed nor permanent, nor relentless entities. One can work with coalitions both to shape and to reform them to effect desired decisions and agreements.

Understanding coalitions and coalition bargaining dynamics endows the focal negotiator with the cognitive schemata to form, track, and reconfigure coalition paths and plays. Knowing these coalition dynamics, however, is not quite enough. For example, in many arenas and negotiations in which coalitions are active, the allies who form coalitions are themselves aggregates, sometimes even collectivities of collectives. They comprise large groups that are only represented in coalitions. Those seated at the coalition table speak for others: groups, organizations, constituencies, and groups of organizations and constituencies. Acting as an agent for others entails role-directed and

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2. United Nations Convention on the Law of the Sea, U.N. Doc. A/CONF. 62/122 (1982), reprinted in 21 I.L.M. 1261 (1982); cf. JAMES K. SEBENIUS, *supra* note 1.

3. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. 5, 55 U.N.T.S. 187.

4. William E. Schmidt, *Croats and Muslims Reach Truce to End the Other Bosnia Conflict*, N.Y. TIMES, Feb. 24, 1994, at A1.

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constrained behaviors and consequently creates dynamics different from those occasioned by acting on one's own behalf. When some or all parties at the table represent groups or constituencies, and table coalitions and countercoalitions form, the negotiating game can become quite complex. The complexity will increase when there is coalition play *within* the represented parties. Coalitions away from the bargaining table will affect coalitions and their agents at the table. Therefore, in their cognitive blueprint, focal negotiators should trace not only the circuitry of coalitions, but also the connected circuitry of the agencies involved in bargaining.

### II. COALITIONS

Increasing the number of parties involved or interested in a negotiation can seriously complicate it. Adding parties can lead to the addition of issues and to the need for increased communication and coordination. As a result, the possibilities of conflict multiply and may create new constraints on settlement. Bringing in parties may also alter the power relationships in a negotiation and change its bargaining dynamics. All of these effects may occur where negotiating parties create alliances or coalitions, either to achieve negotiation goals or to block those of some other party.

#### A. Coalitions

A coalition is an alliance of two or more parties agreeing to engage in joint or coordinated action against other parties or coalitions.<sup>5</sup> Coalitions form when parties perceive that allied action is the best way for them to gain or maximize desired outcomes. Allying forces to enhance the power of coalition members constitutes a problem-solving response to competitive situations in which coalition members, acting alone, cannot gain desired results from others. In other words, coalitions form to remedy or to offset power imbalances among the negotiating parties.<sup>6</sup>

#### B. Bargaining Power

As negotiating coalitions form to acquire power, it is useful to understand what bargaining power means. Parties enter bargaining relationships because they think they need one another to get something

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5. BACHRACH & LAWLER, *supra* note 1, at 8, 45, 106.

6. *Id.* at 8.

they want. Neediness varies from situation to situation and ranges from the simplest of wants or desires that many parties could satisfy to serious needs or necessities that only a few parties can satisfy. If a person wanted to buy a new shirt, but did not really need one and did not have anything particular in mind, he or she could browse in many stores, and yet not buy one. If, however, one's business employees are going to strike, and cannot be replaced, then there is little choice but to deal with them.

These simple examples clarify that a party's need to deal with another confers a kind of power or leverage on the other.<sup>7</sup> In negotiation, the parties' power is a relational matter and arises from the negotiating parties' dependence on one another to obtain something they want -- that is, to satisfy their respective needs -- from that particular relationship.<sup>8</sup> In a negotiation between Sally and Harry, Sally's bargaining power is dependent on Harry's need for her to obtain something he wants. It may also depend on Sally's need to get something she wants from Harry.

If Sally does not need what Harry controls or can provide her, or if she needs or wants it but has other ways of getting it, she does not need to negotiate with Harry. She is independent, rather than dependent. Sally's independence, assuming that Harry does not have a similar capability of satisfying his wants aside from negotiating with Sally, confers bargaining power on her. Harry's need to obtain particular results from Sally increases his dependence on her, and consequently, decreases his power with respect to negotiating with her.<sup>9</sup> Sally has power in her negotiation with Harry if she has at least one reasonably good alternative way to get what she wants outside of settling with him. She also has power over Harry if he does not have a viable alternative way of getting what he wants without settling with her.

On the other hand, if Sally is only able to meet her goals by

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7. The term "power" has unfortunate connotations of force or of a party's unilateral ability to have its way. As used in negotiation analysis, however, it is a shorthand term that refers to the dependency relationships that exist between the negotiating parties.

Much of negotiating comprises the parties' efforts to determine just how much, and in what respect, they need each other to get what they want. This, in fact, is what negotiation information trades are all about. One important matter the parties are trying to figure out from the information they have and obtain, and through their evaluations and assessments, is their relative dependence on one another - in other words, their relative balance of power.

8. BACHRACH & LAWLER, *supra* note 1, at 56.

9. Somewhat paradoxically, however, Harry's neediness could turn out to be a source of power for him. Because he needs to obtain particular results, he may expend great effort to achieve them. In other words, neediness motivates and may generate impression management moves that persuade Sally to do what Harry wants, even though in some absolute, objective sense, Sally has greater "real" power. *Id.* at 64.

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bargaining with Harry, she is dependent on Harry and has relatively less bargaining power with respect to the item she needs from him. The greater her need to obtain particular outcomes from negotiation, the less power she has to bargain for those particular goals.<sup>10</sup> She not only lacks the alternative of doing *without* Harry, but also lacks the alternative of dealing *with* Harry.

Bargaining power in negotiation is thus a relational, relative, and changeable matter. It is not possible to say how much bargaining power a negotiator has without considering how much the opposing negotiator has, for it is a question of their relative dependency on one another to realize particular outcomes.<sup>11</sup>

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10. *Id.* at 60.

11. Of course, the parties' dependency on one another is not necessarily fixed or static; the parties often can act to change their dependency.

For a more detailed and sophisticated discussion of the points made in this section, and in the following sections, and for a comprehensively stated bargaining power model, see ALVIN L. GOLDMAN, *SETTLING FOR MORE* 27-52 (1991). While negotiation bargaining power is a question of relative dependency, it is useful to specify in greater detail the elements or variables on which it depends. The apparent variables are a party's needs or wants and its alternative ways of satisfying them. In relation to these, it is important to consider the information a party has, a party's negotiating transaction costs, and its belief in the other party's ability to meet its needs.

A party has some relative bargaining strength if it has an alternative way, other than through the negotiation, of satisfying its needs. Nonetheless, if the party does not know of an alternative, it is effectively without bargaining power. Therefore, it is important to factor the state of a party's information about its alternatives into the bargaining power equation. If a party is clear and certain about its alternatives, it can readily test the value of possible settlements by comparing them with its alternatives. Where a party is uncertain or insecure about its alternatives, it will have to discount them accordingly. Furthermore, in seeking to discover what effective alternatives it has, a party may experience time and expense limitations. If a party fails to gather the information it needs to specify its alternatives realistically, then the party's relative bargaining position is weakened.

There are also other costs associated with negotiating that may factor into the bargaining power equation. The first of these is the investment cost, the cost associated with initiating the negotiation and carrying it to its current stage. This investment cost is further comprised of preparation costs, research and time costs, and any lost opportunity costs associated with the actual negotiation. All other things being equal, the more a party has invested in a given negotiation, the more likely that party will be to settle. The party will still need to compare any proffered settlement to its alternatives. If the party refuses to settle, its negotiating costs become lost costs. The negotiation has made it more costly to resort to other alternatives. The costs of negotiating may discount the value of the party's alternatives. Thus, increasing a party's negotiation investment costs tends to decrease that party's bargaining power.

The other important negotiation transaction cost is the anticipated cost of going forward with negotiations. The greater this is, the more attractive the alternatives to negotiation may become. It follows that one enhances her bargaining power by reducing the *other side's* anticipated negotiation costs. If the cost of continuing negotiation is low, there is

C. *Coalition Formation*

Negotiation coalitions arise when unallied parties lack the bargaining power to get what they want from a negotiation. Coalitions form to gather enough power for the allied parties to achieve their common and individual goals. They ally to improve their opportunities for getting what they want, either by finding an alternative to dealing with the more powerful party or by altering the dependency relationships between the negotiating parties.

Coalition formation is one way parties can change their relative dependency on those with whom they wish to, or must, deal. Allying with others may create new alternatives, change the available alternatives, or bring additional resources to the negotiation. An employer may be able to withstand a strike by one of its unions, but when all of its unions ally, it may be forced to bargain. When asked by a single homeowner to install a speed bump on her street, a city council may ignore the request, but when asked by all of the homeowners in the residential district, the city council will more likely take action.

In all situations where parties are dependent on a decision maker

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less incentive to resort to alternatives to negotiation, and therefore, a party will be inclined to continue.

Another variable to factor into the bargaining equation is a party's belief in the other party's ability to meet its needs or wants. Suppose you wish to remodel your house and you contact contractors for bids. Before you settle on a contractor, you will want assurance that he is not only dependable, but also capable of doing the work you want at a desired quality and price. If you are not persuaded that a particular contractor meets these conditions, you will not hire him. Consequently, where a party's performance is important in a negotiation, the other party's belief in its capability, trustworthiness, and reliability is a critical variable. Therefore, when performance is important, the performing party can increase its bargaining power by enhancing the other side's belief in the existence of these qualities. On the other hand, one may weaken the performing party's bargaining position by questioning its ability to perform.

Negotiating parties base their negotiating decisions on their perceptions of the negotiating situation. Consequently, it is the parties' perceptions of their alternatives, the certainty and quality of their information, their costs, and their respective abilities to perform that determine their relative bargaining power. A negotiating party can increase its bargaining power by bettering its alternatives, improving its information, reducing its negotiating transaction costs, and improving the impression associated with its ability to perform. A party can also increase its relative bargaining power by acting to decrease the other party's bargaining power. It can do this by worsening the other party's alternatives or that party's *perceptions* of its alternatives. It can undermine the other party's confidence in the information on which that party bases its bargaining position. It can work to increase the other party's negotiation investment cost and it can seek to convince the other party that further negotiation transaction costs will be low. Finally, it can also increase its bargaining power by persuading the other party that it can meet its needs better than any alternative ways the other party has of meeting them.

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to make some decision affecting them, and the decision depends on voting or assessment of the "politics" of the situation, the formation of coalitions can change the alternatives available to the decision maker. This is usually done by increasing the risk of adverse consequences flowing to the decision maker from decisions unfavorable to a coalition or its members.

Typically, coalitions form in voting bodies, such as legislatures or councils in which every member has an equal vote. They can also form in any situation where a party faces a more powerful party and singly lacks the resources to achieve its ends or to protect itself. The following examples illustrate this notion. An investor who wants to buy a company but does not have sufficient funds brings in other investors to achieve his goal. One of several unions wants higher wages for its members, but the company can maintain production even if these union members strike. Thus, the union seeks alliances with other company unions and with the teamsters that transport the company's goods. A developer wants to develop acreage within a city and needs a zoning change, but powerful "no-growth" advocates oppose development. The developer then seeks allies among local contractors, building trade unions and suppliers, local banks, and merchants to overcome the opposition.

Coalitions also form when some external circumstance forces parties to agree, in order to receive a benefit or avert a problem or catastrophe. As one example, under clean air and transportation legislation, the federal government designates certain geographic regions as ozone "non attainment" zones.<sup>12</sup> In order to receive federal highway and transportation funds, cities and counties within the zone must agree on a transportation plan that reduces auto pollution below a certain level. As another example, the owner of a major league baseball team proposes to sell the team to investors in another state. City officials, fans, merchants, and local investors rally to establish a local investment group to make a competing bid.<sup>13</sup>

### *D. Intracoalition Negotiation and Intercoalition Negotiation*

There are two rather different negotiation processes at work as coalitions form and attempt to maintain themselves during a negotiation with other parties. The first is the intracoalition negotiation, which is the negotiation involved in forming the coalition. Intracoalition negotiation concerns the particular issues regarding how the prospective coalition

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12. 23 U.S.C.A. § 104 (West Supp. 1993).

13. Marc Sandalow, *S.F. Group Says Giants Lack Votes to Move*, S.F. CHRON., Nov. 3, 1992, at A1.

members identify potential alliances and how they decide to divide or distribute the realized gains among themselves. The second is intercoalition negotiation, which is the negotiation between a formed coalition and other parties or other coalitions involved in the overall negotiation. These two different negotiations are interrelated and affect one another, in part because coalition formation may stimulate counter-coalition formation and defensive efforts. Moreover, the deals struck to form and maintain a coalition will shape the coalition's bargaining with external parties.

*E. Simple Coalition Dynamics*<sup>14</sup>

Coalition formation occurs when parties negotiate an alliance agreement, formally or informally, expressly or tacitly.<sup>15</sup> In order to form a coalition, prospective coalition members must perceive that an alliance between them will confer advantages they do not have acting alone. Prospective coalition members will decide whether to enter a coalition, and which coalition to enter, by comparing their respective potential gains from either acting alone or from entering the possible alliances. This is most easily understood through a simple example.

Consider a negotiation between three parties, Anna, Emma, and Paul.<sup>16</sup> Assume, in terms of respective negotiating power, that Anna has the most power and Paul the least power. In other words, in order to get what they want, Anna is less dependent on Paul than Paul is on Anna. Anna is also less dependent on Emma than Emma is on her, and Emma is less dependent on Paul than Paul is on Emma. Further assume, however, that when Paul and Emma act together, Anna is more dependent on them than they are on her. We can symbolize these power or dependency relationships as follows:

Anna > Emma; Anna > Paul; Emma > Paul,  
(Paul and Emma) > Anna

In this situation, aside from a grand coalition of all, there are

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14. See generally RAIFFA, *supra* note 1, at 257-74.

15. The term "alliance agreement" is used here quite loosely. The only agreement required is one of parallel action. Many coalitions are tacitly formed when parties informally coordinate their actions toward common ends. For example, when organizations face critical decisions, such as budget allocations, mid- and upper-level managers sometimes form alliances to protect budget shares. These alliances can arise even without face-to-face ally communication. The perception of shared interests will often lead to parallel action, such as similar voting.

16. The vignette and scenario were suggested by the pure coalition game, and discussion of it, found in RAIFFA, *supra* note 1, at 262-67.

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three possible coalitions, as follows:

Emma and Paul (against Anna)

Anna and Emma (against Paul)

Anna and Paul (against Emma)

Paul, knowing he is the weakest of the three, might reason as follows: "If all three of us act solely for ourselves, I will come out worst in this negotiation because I am the weakest. Depending on what either of them will give me to join them, I may be better off joining Anna or Emma to form a coalition against the other. Emma is likely to align with me because she too is weaker than Anna."

"But wait! I see another possibility that may result in an even greater gain for me. If Anna knows I am thinking of aligning with Emma, she will realize that she is overpowered in this negotiation. She therefore may be willing to offer me more to join her against Emma than Emma offers me to join her against Anna. Amazingly, although I'm the weakest of the three, I gain considerable strength from my ability to enter an alliance, and I can maximize my gains by playing Emma against Anna!"

Paul has not quite thought this through well enough yet, for Emma and Anna can play the same game. If Paul seeks to exact too much from Emma as a price for aligning with her, Emma can approach Anna to see whether she can maximize her results by aligning with Anna rather than Paul. In other words, when faced with a coalition, the noncoalition party may seek to weaken or break the coalition apart by changing the terms of its offers to one or more of the coalition parties.

### *F. Coalition Formation, Countercoalition Processes, and Share Allocation*

Coalition formation thus may lead to countercoalition processes. Based solely on a rational calculation of maximal gains -- loyalty and coalition partner skills left out of the equation -- a party will defect from a coalition if it gets a greater payoff from an alternative coalition. The possibility that a coalition member will defect from a coalition enhances the bargaining power of that member both *inside* and *outside* of the coalition. A member's ability to join another coalition gives her an alternative of not dealing with the coalition in which she initially finds herself. The possibility of remaining with the coalition gives her an alternative to joining the coalition that seeks to entice her away from her initial alliance. Consequently, a coalition formed solely to maximize its members' gains, narrowly conceived, will be stable only if its members cannot get a greater payoff outside the coalition than inside it. Of course, in real life, social factors such as loyalty, moral pressures, the possibility of future dealings with coalition-mates, and the like can override the

temptation to seek single-minded and opportunistic gains.

Nonetheless, the general point is valid. Practically speaking, parties can exact a price for agreeing to join a coalition, and exact an additional price for agreeing to stay with a coalition. Consider again the negotiation between Anna, Emma, and Paul described above. Assume, for illustrative purposes, that the parties have the following points in respective negotiating power: Anna - forty, Emma - thirty, Paul - twenty. Assume also that the total available payoff from the negotiation is ninety, and that the parties can, through their negotiation processes, divide whatever points they collectively control. If they do not agree on a division of points, no one gets any.<sup>17</sup> Consequently, if there is a grand coalition of the three, they can divide ninety points between them as they wish. If Anna and Emma align, but Paul does not join them, Anna and Emma can divide seventy points as they wish, and Paul gets nothing. If Emma and Paul align, but Anna does not join them, Emma and Paul can divide fifty points as they wish, and Anna gets nothing. If they do not agree, they each come away with nothing.

The negotiation might go something like this. Anna, Emma, and Paul begin negotiating as separate parties. Paul initially proposes that the three of them agree to divide the ninety points equally. Anna rejects this immediately and demands forty points of the possible ninety points available for division and proposes that Emma get thirty and Paul twenty. Anna's equity argument is based on the fact that forty points is what she contributes to the overall total.

Emma responds, "No, wait a minute! I will not agree to that. I can get thirty points if I enter an agreement with Paul and leave you out. I am not going to enter any agreement with you unless I can get more than thirty points. In fact, if you and I enter an agreement together we can split seventy points. I want half of that, that is, thirty-five points to join you."

Paul then enters the negotiation. "Hey, I do not want to get left out of this! If you two enter that agreement, I will not get any points! Anna, I propose that you align with me, and of the sixty points we have to divide, I will let you have thirty-six and I will take twenty-four. That way you get one more than you get by joining Emma."

"Well, Emma," says Anna, "it looks like I can do better by joining Paul than by joining you. Can you better your offer?"

"Perhaps I was hasty," says Emma. "I can see that you can play me off against Paul. I will agree to give you thirty-nine points and I will take thirty-one."

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17. *Id.* at 262, table 18.

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"Oh, boy," Paul interjects, "that will leave me with nothing. Emma, if you agree to align with me, I will let you take thirty-two points, and I will take eighteen."

"Wait," says Anna, "I am frozen out that way. Emma, I will give you thirty-three points if you align with me. No. No. Wait! Paul, I will give you twenty-two points to align with me. That will leave me with thirty-eight."

"Then I would get nothing," Emma jumps in. "Let us do it this way. Let us have a three-way agreement. You take your thirty-eight points. I will take thirty, and Paul can have his twenty-two."

"Oh, no!," responds Anna. "I will agree to give Paul twenty-two points if you are not in the picture. After all, I only need him because you will not give me a better deal. I am not going to allow you in unless I get something more for it. I want at least fifty points. I will continue to agree that Paul gets twenty-two. That leaves you with eighteen points. That is a good deal considering that we could freeze you out and leave you with nothing."

"Wait just a minute! I am not going to let you get away with that, Anna! Look, between us, Paul and I command fifty points. I will offer him at least twenty-three points to join me. That is one better than you are giving him. And for me, I get twenty-seven points, and that is nine points better than your proposed deal."

"I can do better for you than that, Emma," Anna responds, "If you align with me, I will let you have twenty-eight points and I will take forty-two."

And so on. As is evident from this example, parties proposing to enter coalitions somehow have to determine their share allocation of whatever results the coalition is able to obtain.<sup>18</sup> More importantly,

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18. In reality, this is often unstated. Indeed, parties may privately calculate or speculate about possible gains. In the example, however, the effort turned into a prolonged bidding without an equilibrium point. This occurred simply because each party's only stake was maximizing its individual gain. In realistic circumstances, prospective coalition partners apparently intuitively realize they face the prospect of interminable, inconclusive bidding, and therefore resort to some more principled basis of share division. THEODORE CAPLOW, *TWO AGAINST ONE: COALITIONS IN TRIADS* 26 (1968). The most likely ideas they would use to allocate shares would be either equity, shares proportional to the resources the respective parties contributed to the coalition's success, or equality, equal shares, or a midpoint solution lying between equitable and equal shares. For a discussion on the equity principle, see William A. Gamson, *A Theory of Coalition Formation*, 26 *AM. SOC. REV.* 373, 376 (1961). For an examination of the equality and mid-point principles, see S.S. Komorita & Jerome Chenkoff, *A Bargaining Theory of Coalition Formation*, 80 *PSYCHOL. REV.* 149 (1973). See generally BACHRACH & LAWLER, *supra* note 1, at 48-61.

Interestingly, the share allocation principle that the parties ultimately use also affects just what coalition will form. This is easiest to see from considering the example

however, the share allocation between prospective coalition partners is a negotiation like other negotiations. Forming a coalition is a problem-solving response to perceived weakness, and if the coalition succeeds in its aims, the parties to it in effect create value through alliance. Nevertheless, they still face a value-claiming problem, dividing the value created.<sup>19</sup> Coalition members will share in whatever gains the coalition obtains, and they must decide their respective shares. The bargaining on that point can be distributive, a hard-bargaining contest as in the example, or it can be problem-solving, whereby the parties stumble on or resort to an agreed upon principle to decide what each of them shall receive.<sup>20</sup>

The way coalition members solve the share allocation problem has important consequences for the maintenance and stability of the coalition. In the example, the possible coalition members were all acting opportunistically, as if they were interested only in the size of their returns from cooperation. The single interest holding any proposed alliance together was individual gain. Such opportunistic coalitions are unstable. Where shared interest is not strong, coalition partners may defect when offered more by an external party. In such circumstances, coalitions must both be vigilant and prepared to respond to possible or threatened defections by renegotiating the original terms of coalition formation.

Furthermore, although all coalitions will in some way distribute gain following success, because all coalition members will realize some kind of gain on coalition success, the example suggests it is not always wise for coalition members to attempt to allocate shares in advance. The bargaining process involved in allocating shares may divide the parties rather than bring them together. This seems particularly likely when all the coalition members seek the same kind of gain, such as a share of

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again. In the Anna-Paul coalition, Anna commands twice the resources that Paul does, 40 points to 20 points. If equity is the basis of share division, then, on success of the coalition, Anna should receive twice what Paul receives. If, however, Paul joins Emma in a coalition, and that coalition also uses equity to divide gains, then Paul will receive two-thirds of what Emma receives, for Emma contributes 30 points to his 20. All other things being equal, this should incline both Paul and Emma to enter a coalition with each other rather than with Anna, for they will each get a larger share. In terms of actual receipts, neither are better off than they would be in a coalition with Emma, but they might prefer it because they feel less dominated. BACHRACH & LAWLER, *supra* note 4, at 63-66.

19. For the distinction between value creation and value claiming, see DAVID A. LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN* 30-33 (1986).

20. For a discussion on the use of objective principles to distribute negotiation gain, see ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 84-86 (1981).

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money or a portion of a contract.

Where coalition members seek different kinds of gain, they can collaborate more readily. Consider, for example, the situation where an environmental group allies with a developer of large-acreage luxury home sites to oppose the development plan of a high density home builder. The gain the environmental group seeks is lower population density to limit adverse environmental impacts. The gain the luxury home builder seeks is profit through exclusivity. These parties can align readily, and probably without a discussion of share allocation. Their success as a coalition will give each of them what they desire.

### *G. Real Coalitions*

Matters are rarely as simple and unambiguous in real life as they are in hypotheticals. While the example demonstrates some of the dynamics underlying coalition formation, it is highly simplified and certainly does not capture them all. Among other things, it leaves out consideration of such factors as personal interaction, investment in coalition-building, information availability and costs, loyalty, ideological compatibility of the participants, and perceived possibilities of future use of the developed relationship.

In real negotiations, parties may not be completely clear about their dependencies on one another. When they form coalitions, they cannot necessarily be certain about how their joined forces will change the configuration of their dependencies on the other parties to the negotiation. This is particularly true where the other parties may also ally as a responsive move. Furthermore, negotiating parties often value the same things differently. Parties' respective valuations may become clear only after they trade. Consequently, in forming an alliance, partners may not be able to determine in advance their respective shares of the distribution realizable if the alliance succeeds. This uncertainty is increased when the gains or receipts of coordinated action are themselves uncertain or variable or differentially attractive to coalition members.

To illustrate this point, consider the coalition of nations that formed to fight the Persian Gulf War. At the initiation of the war, its outcome was uncertain. Even if the allying partners expected victory, none could predict how substantial a victory, its overall costs, or the costs each partner would experience. Coalition members also had different stakes in a successful outcome. The security of oil resources was a concern to many of the coalition members, but not to all members. Saudi Arabia hoped to retain its sovereignty and territorial integrity. Egypt and Syria were partially motivated by political considerations, and Egypt was

also motivated by a loan-forgiveness side deal with the United States.<sup>21</sup> Perhaps out of long-term strategic alliance considerations, Japan agreed to help pay for the war, despite the fact that it did not have significant oil security concerns.<sup>22</sup>

### III. BUILDING AND SHAPING COALITIONS

#### A. *Internal Coalition Negotiations*

By joining a coalition, a party gains something it could not otherwise obtain, but it also pays a price. The ability of a potential coalition member to extract gain from joining a coalition turns on the question of how dependent the coalition is on that party to add to the bargaining power it needs to reach the desired results. What a party gains and what it pays therefore depend on its relative value to the coalition, and that in turn is partly a matter of what the other parties to a coalition bring to it. A party's value may also depend upon the role of non-coalition members. For example, if a countercoalition begins to form, an uncommitted party may find itself the object of a bidding war, and therefore will be highly valued. On the other hand, it might also be left out altogether as competing coalitions maneuver to enlist other players.

Coalition-building may be even more complicated, however, as coalition-builders may not fully know exactly what resources potential members might bring to the negotiation. As builders acquire information, they may shift their focus to other potential partners or change the proposed terms of the coalition. The external negotiation in which the coalition is involved may provide information that causes parties to revalue their own positions and the value of any coalition. Furthermore, potential members of a tentative coalition may not be able to finalize their shares of any coalition gains until the coalition concludes its external bargaining. Members' shares will depend upon what the coalition gains in the overall bargain, and that may depend on what the allies contribute at the very end of the bargaining. The contribution that any given coalition member makes to the overall result may not be known until the end of play. For example, the single vote that creates the majority necessary to pass legislation loses its determinative value when others join the majority just before the vote.

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21. Michael Ross & Melissa Healy, *Cheney, Baker Silent on Attacking Iraq*, L.A. TIMES, Oct. 25, 1990, at A9.

22. James Sterngold, *Tokyo Agrees to Pay Off Shortfall in Gulf War Aid*, N.Y. TIMES, May 22, 1991, at A15.

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Coalitions can also impede efficient bargaining.<sup>23</sup> Coalition partners may agree that any final external bargain must meet certain conditions. They may impose such conditions to insure that each partner gets what it wants out of the external negotiation. In doing so, coalitions may impose such constraints on their negotiator that he is unable to make the best possible tradeoffs.<sup>24</sup>

### *B. Coalitional Stability*

If coalition members are merely self-interested and opportunistic, then coalitions would appear to be volatile and unstable. Nonetheless, many coalitions remain intact for the duration of a negotiation or even longer. This might occur if coalition members had compatible interests, compatible ideologies, affectional ties, or other loyalties. Coalitions are also stable where members see potential future advantage from the present relationship. Thus, a member may forego short-term gain, or even suffer a loss, as a price of maintaining a relationship in anticipation of a possible long-term gain.

Even where such factors are not important, there is an additional reason for coalitional stability. Parties invest time, effort, and resources in creating coalitions and creating expectations. As they do, their positions and commitments may change because of the alliance. There are costs involved in forming coalitions, in breaking them, and in creating new coalitions. Such costs impede coalition restructuring.

Furthermore, coalitions often form under conditions of uncertainty with regard to results, the members' relative interests, and possible shares in results.<sup>25</sup> By adding parties to a coalition, the predictions, evaluations, assessments, and guesses that form the bases of judgment during negotiation may be further complicated. These factors of uncertainty, investment, commitment, and information, and the added costs incurred in shifting alliances make coalitions more stable.<sup>26</sup>

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23. For a discussion of efficiency in bargaining, see RAIFFA, *supra* note 1, at 135-42, 148-65.

24. To avoid the situation where the negotiator is unable to reach gains that are on the table, it would be better to link the coalition's internal and external negotiations. Rather than having individual coalition members constrain the negotiator to insure that they do not suffer a loss, they could agree to compensate one another. If the coalition's external negotiation will produce winners and losers within the coalition, the winners should agree to compensate the losers. Ralph L. Keeney & Howard Raiffa, *Structuring and Analyzing Values for Multiple-Issue Negotiations*, in NEGOTIATION ANALYSIS 131, 139-40 (H. Payton Young ed., 1991).

25. See *supra* notes 22-23 and accompanying text.

26. Cf. *supra* note 11 and accompanying text.

Where coalition parties are represented organizations rather than individuals, coalition restructuring may be even less likely, for it is notoriously difficult to get organizations to change course. Depending on the organization's structure, the costs of providing information to relevant actors and getting their approvals can be quite high. For example, trade associations or unions cannot convene their memberships for each shift in coalition politics. One moves mountains, if at all, only rarely.

Depending on the nature of the coalition, and on the character of the negotiation in which it is involved, there may be some tendency toward what we might call "coalitional inertia." Even when coalition members have no pay-off reasons for staying in a coalition, other forces may incline them to remain. Although a coalition-member may not leave the coalition, it can certainly threaten to do so. A member can still use its position to bluff for a greater share of the payoff. Whether other coalition members will call the bluff or pay depends on how well they analyze the threatening member's actual position and alternatives.

### *C. Bringing Parties on Board*

In many situations, it may be fairly easy to determine which parties are likely to form a coalition. A coalition founder will have a sense of whose support it needs to develop sufficient power to create a winning coalition. But knowing which parties to approach does not mean that one can actually approach them. Indeed, a coalition founder may not even have a relationship with a party deemed essential to create a winning team. In such cases, founders often build support by persuading critical players, those influential with others and to whom others listen, to join a coalition early. Once they have done so, their participation in the coalition becomes a resource the coalition can use to persuade others to join. Similarly, a coalition builder could follow a strategy of using intermediaries who could approach the essential party and persuade it to join the coalition. Indeed, even aside from the process of coalition building, any party needing others' approval to get something done can follow this "backward mapping"<sup>27</sup> strategy of lining up parties to insure support.

Starting with the party whose agreement is ultimately needed . . .  
. . . one then works backward, asking whose prior assent would maximize the probability of agreement from the parties ultimately needed. Then, from that prior group of parties, ask

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27. Lax & Sebenius, *supra* note 1, at 180.

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who is most likely to agree and whose assent prior to approaching this group would be most helpful. By this logic, one can work backward from an ultimate target to a present situation.<sup>28</sup>

### *D. Internal Winners and Losers; Side Deals*

Sometimes, in order to create a winning coalition, founding members will have to recruit parties who stand to lose more from the alliance than they gain. Alternatively, a coalition's potential gains and losses and each partner's respective shares may not be clear until the overall negotiation concludes. In either case, fashioning and maintaining a coalition may require the allies to redistribute possible gains and losses among themselves in ways contrary to how they actually fall out in the negotiation. To maintain a coalition, winners may have to compensate losers for losses incurred from the alliance by making side deals with them.

A clear example of a side deal on the international level occurred in connection with the formation of the coalition which successfully conducted the Persian Gulf war. To isolate Iraq from other Muslim countries, the United States believed it was essential to enlist Egypt's support. In joining the allies against Iraq, Egypt risked losing standing and influence in the Muslim world and also ran the risk of economic loss. The United States gained Egypt's support and participation in the war by forgiving a \$6.7 billion military aid debt Egypt owed the United States.<sup>29</sup> As a Muslim state, Egypt may have had little to gain directly from participating in a war with Iraq. The United States made a side deal with Egypt to compensate it for any losses it incurred in joining the alliance.

### *E. Adding or Subtracting Issues*

Another way to form or to solidify a coalition is to add or subtract issues to a prospective negotiation.<sup>30</sup> The parties to a negotiation define what issues they will negotiate. Thus it is always open to a party to attempt to widen or narrow a negotiation. In order to bring a party into a coalition, a builder may have either to add or subtract issues that concern that party. Rather than make a side deal to gain the allegiance of a prospective negotiation member, the coalition reconfigures the negotiation

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28. *Id.*

29. See Ross & Healy, *supra* note 21, at A9.

30. SEBENIUS, *supra* note 1, at 203.

in order to provide a prospective gain for an otherwise reluctant prospective coalition partner. If an issue is added, it is equivalent to a side payment. If an issue is subtracted, it alleviates a potential loss.

The tactic of adding or subtracting issues to shape a coalition is common. For example, imagine one of an employer's two unions wants to renegotiate a wage contract while the other is interested primarily in working conditions. The two ally to present a common front on wages and working conditions. A group of faculty wants to revise a school's curriculum, but other faculty are opposed because the revisions threaten to increase faculty workload. The parties agree to make teaching workloads an explicit issue. A Supreme Court Justice, assigned to write a majority opinion, has difficulty gaining support for the narrow opinion she has drafted. She revises it to address issues other potential members of the majority want raised.

#### *F. Adding or Subtracting Parties*

Adding parties or subtracting parties from a tentative coalition has effects similar to adding or subtracting issues. Indeed, adding or subtracting parties may be a way to add or subtract issues. But this arithmetic may have other effects as well.

[A]ddition of parties is likely when they (1) have a tangible interest in or influence on the substance of the negotiation; (2) may strengthen an existing coalition directly or by leverage from unrelated issues; or (3) enable more binding commitments to be made. Subtraction of parties may take place for opposite reasons, as well as to reduce complexity and information costs and to provide focal points for larger settlements.<sup>31</sup>

The following are examples that illustrate this point. Three organizations jointly apply for and receive a grant, but they are thereafter unable to agree on specific ways to spend the money. The granting agency enters the dispute to help the parties renegotiate the terms of the grant. Two rural counties, adjoining a heavily populated county containing a major city, refuse to join a public regional planning organization for fear of domination by the populous county. Other county members of the planning organization call in federal authorities, who have regional planning monies to dispense, to persuade the rural counties to join.

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31. *Id.* at 209.

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In these situations, the outside party, not originally involved in the negotiations, is nonetheless interested in potential negotiation outcomes. The outside party intervenes, either on its own or at another's request, to protect and advance its interest, and by so doing changes the bargaining configuration. The entry of the outside party changes the original constraints of the situation, either adding issues or changing the alternatives available to the parties in the negotiation.

### *G. Intercoalition Bargaining*

Parties form negotiating coalitions to improve their power positions in a negotiation. Weaker parties and parties sharing other perceived common interests are thus likely to enter coalitions.<sup>32</sup> As parties enter coalitions to increase their bargaining power, coalitions may stimulate counter-coalition efforts to break up the coalition or the formation of counter-coalitions. A counter-coalition is likely to form around a set of common interests that are likely to conflict with those that were the ground of the initial coalition's formation. If counter-coalition members actually shared a significant number of interests with coalition members, they would likely ally with them rather than the counter-coalition.

What this suggests is that while the intracoalition negotiation involved in forming coalitions is a problem-solving activity, once coalitions form, intercoalition bargaining is more likely to be competitive or distributive in character.<sup>33</sup> This is not to say that intercoalition bargaining will inevitably be distributive. Instead, where coalitions form around conflicting sets of shared interests, the underlying conflict of interest and psychological investment in a coalition once it is formed will incline the coalitions to bargain competitively.

Interestingly, however, because coalitions form in response to power imbalances, coalitions may also induce integrative bargaining. Here, negotiating parties are more likely to bargain integratively when they are at least roughly equivalent in bargaining power, or when one party or another cannot in effect dictate the outcome.

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32. Gamson, *supra* note 18, at 376.

33. BACHRACH & LAWLER, *supra* note 1, at 110-11.

#### IV. NEGOTIATING AGAINST COALITIONS

##### A. *Exploiting Differential Interests Within Coalitions*

In multi-party negotiations, different parties may appear to have compatible or allied interests and therefore may appear to be natural allies likely to form a coalition. For example, when the government proposes to build a new dam, developers, real estate brokers, bankers, and farmers often support the proposal while environmentalists, river rafters, and local residents often fight it. When several unions bargain with an employer, the unions generally appear willing to support each other. In such situations, natural and predictable alliances are apparent.

Nevertheless, apparent natural alliances may not be what they seem to be. Apparent coalitions, while often presenting a common front at first glance, usually consist of different stakeholders having different interests and priorities. Some apparent coalitions are only nominally coalitions. Confronting a coalition with choices emphasizing the differences between its members can split it apart or cause it, through its internal negotiation processes, to moderate its demands.

##### B. *Splitting Coalitions*

Many coalitions are held together only by an apparent or assumed commonality of interest between members. In some circumstances, it may be possible to split such a coalition by defining an upcoming negotiation with it in a way that exploits the different interests and priorities of coalition members. Lax and Sebenius give a good example of this using the National Football League (NFL) and the Players' Association.<sup>34</sup> The Association was negotiating for the players' proposed salary schedules dependent upon their position and seniority. The NFL resisted, and a strike ensued. The NFL then made an offer of limited free agency, an offer attractive to some of the star players, who then crossed the picket line. The free agency offer benefitted both the star players, who received more money, and the NFL, as the stars brought more fans into the stadiums. The NFL offer thus drew the star players from the player coalition and weakened it.<sup>35</sup>

Redefining a negotiation issue, by making a new offer invoking interests shared by some opposing parties but not others, is a common

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34. Lax & Sebenius, *supra* note 1, at 158-59.

35. *Id.*

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tactic used to split or weaken coalitions. To take another recent example, the coalition that fought the Gulf War against Iraq also imposed reparations sanctions on Iraq following the war.<sup>36</sup> One sanction included the United Nations' control of Iraq's oil sales and revenues, which were to be applied to compensate Iraq's victims. Iraq resisted and attempted to defy these requirements. To counter this resistance, some of the Gulf War Allies threatened to seize \$1 billion worth of oil payments due to Iraq as well as undelivered Iraqi crude oil. Iraq then made an offer to reopen talks and stated it would donate five percent of its proposed oil sale proceeds to buy relief supplies for famine-ridden Somalia and war-torn Bosnia.<sup>37</sup> This offer was an obvious effort by Iraq to appeal to those members of the U.N. deeply concerned with the suffering in Somalia and Bosnia. Iraq's strategy was to weaken the opposing U.N. coalition by adding an issue that Iraq hoped would split the coalition.

Another way to divide and to weaken a coalition is to ally with a party that has ties to, or a set of interests similar to, a coalition-member. As the benefits or payoffs associated with a particular coalition are not always clear, this move may cause the target member of the coalition, that member whose interests are similar to those of the party with whom the counter-coalition allies, to reassess its allegiance to the coalition. If the parties identified as having interests similar to its own are on the other side of a negotiation, perhaps, it may reason, it has misjudged the situation and the ways in which its interests might best be served.

There is a general lesson here. When negotiating against a coalition, it is essential to analyze the disparate interests of each coalition member as these interests may be implicated in the negotiation. When a party negotiating against a coalition discovers it has interests common to, or compatible with, those of one or more opposing coalition members, it may attempt to frame an offer advancing those interests. This can have effects of either splitting the coalition or creating a de facto ally within the other coalition's camp.

In contrast, a coalition-builder must anticipate splitting moves and be prepared to meet them. This too requires knowledge and analysis of coalition members' interests. It is, however, a knowledge different than that used to identify and form the coalition in the first place. A coalition-builder must also understand and analyze the possible interests of opposing parties, for it is these interests that are the impetus of coalition-splitting offers.

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36. They did not succeed. The U.N. Security Council ordered the seizure of Iraqi oil assets. Stanley Meisler, *Council Orders Frozen Iraq Oil Assets Seized*, L.A. TIMES, Oct. 3, 1992, at A13.

37. *Id.*

V. INCREASING ONE'S OWN GAIN WITHIN A COALITION

A. *Using Cross-Cutting De Facto Alliances*

There is a complex interplay between a coalition's external bargaining and its internal bargaining, the negotiation between its members. A natural alliance of interest may cut across coalitions, but coalitions will not necessarily decompose or fracture when their members share interests with opposing parties or with members of opposing coalitions. What may occur instead is that each coalition will moderate its demands or reshape its positions so that those members who have a de facto natural alliance with members of the opposing coalition will not defect. Parties who are members of a coalition thus can exploit their community of interest with their opponents' community of interest in order to move their coalition in a direction that better serves their own interests. In other words, coalition members can sometimes use the coalition's external bargaining situation to give them leverage in their coalition's internal bargaining.

B. *Using External Negotiations to Obtain Internal Concessions*

Strategically placed coalition members, usually those who effectively control the coalition's bargaining representative, can sometimes use the pressures created by the external negotiation to force or persuade other coalition members to make concessions within the coalition. A good example of this arises in international trade negotiations.

Trade negotiations require a balancing of many interests, both within and across national lines. The main lines of cleavage are the differences between those industries seeking access to foreign markets and who are free traders versus those competing against foreign imports and who are protectionists. In this internationalized brokering of interests, access to the external negotiation increased the capacity to balance interests internally. The greater the access that government agencies dealing with constituency groups had to the external negotiation, the greater the likelihood that they could trade off internally to reduce the more extreme demands of some groups. Extreme demands on other countries in trade negotiations almost always invoke a "payment" in return. Because the STR [State Trade Representation], working through the SAC [Private Sector Advisory Committee] system, could transmit back to the internal constituency what the costs might be of

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taking certain extreme positions, it helped to keep such positions from being taken in the first place.<sup>38</sup>

### *C. Manipulating One's Own Coalition*

Coalitions are not monolithic. Nevertheless, bargaining requires one member to speak for the coalition. In simple terms, all coalition members do not necessarily participate in the bargaining. Indeed, there may even be communication protocols, formal or informal, within coalitions, so that only certain parties speak with other parties. Not all members of a coalition necessarily have the same information. Instead, some will only have the information that the coalition's bargaining representative gives them. Consequently, a coalition's bargaining representative is in a strategic position; she can use its access to and control of information to solidify or manipulate her own coalition. She can do this to facilitate an agreement between negotiating coalitions and to manage information for her own gain. A coalition's selection of a bargaining agent is a critical act, and the relationship with the agent is crucial.

## VI. THE NEGOTIATOR AS AGENT OR REPRESENTATIVE

### *A. Negotiating for Others*

Negotiating as an agent or representative of another, a client or a union, a management group, an agency, or an interest group or association, places potentially significant constraints on both the substance and manner of bargaining. The represented parties will usually have both substantive expectations regarding negotiation outcomes and behavioral expectations about how the negotiator should conduct the negotiation. Even in cases where additional parties are not directly involved in a negotiation, but merely form an observing audience or a psychological presence, "phantom" players at the table, a negotiator may feel pressures and restrictions on the way he bargains.<sup>39</sup>

There is a range of possible ways in which a negotiator can carry out the role of representing another party in a negotiation. In any given negotiation, the nature of the representation depends very much upon the

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38. GILBERT R. WINHAM, *INTERNATIONAL TRADE AND THE TOKYO ROUND NEGOTIATION* 316-17 (1986).

39. JEFFREY Z. RUBIN & B. BROWN, *SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION* 44-45 (1975).

relationship between the negotiator and the party represented. Some represented parties are more directive, involved, demanding, and communicative than others. The parties may refrain from supervising the negotiators and may place significant trust and authority in the agents. Beyond these evident matters, however, there is good evidence that the very fact of representation introduces particular psychological dynamics into a negotiation that would not otherwise exist.

It appears that bargaining as a representative inclines negotiators to bargain more adversarially or competitively, or at least with a limited ability to consider options that the represented party has not endorsed. The represented party may demand loyalty, commitment, and advocacy of its positions or points of view.<sup>40</sup> In such circumstances, the situation will motivate the negotiator to perform for his principal and to attain its approbation. When a negotiator is accountable to another who can evaluate and sanction his bargaining performance, whether a client or a constituency, he is responsive to it. This is particularly true where the negotiation is carried out in public or in the presence of the client or constituency who can monitor the actual conduct of the negotiator.<sup>41</sup> Negotiators who represent others seek the approval and positive evaluations of those they represent. They look for validations of competency, ability, and strength, and will take the actions thought necessary to earn the client's favor.

These "representative capacity," "loyalty over logic," accountability, and face-saving effects are even stronger when the negotiator is a member of the group represented, for then group influence and loyalty pressures are stronger. "[A] representative of a group, having a strong commitment to the group's position, may not merely be handicapped in accepting an opposing position, but, on a more fundamental level, may be impeded from being able to even recognize superior elements in that opposing position."<sup>42</sup> In other words, bargaining as a representative may entail a "narrowing" of a negotiator's vision, capacities, and aims. This, of course, will also affect the way in which the negotiator bargains. Similarly, negotiators who represent others may make certain negotiation moves, not because the moves make substantive sense, but in order to protect or enhance their image and reputation with their principal.

In some cases, these effects may operate even more strongly where the negotiator is not a member or regular employee of the

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40. *Id.* at 51-54.

41. *Id.*

42. *Id.* at 51.

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represented group, but is an independent professional. This is particularly true for those negotiators, such as lawyers, whose normal role is that of a professional advocate. The profession's ethical standards require the lawyer to be a vigorous and zealous advocate for his client, and the lawyer's general ethos, at least in the American legal system, is adversarial.<sup>43</sup> Generally speaking, the lawyer is trained to battle for his client and aims at winning contests, not settling them. Those who hire lawyers often have the same understanding and hire them for that very reason. Ethos and expectations mutually reinforce one another, and may consequently shape negotiating behavior. This is not to say that all lawyers subscribe to this role, nor that all those who use lawyers to represent them in negotiations have such expectations. It does suggest, that many lawyers, and perhaps other "hired gun" negotiators, are *naturally* inclined, and their clients will expect them to bargain adversarially and competitively.

Bargaining competitively is not always the best way to maximize one's gains.<sup>44</sup> Indeed, competitive bargaining may cause parties to lose potential gains and opportunities for creative joint action. It is therefore important for focal negotiators acting in representative capacities, or dealing with other negotiators acting as representatives, to understand the possible pressures influencing that role. In particular, if such a negotiator perceives problem-solving negotiation as a viable and beneficial option, she will have to secure her ability and authority to undertake it.

### *B. Representing Groups and Constituencies*

While all negotiators who represent other parties in a negotiation must face conflicts between a principal's expectations and the realities of the actual negotiation, additional problems arise when the principal is a group or a constituency. When the negotiator represents a group, her task may further be complicated by conflicts within it. The group may lack consensus on goals. Different persons or coalitions within it may have different priorities regarding goals or issues. Group members may disagree not only about goals, but also about strategy, tactics, and bargaining styles, and about the significance of developing particular relationships with the other side.

Indeed, the larger and the more heterogeneous the represented

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43. MODEL CODE OF PROFESSION RESPONSIBILITY DR 7-101, EC 7-1 (1983); cf. CHARLES WOLFRAM, MODERN LEGAL ETHICS § 10.3 (practitioner's ed. 1986).

44. See generally FISHER & URY, *supra* note 20; LAX & SEBENIUS, *supra* note 19; Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984).

group, the more likely the group itself will be in conflict. Individuals comprising the group will have different interests and needs, and different perceptions of the bargaining situation. Subgroups, coalitions, or factions may also form. Whether the larger group is composed of relatively independent individuals, subgroups, or a combination of the two, these different actors will likely operate from different informational bases, different levels of intelligence and experience, and will interpret, assess, and value differently what is involved in the negotiation. In addition, the issues to be negotiated, as well as their possible outcomes, may have different impacts on individuals or subgroups, causing these actors to respond differently to various proposed negotiation outcomes.

Even where a group is unified on some issues when negotiation begins, consensus may dissolve as negotiation progresses and group members' perceptions of the issues and bargaining situation may change. The group may continue to lack consensus on issues unresolved within the group prior to negotiation. Other, unexpected issues may also arise during the course of the negotiation. Indeed, the very process of negotiation may stimulate members' awareness of such issues and create incentives to work them out. Thus, even while engaged in negotiations with others, a group may have to engage in its own internal negotiations. These negotiations will affect the agent at the table, and the agent may also participate in or even manage the internal negotiations.

The negotiator who represents a group is in a critical position. It is useful to think of the negotiator in such a situation as a political actor having to respond to the demands and expectations of a constituency. Where the group is unified, he will be subject to the group's substantive expectations regarding negotiation outcomes and its behavioral expectations regarding the manner in which he will carry out bargaining, the latter possibly enforced by group surveillance. Where the group is not unified, the negotiator, as the individual at a critical decision point, will be the target or focus of group members' influence attempts. On the other hand, the negotiator develops information during bargaining from which he can assess bargaining possibilities. He is in a privileged position vis-a-vis the group and can influence its decisions.

There are group politics that will arise in representative bargaining, and the negotiator will inevitably be involved. But the negotiator in such a situation is in a delicate political position, for he occupies two roles that are potentially in conflict. As a group representative, he has a proscribed role in which he is expected to be loyal to the group and to act according to instructions or only in ways that will further its defined interests. As a negotiator, he has the functional role of

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working with the other side's negotiator to craft a settlement.<sup>45</sup> Because he is at the bargaining table, the negotiator will have a much more realistic sense of what is possible in the negotiation and how best to achieve it. Unfortunately, his assessment may be at odds with that of his constituency. If the group he represents takes a hard-bargaining approach and expects him to demonstrate his toughness and ability to deliver the results it expects, his flexibility to overtly undertake problem-solving or integrative bargaining is limited. Indeed, the need to impress his constituency, at least if it oversees his bargaining, may even constrain the negotiator's ability to develop a cooperative, friendly, and trusting relationship with the other side's negotiator. In such a situation, the negotiator is aware of the audience for which he must perform, even if it is not present. This pressured performance may interfere with what, in his judgment, constitutes the best way to bargain under the circumstances.

### *C. Working with Clients and Constituencies*

Negotiators caught in such "boundary"<sup>46</sup> role conflicts have a number of options regarding ways in which to proceed. Indeed, whether the negotiator represents a single client or a constituency, the problems her representative role presents are similar. The only significant difference arises from the fact of constituency politics. Plainly, the politics within the constituency, and the politics of working with, or on behalf of, a constituency, deeply affect the ways in which a negotiator goes about her work for a constituency. Nevertheless, because the two kinds of representation involve similar problems, I will treat them together, noting where necessary, unique problems involved in constituency representation.

Ideally, the negotiator working for a client or constituency needs its trust and confidence and its authority to operate freely and flexibly to craft the best possible agreement. But a negotiator will not always have that freedom of action. Her client or constituency may have its own confirmed views of what it desires and how to achieve these desires. Within a constituency, there may be factions or coalitions, and the reigning power may need to deliver certain results to retain its position. The constituency may view the negotiator as a mere agent of its will and not as an active player in determining what to seek in the negotiation.

What a negotiator can do in such circumstances is highly contingent on the character, unity, and sophistication of her client or

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45. RICHARD E. WALTON & ROBERT B. MCKERSIE, *A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS* 283-89 (1965).

46. *Id.* at 284.

constituency. Her freedom of action also depends on her skill, sophistication, and the nature of her working relationship with her principal. There are a number of general possibilities. When the principal's substantive expectations appear to be greater than the negotiator's considered judgment of what is possible from the negotiation, the negotiator can work, in advance of settlement, to reshape those expectations. The negotiator takes an active role in working with her client or constituency to create the substantive flexibility that she believes is needed to negotiate effectively.

To maximize negotiating room, the negotiator needs to educate her principal about the advantages and disadvantages of various ways of negotiating. In doing so, she should seek authority from the client to negotiate flexibly. If the principal gives the negotiator broad authority to negotiate as she deems appropriate, she obviously will have to work with the principal to discover its true interests in the negotiation, to anticipate the other side's interests, and to develop possible alternative solutions to the presented bargaining problem.

She can accomplish this by working with the client or constituency as it develops its substantive bargaining expectations and aspirations. If the party's views are already settled, she may have to educate it regarding bargaining possibilities and attempt to persuade it to revise its expectations. Working with a group is more difficult than working with an individual client because there are more persons involved, making group consensus harder to achieve, and once achieved, even harder to revise. Factions or coalitions within the group will also complicate the negotiator's task, and the negotiator may even have to negotiate alliances within the group that will enable the group to be effective in external negotiations.

The client or constituency, however, may have settled substantive expectations that the negotiator cannot alter prior to negotiation. If negotiation will not lead to results that satisfy these expectations, the negotiator may have to act in some way to alter her principal's expectations so that it will both accept the results and not blame her for failure. But that may be difficult because "the negotiator is most vulnerable to censure by his principals if he attempts to alter their assumptions and attitudes about the opponent *during* negotiations."<sup>47</sup> Depending upon the trust vested in her, she might succeed in direct efforts to educate the principal about the realities of the situation. If the principal cannot be educated in this way, the negotiator may manipulate the bargaining so that the represented party has to confront the apparent

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47. *Id.* at 305 (emphasis added).

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realities of bargaining itself, and so force it to revise its expectations.<sup>48</sup>

But a negotiator's client or constituency is likely to have not only expectations about substantive negotiation results, but also about the way in which the negotiator negotiates. In the case of a constituency, if it has no representatives at the table other than the negotiator, or does not otherwise in some way surveil her bargaining activities, she may appear to retain flexibility to bargain in whatever way she deems most useful. If the resulting proposed agreement does not better or meet her client's or constituency's substantive expectations concerning outcomes, she will have the problem of justifying or explaining the discrepancy. She will be in trouble if she bargained in unexpected ways. To gain flexibility, the negotiator can work to shape her principal's behavioral expectations about how she will bargain. The ideal way to do this would be to educate the principal regarding all the different bargaining strategies, particularly problem-solving, for it is the least widely understood bargaining strategy.

The latter may be a difficult task, particularly where the principal is a group without a defined authority structure. Even if the represented party does understand problem-solving bargaining in principle, it may not accept it in practice. For example, one study has reported that "[c]onstituents . . . resisted mutual gains bargaining because it generated innovative options that they had not foreseen or approved."<sup>49</sup> The results were angry confrontation and increased constituent monitoring of the negotiator. The study concluded that when attempting to bargain integratively, a negotiator representing others may encounter severe communication and coordination problems.

[N]egotiators are caught between constituent expectations that they will be kept informed on every aspect of negotiations, and the need for open, innovative discussions. Constituents could be informed of every new idea, but this would greatly restrict the brainstorming phase and tie negotiators up in constant meetings with constituents. Yet, if negotiators eventually bring back ideas to constituents that are too radical or too difficult to understand without bringing them along gradually, the new ideas will not be accepted. And since radically new ideas are apt to be generated in mutual gains bargaining, constituent management problems are heightened considerably.<sup>50</sup>

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48. *Id.* at 310.

49. Debra G. Ancona et al., *The Group and What Happens on the Way to "Yes,"* 7 NEGOTIATION J. 155, 167 (1991).

50. *Id.*

If the negotiator cannot educate her client or constituency during integrative bargaining or concludes she will be unable to manage relations with her principal when she openly attempts to bargain integratively, she has the following choices. The negotiator can ignore, at least selectively, her principal's expectations, taking the risk that the results obtained will justify her actions or that they will not be observed or otherwise discovered. Alternatively, she could simply satisfy her principal's expectations and let the results fall out as they may. Even if the outcome results are unsatisfactory, she cannot be blamed as she expressly carried out the constituency's wishes. Most likely, the principal will blame the other side, not realizing that some other way of bargaining might have led to better results. Finally, negotiators sometimes, at least to a certain degree, collude or work with the other side in ways that will help them with their own clients or constituencies. The negotiator might give the appearance of bargaining as her principal expects her to bargain, while signaling<sup>51</sup> to the other side that she is in fact more flexible and open than her bargaining manner indicates. If the other side reads the signals correctly, it would realize that in order to reach a satisfactory bargain, it would have to cooperate with the negotiator in allowing her to maintain the appearance of hard-bargaining. It could, for example, adopt and publicize a reciprocal apparent hard-bargaining stance, so that a negotiator's principal could be convinced of the negotiator's toughness and perhaps made amenable to more conciliatory moves. Similarly, the other side could overinflate the value of some particular issue or concession, bargain hard on it, and then finally concede, all in order to give the negotiator a win she needs to help her convince her principal of her efforts to bargain for it.

#### *D. Constituencies on the Other Side*

To this point, I have considered agency or representative

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51. Negotiators "signal" by using language or demeanor that may give inconsistent messages. Taken superficially, a message may indicate that the negotiator is not flexible. The subtext of the message, however, is that the issue is in fact negotiable. For example, suppose the negotiator says, "That's a pretty solid condition." Listening superficially, one might conclude that the negotiator is talking about a "must have," but the language is qualified. "Pretty solid" is not solid. An acute listener and experienced negotiator realizes that the negotiator making the statement is indicating that the matter is actually negotiable.

Negotiators use signaling when they feel unfree to disclose openly what matters are negotiable or whether there is more room to bargain on certain issues. This usually occurs when there is an audience that the negotiator must impress, such as the negotiator's principal.

## COALITIONS AND REPRESENTATIVE BARGAINING

bargaining from the point of view of a negotiator representing others. In most cases of representative bargaining, however, there will be a represented party on each side of the bargaining. In the case of multiple party bargaining, there may be many represented parties, individual clients, or constituencies. Such bargaining situations can be complex. For example, suppose a negotiator succeeds in gaining flexibility from the constituency she represents and persuades it to permit her to engage in problem-solving bargaining. The negotiator representing a constituency on the other side may not agree, or not know how, to problem-solve. Alternatively, the latter constituency could be factionalized in a way that so constrains its negotiator that she must negotiate only for particular positions or results and in particular ways.

Consequently, when a negotiator represents another party, she must attend to factors other than the needs and possible politics of her own client or constituency. To be effective in the negotiation, she must also have a good sense of the pressures and problems that the other negotiator's client or constituency imports into the actual negotiation. Moreover, she will need to understand the other negotiator's relationship to his own principal. Finally, she may even have to take actions that, while not alienating her own principal, will assist the other negotiator in managing his principal.

### VII. CONCLUSION

Coalitions, as collective actors in many complex bargaining situations, are fluid and dynamic alliances of parties having the aim of securing gains through joint action. Coalitions complicate negotiations not only by adding parties, but also by multiplying the negotiations taking place. At the least, coalition bargaining involves a double negotiation game: an internal and external negotiation. However, coalitions can reconfigure in a multitude of ways as the bargaining situation changes and as parties responsively renegotiate the terms of their alliance. Coalition bargaining may entail many negotiations, as individual actors change positions before the final accounting. In this sense, coalition action mirrors political action and crosses any conceptual divide between negotiation and politics.

Coalition action is an inescapable element of collective decision making. Anyone who seeks to influence collective decision making or attempts to help groups reach negotiated decisions, needs to understand the interplays and possibilities of coalition dynamics. Further, much coalition bargaining is agented bargaining. Introducing an agent into this scheme brings new elements and dynamics into a negotiation. The facts and

constraints of representation shape the agent's behavior and strategy both at and away from the table. They also provide the agent with the possibility of shaping, even manipulating, the party who placed her there. When the party is a coalition, matters become complicated and raise questions of who serves whom. A wise appreciation of these factors -- of coalition actions and actors -- helps the focal negotiator to navigate and, if necessary, manage coalitions.