

The Poverty of Buyer and Seller

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Editors' Note: In a world in which negotiating can implicate your most important values, Avruch points out that the most common mental model of negotiators is that of buyer and seller. Yet both our most intimate and our greatest negotiations have little to do with the whole basis of buyer-and-seller ideas. Avruch offers a way at least to begin to rethink, to find our way out of this trap.

My goal in this essay is to examine the question of whether negotiation theory and practice is of much use in social conflicts involving deeply rooted disputes over values. I proceed first by examining critically the foundational heuristic of what I call canonical or first-generation negotiation theory: the *buyer-seller* heuristic.¹ I then propose, and critically examine, another heuristic.

The First Generation Heuristic: Rational Choice and the Buyer-Seller

Almost every formal academic treatment of negotiation, and quite a few informal ones as well, reveals its basis in the larger theory of rational choice (or rational decision-making) and the key heuristic of the buyer-seller encounter.² Buyers meet sellers in different sorts of markets all the time and everywhere, and although the nature of these markets is hardly the same, the essential roles are remarkably constant and recognizable.³ The two—the theory and the heuristic—are of course inextricably entangled in neo-classical economics: rational choice as its conceptual foundation and the buyer-seller transaction as its paradigmatic praxis. No one can deny the rigor, parsimony, and productiveness of the rational choice paradigm even if, as one commentator notes, the model is not without flaws, “not least through the real world’s bloody-minded obstinacy in simply not conforming to theory.”⁴ The obvious and frequent disconnect between actors’ behavior as “predicted” by the paradigm and their actual behavior has long been noted by scholars, both those working within the paradigm and those critics outside it. Perhaps the explanation for the disconnect that is most friendly to the theory involves information. Rational choice requires actors to possess rigorously valid and reliable information about many variables to arrive at a decision. In the “real world” such

information is very often partial or imperfect and hence, expectedly, decisions are far from optimally rational.⁵

A more serious critique raises the possibility that the human cognizing apparatus charged with effecting rational choice decision-making calculi is itself intrinsically to blame: it is not up to the task. This can result from structural limitations in the capacity of the cognitive apparatus to store, retrieve, or process information, or from a range of other distortion-causing mechanisms, many supported by the apparent organismic requirement for “cognitive miserliness” (or risk aversion), resulting in such framing biases as attribution errors, just-world thinking, mirror imaging, illusory correlations, reactive devaluation, etc.⁶ More recently, that most important distinction in the theory of mind assumed by rational choice theory—a bifurcation, actually—between “cognition” on the one hand and “emotion” on the other has been questioned. Affect and cognition appear to interpenetrate one another all the time in our thinking.⁷ And if our conception of thinking—of cognition—no longer allows the partitioning away of (messy, irrational) emotion, then how can we assume that rational choice theory “predicts” any actor’s behavior any time?

These are some of the critiques that have emerged from within cognitive psychology itself, at the foundation of rational choice theorizing. I will not engage here two other important sources of critique. The first has to do with the problem of how one gets from the behavior of an individual rational actor to the behavior of the collective—a problem that has engaged some of the best minds in a variety of the social sciences.⁸ The second is basically a cultural critique, questioning the assumption of the universality of utilities divorced from their encompassing contexts of meaning and valuation.⁹ The adequacy of such a concept of utility for understanding other cultures has long been questioned,¹⁰ but the questions become harder if one imagines trying to “transact” (say, negotiate) *across* different “utility universes.” For even if we assume that a behavioral theory of utility maximizing holds across all cultures, if we admit that the nature of utilities varies cross-culturally, then, to imagine intercultural “rational” transactions we would also have to assume that culturally-specific utilities are everywhere essentially fungible.¹¹ But for the purposes of this essay I want to hold cultural variability constant, and redirect our analysis of utility to the related notion, so important in contemporary negotiation theory and practice, that of “interest.”

In what one might legitimately call the first “Copernican revolution” of negotiation theory and practice, the idea was put forward that if individuals could be shown that most unproductive and inefficient negotiation involves arguments around surface demands or “positions,” then the act of having parties move beyond positions to analyze their underlying interests would free them to engage in a whole range of creative problem-solving activities. Put more formally, one could in many (though certainly not all) situations move from distributive (fixed-pie, zero-sum) bargaining toward problem solving and integrative (expanded-pie, positive-sum) solutions, toward the famous “win-win” agreement.¹² The question which some within our field have asked is whether anything (capable of motivating behavior or social action) lay “beneath” interests. This is the crucial question if one wants to assess the relevance of negotiation for conflicts around issues involving ideology, identity, or values.

Values-Based Conflicts, Interests, Rights, and Power

Several major theorists have identified a “bedrock” level of motivators beneath mere interests; these are often called “basic human needs.”¹³ Sandwiched between the pre-

sumed universal comparability of utilities, opening the way for creative problem solving at the level of interests, and the bedrock universality of basic human needs, lies the layer Warfield calls “values.”¹⁴ Inculcated in individuals through socialization and enculturation, “values” in this scheme cover a wide range of notions, including such ideas as ideology, beliefs, or worldview, which are not at all identical. So the term is being used here, imperfectly, as a kind of shorthand.¹⁵ Instead of being linked, through the notion of utility, to what is useful, desired, or preferred, values are linked (through a different calculus?) to what is deemed good and true. Warfield also argues that at this level some sort of “non-rational choice paradigm” is the appropriate one for understanding social transactions—conflict or its resolution, for example. At the least, values-based conflicts may resist the sort of rational, problem solving negotiation practices that often and demonstrably work well to address conflicts involving competing interests. In the past, many such values-based conflicts have been labeled as “intractable,” especially if they involve basic incompatibilities between the parties at the deepest levels of worldview, or perceived threats to personal or group identity.¹⁶

A first step in addressing value conflicts requires perhaps the formulation of a different heuristic for orienting oneself to these sorts of conflicts, different, that is, from the *buyer-seller* metaphor that is central to interest-based negotiation theory, research, and practice. The metaphor/heuristic of *buyer-seller* is hardly in itself “value-neutral” in this regard. Consider, for example, how it orients us to the notion of “trust” in negotiation. [Lewicki, *Trust*] Discussing the concept of “reservation point”—essentially the quantification of one’s BATNA—Leigh Thompson assesses the wisdom of one party revealing her reservation point to the other, in part thereby demonstrating “good faith and trust” in the other party. Thompson writes, prescriptively: “Negotiation is not an issue of trust; it is an issue of strategy. The purpose of negotiation is to maximize your surplus, so why create a conflict of interest with the other party by ‘trusting’ them with your reservation point?”¹⁷ Given the underlying and orienting heuristic, this seems a perfectly reasonable, indeed rational way to structure a buyer-seller relationship and approach negotiation within one.¹⁸ But if one is negotiating with another in the context of a values-based conflict, ought the matter of “trust” be dismissed so emphatically? If one thinks not, then what sort of heuristic can move us away from thinking of negotiation in a “maximize your surplus,” buyer-seller modality?

Before suggesting such a heuristic, it is worthwhile briefly to examine how rational choice and interest-based negotiation theorists have themselves addressed values-based conflicts. The two main ways pull in rather different directions.

First, one can simply deny that any significantly different sorts of “motivators” underlie interests. This is the tack taken by Dean Pruitt and Sung Hee Kim, who see “interests underlying interests,” although they do agree that interests cluster into “hierarchical trees,” the deepest or most “basic” level of which consist of such Burtonian basic human needs as identity, security, justice, or self-esteem. However, they do not agree with needs theorists “about the need to draw a sharp distinction between interest-based conflicts and needs-based” ones.¹⁹

The second tack is very different. Agreeing that values-based conflicts are rarely if ever amenable to interest-based negotiations, these analysts suggest that two other modes of settlement or resolution may be called for, one based upon power, the other upon rights.²⁰ Both may be deployed in the framework of a “negotiation,” although such negotiations rarely present the same opportunities as interest-based ones, i.e. for creative or “pie-expanding” problem solving. Power implies coercion of one sort or another, whether deployed as threat or exercised in some sort of contest—the outer limits of

“negotiation.” Rights refer to standards of legitimacy, justice or fairness, whether formally codified in a contract or generally understood in some cultural context. Rights may be generally socially accepted, but they are as often as not contested as well, frequently looping us back to power.

When faced with values-based conflicts, then, the choice with regard to negotiation at present seems to be between presuming that such conflicts are not qualitatively different from other sorts of interest-based conflicts; or presuming that the notion of interests no longer productively applies, and negotiation itself constricts to power-plays or rights contests. And what about rights? If one thinks of such commonly conceived rights as fairness, equity, or justice, it seems as if we are very close to the domain of “values” as this is commonly conceived as well. Can we imagine an expanded canon of negotiation capable of addressing these sorts of conflicts? If so, I think we have to begin by conceptualizing a heuristic for negotiation different from that of *buyer-seller*.

A New Heuristic for Negotiation

If one thinks about a deep values conflict in our contemporary society then something like abortion or capital punishment is immediately suggested. But if we want a heuristic similar in type to *buyer-seller*, focused (microsociologically) on dyadic actors in a specified and delimited decision-making situation, consider the following:

A couple, each deeply religious but coming from very different religious traditions, has a child. Religion is extremely important to both of them, and while each “respects” the tradition of the other, a decision must be made as to which tradition the child will be affiliated with and raised in. How do they go about “negotiating” this?

Perhaps the first thing to note about this—let us call it the *two-religions*—heuristic is how, by its own limitations, it highlights the robustness and appeal of *buyer-seller*. For one thing, *buyer-seller* has wide, virtually universal, applicability as an example of a decision-making situation. In stark contrast, the *two-religions* heuristic is only *imaginable* in an essentially liberal society in which religion is culturally constituted as a matter of individual “conscience,” privatized and free of coercive pressures from larger social groups—at least larger than each of the couple’s immediate family.²¹ In many of the world’s societies, today and historically, this scenario would make no sense. It is, compared to *buyer-seller*, narrowly historically and culturally contingent.

What would a “rights” paradigm bring to this decision? In an explicit patriarchy, of course, the “right” to specify the religion of the child would reside with husband/father; we’re back to culture again (which in effect constitutes “rights”), and also, of course, to power. But in our own society—not *normatively* patriarchal—rights won’t get us very far.

It’s also difficult to imagine a “power” process being applied to this decision without great damage to the relationship, and perhaps eventually to the child as well. However, if power is conceived beyond the bonds of the dyadic relationship and generalized to society, then one can imagine a rational decision being made to raise the child in the tradition that is more closely identified with the power structure of the society, for the future advancement and “benefit” of the child. In fact, under some circumstances values do get treated like interests and negotiated as one would negotiate interests. This happens in the U.S. Congress or parliaments or in democratic electoral politics generally—not to mention in labor-management relations—more often than not. But if we insist on preserving the genuine and deeply held values—the non-utilitarian—nature of the couples’ thinking (and *feeling*) as they make their decision, then choosing on the basis of secular, “profane,” and interest-based advantage should be offensive to both parties.²²

Is this decision *negotiable* at all?

Conclusion: A New Canon for a New Heuristic?

I do not, in fact, have a very decisive or satisfying answer to this question. But the raising of it brings us back to the starting-point of the essay, the call for a new, expanded canon of negotiation theory, research, and practice. I do think the *two-religions* heuristic demonstrates the limitations of the older canon, based on rational choice and buyer-seller, in approaching these sorts of conflicts. I can see that based upon the older canon of negotiation we might well call this conflict fully “intractable” and non-negotiable. The advice of a third party to this couple might then be to forego bringing children into their relationship entirely—or rethink the sustainability, if not the value, of the relationship. Hardly win-win.

But if new heuristics guide or orient our thinking about problems in new ways, then what might the *two-religions* heuristic suggest? The list of topics for a new “common core” in an expanded canon of negotiation suggested by many of the authors in the *Marquette Law Review* (and now addressed in this volume) include subjects under apology, culture, emotions, ethics, identity, power (beyond coercion), narrative, and metaphor.²³ If the older canon seems too restricted to imagine negotiating the *two-religions* conflict under it, it is equally difficult to imagine a negotiation—were one possible—that did not include recourse to some of the subjects listed above. But how?

One important question raised here is under what circumstances does the interest-based paradigm work or fail when confronted by values-based conflicts: when are values reducible or irreducible to interests? I think we need a more nuanced—procedural and dynamical—way of describing negotiations in values-based conflict. Wallace Warfield, for example, suggests that we shouldn’t so much see interests and values in a hierarchical relationship where one “trumps” the other—my earlier game metaphor—as understand the ability of oppositional parties in negotiations of various dimensions to engage in what he describes as “rapid shifting” between “negotiable interests and so-called non-negotiable values.” Reflecting on his own conflict resolution training and workshop practice in post-genocide Rwanda, Warfield writes: “Thus Rwandans (Hutus and Tutsis) were able to negotiate around interests in a scenario that dealt with organizational conflict, because organizational structure and culture provided negotiators a bridge. Whereas, those same parties, when it came to fundamental issues of genocide and forgiveness, struggled to find a common ground.” He suggests the need for heuristics and models that depict not static layers, but “shifting ... boundaries driven by situation and perhaps other characteristics.”²⁴

The really hard work, not even attempted in this essay, is not to devise a new heuristic, but having proposed one, to develop it in order to imagine the possibility for *negotiation* of values-based conflicts now deemed intractable, beyond the sometimes uncertain remedies of rights and power. The *two-religions* heuristic, given its limitations, may in the end serve only to remind us that these sorts of deeply embedded conflicts demand, on the part of theorists and practitioners alike, greater attention to understanding the dynamics of values-based negotiations (in the area of practice), and for theorists, greater attention to axiology in general and the nexus between values and identity—in the end hinted at but unexplored here—in particular.

Endnotes

A version of this essay was presented at the annual meeting of the International Association for Conflict Management on June 6-9, 2004 in Pittsburgh, PA. I thank co-panelist Linda Putnam and organizers Christopher Honeyman and Andrea Schneider. In subsequent drafts, Evans Mandes helped with additional sources in cognitive psychology. My colleagues Marc Gopin, Christopher Honeyman, Dan Rothbart, Richard Rubenstein, Andrea Schneider, and Wallace Warfield all read earlier drafts closely and critically. Having satisfied none of them entirely, I thank them wholeheartedly.

¹ I borrow the notion of a negotiation 'canon' from Christopher Honeyman and Andrea Schneider. See the special issue they edited of the *Marquette Law Review: The Emerging Interdisciplinary Canon of Negotiation*, 87 MARQUETTE LAW REVIEW (2004).

² See, e.g., HOWARD RAIFFA, *THE ART AND SCIENCE OF NEGOTIATION* (1982); RICHARD E. WALTON & ROBERT B. MCKERSIE, *A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS* (1965); ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (1981).

³ 'Recognizable' but not necessarily 'identical.' Other markets in other places ('cultures') provide evidence of this. See Clifford Geertz, *Sug: The Bazaar Economy in Sefrou*, in *MEANING AND ORDER IN MOROCCAN SOCIETY* 222 (Clifford Geertz, et al., eds., 1979). Among other things—pace Leigh Thompson on 'trust'—Geertz writes of buyer-seller interaction in the sug: 'Bargaining does not operate in purely pragmatic, utilitarian terms, but is hedged in by deeply felt rules of etiquette, tradition, and moral expectation.' *Id.*

⁴ Jocelyn Evans, *Fitting Extremism into the Rational Choice Paradigm*, 39 *GOVERNMENT AND OPPOSITION* 110 (2004).

⁵ HERBERT A. SIMON, *MODELS OF BOUNDED RATIONALITY* (1982).

⁶ For a discussion of such regular distortions found in international negotiation at the state level, see ROBERT JERVIS, *PERCEPTION AND MISPERCEPTION IN INTERNATIONAL POLITICS* (1976). An early insight in this direction, deeply connected to peace studies and coming from a polymath and perennially former-economist is KENNETH BOULDING, *THE IMAGE: KNOWLEDGE OF LIFE AND SOCIETY* (1956).

⁷ A sample of recent works in this vein—JOSEPH FORGAS, *FEELING AND THINKING: THE ROLE OF AFFECT IN SOCIAL COGNITION* (2001); ERIC EICH, *COGNITION AND EMOTION* (2000); *EMOTIONS AND BELIEFS: HOW FEELINGS INFLUENCE THOUGHT* (Nico H. Fridja, et al., eds., 2000).

⁸ On the 'tragedy of the commons,' start with this classic work: Garrett Hardin, *The Tragedy of the Commons*, *SCIENCE*, Dec. 13, 1968, at 1243-48. An economist proposes an 'impossibility theorem' in KENNETH ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (1963). For skepticism directed at a sociological 'invisible hand' capable of maximally organizing social collectivities, see MICHAEL HECHTER, *PRINCIPLES OF GROUP SOLIDARITY* (1987). I have hardly scratched the surface of this literature in rational choice and exchange theory, ranging from ecology and economics to sociology and political science.

⁹ KEVIN AVRUCH, *CULTURE AND CONFLICT RESOLUTION* (1998).

¹⁰ Start with MARSHALL D. SAHLINS, *CULTURE AND PRACTICAL REASON* (1976).

¹¹ See Aaron Wildavsky, *Choosing Preference by Constructing Institutions: A Cultural Theory of Preference Formation*, 81 *AMERICAN POLITICAL SCIENCE REVIEW* 3 (1987) (arguing against the universality and for the cultural variability of 'preferences' [utilities]).

¹² Outside of the more formal negotiation literature the *locus classicus* of this argument is Fisher and Ury's *GETTING TO YES*, *supra* note 2 (*but see* the book's second edition, 1991). Although I have critiqued this book from a cultural perspective in the past, it is mildly distressing to see 'win-win' turned so decisively into a cliché. I have been in the field long enough to remember first encountering the phrase 'win-win' as a genuine and thought-provoking insight. Now one can hear it used routinely by Pentagon spokespersons, or on unwary consumers in the finance departments of Ford dealerships all over the country.

¹³ John W. Burton has been the most forceful advocate of such a theory; see, e.g., JOHN W. BURTON, *CONFLICT: RESOLUTION AND PREVENTION* (1990).

¹⁴ Wallace Warfield, *Public Policy Conflict Resolution: The Nexus Between Culture and Process*, in *CONFLICT RESOLUTION THEORY AND PRACTICE* (Dennis Sandole & Hugo van der Merwe eds., 1993).

¹⁵ Values are connected closely to matters of ideology and identity, and therefore values-based conflicts to ideological and identity conflicts. However, to keep the discussion that follows relatively simple I will focus on values only, and leave the nature of their connection to the latter two unspecified.

¹⁶ See *INTRACTABLE CONFLICTS AND THEIR TRANSFORMATION* (Louis Kriesberg, et al., eds., 1989) (especially chapters by John Agnew, Susan Hunter, and Terrell Northrup).

¹⁷ LEIGH L. THOMPSON, *THE MIND AND HEART OF THE NEGOTIATOR* 43 (2d ed. 2001).

¹⁸ Granted, though I suspect that another reason for this assertion, regarding trust in general, if not disclosing one's BATNA, has to do with the presumption (particularly in simulation or experimentalist settings) that buyer-seller negotiations are one-off, 'cash-and-carry,' non-repetitive encounters. If one assumes a continuing relationship, even in strictly surplus-maximizing, cost-benefit encounters, then perhaps the notion of trust looms larger—it becomes another utility? The one-off nature of the buyer-seller heuristic is of course not a necessary element, but a commonly assumed one. More broadly, Thompson is forgetting that even the most coldly rational or economic negotiation between buyer and seller depends upon the existence of some shared norms, for example a consensual legal framework that valorizes contracts. In this sense one might assume there is a basic level of trust in 'the system' if not in the (other) individual. Finally, markets in other cultures may well parse trust in different ways; See Geertz, *supra* note 3.

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¹⁹ DEAN PRUITT & SUNG HEE KIM, SOCIAL CONFLICT: ESCALATION, STALEMATE, AND SETTLEMENT 199-200 (3d ed. 2004).

²⁰ See WILLIAM URY, ET AL., GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT (1988).

²¹ Other features of this social setting may include notions of gender equality (for heterosexual couples), egalitarianism, the absence of an official state-sponsored religion or at least the effective legal separation of 'church' and state.

²² Among my (American) colleagues who read and responded critically to this essay, it was the colleague who is most committed to his faith and cultural/ethnic identity who was the most unhappy with the *two-religions* scenario as a basis for much of anything.

²³ *Supra* note 2.

²⁴ Wallace Warfield, personal e-mail communication (June 30, 2004) (on file with author).