

BARGAINING
WITH
THE DEVIL

When to
NEGOTIATE,
When to
FIGHT

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Introduction

Should you bargain with the Devil? In an age of terror, our national leaders face this sort of question every day. Should we negotiate with the Taliban? Iran? North Korea? What about terrorist groups holding hostages?

In private disputes, you may face devils of your own. A business partner has betrayed you and now wants to negotiate a better deal. A marriage is ending and a divorcing spouse is making extortionist demands. A competitor has stolen your intellectual property. You are furious. Your gut tells you to fight it out in court. To negotiate with this person would give him something he *wants*. It would reward him for his bad behavior. You want your rights vindicated, and the thought of negotiating with your adversary seems wrong.

This book is about these kinds of conflicts, which pose some of the most challenging questions in negotiation. A disputant must decide: Should I bargain with the Devil, or resist? By “bargain” I mean attempt to make a deal—try to resolve the conflict through negotiation—rather than fighting it out. By “Devil,” I mean an enemy who has intentionally harmed you in the past or appears willing to harm you in the future. Someone you don’t trust. An adversary whose behavior you may even see as evil.

These days it is not fashionable to talk about evil, particularly among professionals concerned with dispute resolution. It smacks of smug moralism and religious fundamentalism. It has religious overtones connected with notions of sin. Moreover, many dispute resolution professionals would argue that it has no stable definition or inherent meaning. Many believe that the concept is entirely subjective: an individual who is involved in a conflict will often perceive the adversary as evil, but it is *only* a perception; a detached observer might disagree. Others

would add that the notion of what is evil can vary greatly depending on time and place. This is not simply an academic debate about definitions. In my field, an air of taboo hangs around the word *evil*. It is considered a slippery and explosive term, much overused, loosely deployed, and too often exploited by religious and political leaders to malign their enemies and lead their followers into battle.

While I agree that these dangers exist and demonization can get in the way of clear thinking, I do not believe that the concept of evil is incoherent or meaningless. In my view, intentionally inflicting grievous harm on human beings without a compelling justification is evil. The Nazis' persecution of the Jews, the Hutus' slaughter of the Tutsi, and the Taliban's penchant for throwing acid in the face of girls who dare to go to school—all of these are evil acts. So were the attacks of September 11, 2001, when suicidal terrorists intentionally and without justification killed nearly three thousand innocent civilians.

My question, and this book, have their roots in September 11. In the fall of 2001, less than a month after the attacks, Harvard Law School's Program on Negotiation sponsored a public debate at Harvard on whether President Bush should be prepared to negotiate with the Taliban. This debate led me to begin thinking about a more general question: In any particular conflict, how should you decide whether or not it makes sense to negotiate?

At the time of our debate, events were moving quickly. Bush had just issued an ultimatum to the Taliban government in Afghanistan: Shut down al-Qaeda's training camps and turn over Osama bin Laden and his lieutenants, or we will invade.

The Taliban, surprisingly, had responded by inviting President Bush to negotiate. In addressing a council of clerics on September 19, the Taliban leader Mullah Mohammed Omar said, "If the American government has some problems with the Islamic Emirate of Afghanistan, *they should be solved through negotiations*" (emphasis added).¹

My colleague Roger Fisher and I were invited to discuss how Bush should respond to this offer. Roger Fisher is probably the best-known negotiation guru in the world. He is the leading proponent of what is called interest-based or "win-win" negotiation. His seminal book, *Getting to Yes*, has sold over three million copies. I am his successor as chair of Harvard's Program on Negotiation.

Roger and I share common views on many important issues. But not in this case.

Roger took the position—as I knew he would—that President Bush was wrong to issue an ultimatum and that the United States should accept the Taliban's invitation to negotiate. His argument was consistent with his view, expressed in many of his books, that one should always try to resolve conflict through a problem-solving approach to negotiation based on the interests of the parties.

Essentially, Roger supports the categorical notion—prevalent in the field of dispute resolution—that you should *always* be willing to negotiate.

The core argument behind this notion is straightforward and appealing. Before you resort to coercive measures—such as warfare or litigation—you should try to resolve the problem. To negotiate doesn't mean you must give up all that is important to you. It only requires that you be willing to sit down with your adversary and see whether you can make a deal that serves your interests better than your best alternative does. People and regimes are capable of change. You can't hope to make peace with your enemies unless you are willing to negotiate.

You've also heard the categorical answer on the other side. The Faustian parable suggests you must *never* negotiate with the Devil. He's clever and unscrupulous. He will tempt you by promising something that you desperately want. But no matter how seductive the possible benefits, negotiating with evil is simply wrong; it would violate your integrity and pollute your soul.

I must confess a natural aversion to categorical claims of "always" or "never." There are usually examples that can puncture such arguments. In my debate with Roger, I explained that my two greatest political heroes of the twentieth century are Winston Churchill and Nelson Mandela. Each had to decide whether to negotiate with an oppressive and evil enemy. In May 1940, Churchill refused to negotiate with Adolf Hitler, even though Nazi forces had overrun Europe and were about to attack a weakened Britain. In 1985, on the other hand, Nelson Mandela chose to *initiate* negotiations with a white government that had erected and enforced a racist regime.

If there is no easy, categorical answer—if sometimes you should bargain with the Devil and other times you should refuse—how in partic-

ular circumstances should you decide? How should you think about the problem? What are the considerations? The challenge is making wise decisions. This book addresses that challenge.

We will explore eight real, concrete cases in which a disputant had to decide whether to negotiate or resist. These are hard cases that cover a broad range of situations. Some are international conflicts involving evil regimes. Others involve business and family conflicts.

In all of them, the stakes are high and at least one party is enraged by the other side's behavior. Demonization is rampant. Primal emotions, such as the desire for revenge, may be hard to distinguish from moral impulses: a deep aversion to the idea of "legitimizing" the enemy or rewarding bad behavior; a strong desire for vindication and justice. How do you make a wise decision in the face of such strong feelings?

We won't look at these decisions in hindsight and ask, Did it turn out well? That would be too easy, and unfair to the protagonists of these stories. We will go back in time, follow the action as it unfolds, and evaluate the decision based on what the decision-maker knew at the time.

The stories of Churchill and Mandela have each become an archetype, a stock narrative that people tend to use as a convenient rationale for a decision they have already made. When they don't want to negotiate, they tell the story of Churchill and the failure of appeasement. When they want to negotiate, they tell the Mandela story.

With the benefit of hindsight, both of these decisions look obviously right. But what if you go back to the time when the decisions were made? Do they still seem wise?

These were much harder decisions than they might at first appear, and I devote a chapter to each. In Churchill's case, the war was going so badly that the American ambassador thought Britain would soon be overrun. Although Churchill always proudly maintained that his government never even considered negotiating with "that man," the truth is very different. He and his War Cabinet ministers secretly debated—for three days—whether to pursue peace negotiations with Hitler. Powerful arguments were made in favor of negotiation. Mandela, too, made an enormously difficult and risky decision. In order to initiate negotiations with the apartheid regime, he had to figure out a way to keep the talks secret from his own colleagues.

We also explore the stories of two individuals caught in evil regimes.

Both faced decisions in which lives were at stake. One refused to negotiate with the KGB and lived to be celebrated. The other chose to negotiate with the Nazi Adolf Eichmann and saved hundreds of lives—only to be later condemned as a Nazi collaborator. Each in his own way was heroic.

The four business and family cases are all based on real disputes that I observed firsthand. They involve two giant computer companies fighting over software rights, a symphony orchestra torn by labor conflict, a bitterly divorcing couple, and three siblings in combat over an inherited vacation home.

There are, of course, some big differences among these cases. The most important distinction has to do with what I mean by "evil." I don't believe in the Devil in a religious sense, but I do believe that Hitler and Eichmann were evil, as were the KGB and the apartheid regime. By contrast, none of the antagonists in our private disputes was evil, in my view, although they were demonized and in some cases *perceived* as evil by their adversaries.

Another distinction relates to what was at stake. The chapters concerning international devils involve matters of life and death. The business and family cases, by contrast, involve money and relationships—very significant relationships that had completely broken down. The alternatives to negotiation are different as well. In business and family disputes, there is typically an enforceable legal remedy: the disputants can go to court if necessary. This was not true in our international cases.

Given these differences, why consider these cases together? First, because this is a "how to think" book designed to show you how to "think outside the box." In my many years of teaching I've learned that it's often easiest to get students to embrace a new set of ideas by thinking about them in an unfamiliar context, and then applying them to contexts they are more familiar with. Second, because all eight cases involve demonization and its by-product: distorted thinking. Through these stories, I will examine *how* people in intense conflict decide whether to negotiate. What role do emotions play? What is the relationship between analysis and intuition? Are there common traps that interfere with wise decision-making? And is there an approach that can improve the likelihood of making wise decisions?

I think there is. In this book I will offer a framework—a disciplined

way of thinking—that you can apply to any situation. As part of that framework, I will delineate two opposing sets of traps that can stand in the way of a wise decision. The “negative” traps, particularly demonization, stoke our anger and tempt us to refuse to negotiate when we probably should. The “positive” traps, although far less common in disputes like these, may tempt us to negotiate when perhaps we shouldn’t. My framework will help you avoid both sets of traps.

We are going to face some moral quandaries as well. What if, emotions aside, your own moral compass suggests that doing business with this Devil is simply wrong, even though it might provide some pragmatic benefits? Suppose you could foresee a deal that would serve your own interests but would harm others?²

In each chapter, you will see a protagonist struggling with the decision of whether to bargain or resist, and the influence of the traps. You will see how they made their decision and why. I will tell you whether I think they made a wise decision. I will also give you enough information to draw your own conclusion. You may not agree with me, but you will know where I stand.

Now let me return to the Taliban in 2001 and my debate with Roger Fisher.

We all know what happened soon thereafter. President Bush refused to negotiate. The Taliban refused to turn over bin Laden, citing Islamic law, and did not agree to shut down the training camps. After receiving both congressional and U.N. authorization, Bush launched war in Afghanistan and toppled the Taliban government.

But on the facts known *at the time*, was President Bush’s decision wise?³ In the debate, I contended that it was.

My argument went as follows:

What were the interests at stake? For the United States, our most important interest was to protect American lives and deter future terrorist attacks. The Taliban’s primary interest was to stay in power and maintain the rule of Islamic law.

What were the alternatives to negotiation? For the United States, the best alternative was to use military force. Although the outcome of a war is always uncertain, it appeared we had the capacity to topple the Taliban regime, shut down the training camps, and perhaps cap-

ture many of the culprits. The Taliban’s alternative was much worse. If the United States attacked, they would probably lose control of the government; their best alternative would be to go into hiding and wage guerrilla warfare.

Were there likely potential negotiated outcomes that would meet the interests of both parties? Was there a reasonable prospect that such an agreement would be carried out? Slim to none. The Clinton administration had made similar demands with respect to bin Laden, al-Qaeda, and the training camps, and the Taliban had been entirely unresponsive. They had done nothing. The Taliban didn’t seem to have the capacity, let alone the will, to shut down the camps or turn over bin Laden. In fact, some observers believed that bin Laden had more power and influence over the Taliban regime, partly due to family ties, than they had over him.

What were the costs to the United States of choosing to negotiate? Substantial. The Taliban regime was not an innocent bystander. It had harbored bin Laden and thousands of Islamic terrorists from around the world. The Clinton administration had clearly warned the Taliban, more than a year earlier, that it would hold them responsible for any terrorist attacks by bin Laden.⁴ To negotiate now would severely undermine our credibility, not simply with terrorist groups around the world but with the Taliban and other governments that harbored terrorists. In this sense, negotiation would have established a dangerous precedent. It would have also undermined President Bush’s ability to assemble and lead an international coalition to fight terrorism.⁵

Finally, was our alternative—use of military force—legitimate and morally justifiable? In my view, yes. Bin Laden had publicly declared war on the United States several years earlier,⁶ and the September 11 attacks were undeniably acts of war. Under domestic and international law, American use of force was permissible.

On the basis of this cost-benefit analysis, I concluded that Bush would be wise *not* to negotiate with the Taliban.

Like most Americans, I saw the September 11 attacks as evil: grievous harm had been intentionally inflicted on innocent victims without adequate justification. I thought the guilty parties should be punished and that further attacks should be deterred. Fortunately for me, my pragmatic analysis led to the same conclusion that my moral intuition did. Both said, “No negotiation,” albeit for different reasons. So my

decision about the Taliban was a relatively easy one. The fact that the Taliban regime had condoned an evil act was relevant to me, but not dispositive.

The harder case is when pragmatic and moral demands conflict. What if your analysis says, "Negotiate," and your principles suggest it would be wrong? What do you do? How should you go about thinking it through?

Consider, for example, a business dispute based on real events that could happen to any one of us.⁷

You are the founder of a small, privately owned research and development company in Silicon Valley. You recently learned that your joint venture partner, the giant Bikuta Corporation of Japan, has secretly developed a competing product which it is now selling under its own name in the Chinese market. This "new" product is essentially a knock-off of the design you licensed to Bikuta (along with essential know-how) two years ago. There is no doubt in your mind that Bikuta has violated your contract, which provides that Bikuta will manufacture and distribute *only* your product "worldwide" for five years—and pay you a license fee of 15 percent of sales.

When you confront Bikuta's president, he is unremorseful. He says your original design does not "fit" the Chinese market and that Bikuta owes you nothing for Chinese sales. He also wants to renegotiate your 15 percent royalty rate, which he suddenly claims is too high.

You feel stunned and betrayed. Bikuta thinks nothing of stealing your know-how, ignoring its contractual obligations, and trying to bully you into accepting less than you are due. You are also angry with yourself for being so trusting.

Any businessperson can identify with this case. The gut says "Do battle!" and "It would be unworthy to negotiate." But what's the wise thing to do—financially, morally, rationally? In the face of a bully, do you fight or negotiate?

The tension between conflicting moral and pragmatic demands is central to each one of the real-life dilemmas I present in this book. By the time you finish reading it, I hope my framework will give you a new and useful way to think not only about Bikuta, but about all those situations in which you will have to decide whether to bargain with the Devil.

PART I

Understanding the Challenge

Avoiding Common Traps

The news about Bikuta is alarming. You have sacrificed the last five years of your life as CEO of ResearchCo., the start-up that you founded. The company is now profitable, but just barely. And you are in a terrible bind. You have licensed your design and know-how for the “FreeFlow,” an implantable arterial stent, to the Bikuta Corporation of Japan. The deal gives that company exclusive rights to manufacture and sell the FreeFlow everywhere in Asia—except China. In exchange, Bikuta was to pay you a license fee of 15 percent of sales. Now you’ve discovered that your so-called partner has essentially cloned your product, renamed it the “EasyFlow” (hardly even changing the name, you note with disgust), and started selling it in China. When you challenged Mr. Bikuta—the founder and CEO—he denied using your intellectual property in making the EasyFlow. You don’t believe it for a moment, and you’re worried about the future of your company. Bikuta Corporation is your most important joint venture partner. What should you do?

You call the Kramers, your sister and brother-in-law. Evelyn and Fred have a stake: they were the first investors in ResearchCo. and the sixty thousand dollars they put in, combined with your own savings, launched the company and kept it going while you developed a business plan and secured the first rounds of venture financing. Without their help, you’d still be an engineer at Johnson & Johnson. You trust them; they are energetic, loyal, and blunt. And they are a study in contrasts.

Your older sister Evelyn is warm, optimistic, and savvy about people. After college, she volunteered for the Peace Corps in Guatemala, later earned a Ph.D. in Spanish literature, and now chairs the Spanish department at San Jose State. She is comfortable in her own skin, and a

calming presence. She practices yoga and meditates every day. Women find her looks attractive but nonthreatening, and men find her appealing. People are naturally drawn to Evelyn—perhaps because she tends to see the best in them.

Most people are drawn to Fred, too, but for different reasons. Adventurous and enthusiastic, Fred is a take-charge kind of guy who enjoys being a partisan and relishes competition. A former Marine, he charged through business school and rose through the ranks at Oracle, a large Silicon Valley software company, to become a vice president of sales. He is also a fitness fanatic. He runs daily, tracking his mileage and times as precisely as he tracks the software sales of his team. His passion is rugby—an English form of football, played without pads. Fifteen years ago he started the Silicon Valley Rugby League. Every Saturday morning during the season, with the drive of a Marine drill sergeant leading his men on a twenty-mile run through a swamp, Fred takes his Oracle team into battle, apparently oblivious to the fact that he is now about twenty years older than everyone else on the field. Evelyn thinks he's crazy—he comes home stiff, sore, and bruised. In their marriage and in his life, he lives by the Corps' code: *Semper Fi*. Their marriage works.

"Bikuta is ripping us off," you tell Fred and Evelyn as they arrive at your office. "They're using our technology to manufacture and sell stents in China. When I confronted Mr. Bikuta, he gave me a load of B.S. He claimed that our design wouldn't work in the Chinese market and that they had developed their product independently, with their own R&D. But we got hold of one of their stents. It's not identical to the FreeFlow, but our engineers confirmed that it's based on our know-how. Did they think I wouldn't find out? That I wouldn't mind? What kind of sucker does Bikuta think I am?"

You stand up and begin pacing around the room. "Mr. Bikuta wouldn't disclose their sales figures in China, and he flatly refused to discuss paying royalties on those sales. Then the bastard had the gall to invite me to come to Japan to negotiate a lower royalty rate on sales of FreeFlow in the rest of Asia! He actually threatened me, saying that if we don't lower the licensing fee, they will simply sell their 'own' product worldwide!"

Fred's response is immediate. "I hate to say I told you so," he exclaims, "but this is exactly what I was afraid of. Once the Japanese have

mastered your technology, they steal it or invent around it and toss you aside."

"I know, I know," you grimly acknowledge. "You warned me. I'm angry with myself." You recall the hundreds of hours you spent courting this company. The long, saki-soaked dinners. The rounds of golf developing a relationship with Bikuta-san. For three years the joint venture seemed to work so well. Bikuta's quality control and manufacturing efficiency are superb. Their distribution was fantastic. For eleven straight quarters, sales of the FreeFlow went up. Bikuta fully accounted for the sales and paid you your fee the day it was due. Maybe you got lulled into dropping your guard. In fact, during the past year you and Bikuta started discussions about expanding your agreement to include sales in China. Now it seems this was all part of the con.

"While he and I were cordially negotiating, he was already stabbing me in the back," you say.

"Oh yeah, they do that—use negotiations as a cover for a sneak attack," observes Fred, who fancies himself something of a history buff. "It's the story of Pearl Harbor."

"Fred, I can't stand it when you talk like this," Evelyn interrupts. "You sound like even more of a bigot than you actually are. People are people. Any businessman wants to make money for his company. Remember you, too, were impressed with Bikuta and liked him. Remember the weekend you hosted him to a round of golf at Pebble Beach? You told me afterward that, unlike some of your American golfing buddies, Bikuta was scrupulously honest about keeping his score—that he had actually counted every one of his strokes. *You're* the one who always says, 'Character is revealed on the golf course.'"

Fred ignores this rebuke. "I've done many deals with the Japanese. They don't think the way we do. They nod and say 'yes,' and half the time it means no. And they can be bullies. The whole culture runs on status and hierarchy—those on top exploit those below."¹ Fred turns to you. "You've got no choice. To negotiate now would be to reward bad behavior. Tell them that if they don't stop selling in China, you'll terminate the joint venture and sue their ass off."

Fred doesn't need to convince you; this is exactly what you want to do. You feel humiliated and you want revenge.

You say, "I doubt we will get far filing a lawsuit in China or Japan."

"No, obviously the Chinese and Japanese courts are worthless," says

Fred. "Sue them here in California. Take your case to an American jury. Teach Bikuta a lesson."

You frown and think to yourself: If only it were that easy.

Evelyn, showing increasing signs of exasperation, finally cannot contain herself. "What macho nonsense!" she exclaims. "Let's not get carried away. Suing Bikuta will destroy what's been a profitable relationship so far. It will make your lawyers rich and distract you from the business. Go to Japan. Sit down with Bikuta. See what he has to say. What do you have to lose? And besides, have you considered Bikuta's perspective?"

You give Evelyn an incredulous look.

"Bikuta *asked* you to include China in the license agreement originally," she reminds you. "And you refused. Because you wanted to preserve your options. And haven't you been talking lately with some Chinese firm about making stents for the Chinese market? You know how seriously the Japanese take their business relationships. Maybe Bikuta heard about this and thought you were going to cut them out."

"But that was our right! We can enter the Chinese market with anyone we want. We have no obligation to Bikuta," you scoff.

"Don't listen to Evelyn," Fred interjects. "Bikuta was represented by international counsel. I'm sure his lawyer explained to him what the corporation's obligations were. Evelyn is such a bleeding heart. Every time some seventeen-year-old assaults an old lady and grabs her purse, she talks about what a difficult home life the kid's had."

Evelyn ignores this comment. "Of course you have the *legal* right to find a new partner for the Chinese market," she tells you. "I'm not saying that Bikuta isn't at fault. I'm just saying, give Mr. Bikuta a chance to do the right thing. Maybe you can negotiate a lower fee but extend the contract to the Chinese sales."

Fred explodes. "Evelyn, whose side are you on? There's a principle at stake here. You cannot do business with people who intentionally violate their agreements. Once they've screwed you, you can't just go back to business as usual. It sends the wrong message—not just to Bikuta, but to anyone else you might do business with. You might as well put a big sign on your head saying, 'Please, exploit me and I'll come back to the table! I'll accept any kind of behavior, right or wrong!' Is that how we want to be perceived? No! Besides, from a purely financial standpoint, Bikuta has no incentive to give us a dollar more than they abso-

lutely have to. Every dollar they pay in royalties to us is a dollar less profit for them. And vice versa. *That's* the reality."

Evelyn rolls her eyes. "Fred loves to rant about the harsh 'realities' of business, but frankly I'm the one who's being realistic. Bikuta's a lot bigger than we are. They can afford the costs of litigation a lot more than we can. If we sue, they will probably stop selling our product entirely. If we negotiate—extend the joint venture to China—and if total sales go up, we could make more money even with a lower royalty rate."

The dilemma described above is quite realistic. The question is: Should you negotiate with the enemy or not? Fred and Evelyn are both making some sense. Each offers a point of view that has emotional and intellectual appeal. But you also see flaws in both arguments, and you are pretty riled up yourself. You want to make a wise decision, not one based solely on emotion. How do you sort through these arguments? Where do you begin?

After helping to resolve many business and family disputes over the years, I have come to believe that for most of us, confronting an enemy poses exceptional negotiation challenges. When I say "enemy," I do not mean just an ordinary competitor; I mean someone who has deeply wronged us and poses a serious threat to our well-being—someone we may even see as evil.

In the introduction, without elaboration, I proposed a definition: *An act is evil when it involves the intentional infliction of grievous harm on another human being in circumstances where there is no adequate justification.*² This definition has three essential elements. First, for an act to be evil, the perpetrator must intend to inflict harm. Carelessness is not enough. Second, the harm must be very serious. I use the word *grievous* to connote harms that are severe. Third, the infliction of harm must lack an adequate justification or excuse. Of course, the judgment about whether a justification is adequate may in some cases be reasonably debatable, and may depend on one's moral perspective.

Does every person who commits an evil act by definition become an evil person? I think not. Instead, I would call someone an evil person only if by disposition he or she repeatedly commits evil acts. This distinction is important. Too often we may condemn someone on the ba-

sis of a single action. Psychologists have shown that otherwise decent people may, because of obedience to authority or peer pressure, commit evil acts in particular contexts.³ A centrally important finding of social psychology is that in evaluating the behavior of others, we tend to exaggerate the importance of a person's dispositions or traits and underestimate the influence of context. This tendency is well documented; social psychologists call it the "fundamental attribution error."⁴ But when it comes to justifying our own behavior, our tendency is the exact opposite—we are quick to use contextual pressures to excuse behavior of which we are not proud.⁵ "I did something bad," we may tell ourselves, "not because I am a bad person, but because the situation put me under so much pressure."

Bikuta's actions were certainly intentional. They might cause your company serious economic injury. And from your perspective they seem utterly unjustifiable, although Bikuta might see things differently. If Bikuta has violated the contract by using your intellectual property, that would be wrong, but I doubt the economic injury to your company represents harm that is substantial enough to justify the characterization of this act as evil. I think it would be even more of a stretch to conclude that Bikuta is an evil person, or that his corporation is evil.

But that doesn't lessen or invalidate how any of us might feel in such a situation: betrayed, humiliated, disrespected, dishonored. To the question, Should I bargain with this Devil? we *feel* the answer should be a resounding no. (Sometimes expressed as "That'll be a cold day in hell" or "Over my dead body!")

In helping clients work through such conflicts, I have found that wise decision-making poses three different challenges. The first is to avoid emotional traps that can lead to hasty and knee-jerk decisions. This chapter identifies and explores these traps. The second challenge is to analyze the costs and benefits of alternative courses of action. That is the focus of the next chapter. The third challenge is to address the ethical and moral issues that often arise when one is trying to decide whether to negotiate with an enemy. That will be our focus in chapter 3 and the case studies that follow.

But first let's focus on why these situations are so challenging. Psychologists and neuroscientists have discovered that people perceive reality and make judgments in two fundamentally different ways.⁶ One,

which I'll call *intuitive reasoning*, is automatic, effortless, and affective (related to emotions and feelings). It triggers instant responses and influences the meaning we attach to facts by linking the current situation to past experiences and stories we know. It will often motivate our behavior.⁷ The other mode, which I'll call *analytical reasoning*, is conscious, deliberative, systematic, and logical: what we usually call "rational."

All human beings apprehend reality using both the intuitive and analytical modes, and our evolutionary survival depended on both kinds of reasoning. This "dual processing" system also guides our decision-making. Not surprisingly, both cognitive modes have advantages and drawbacks. The intuitive system picks up nonverbal cues and makes rapid appraisals.⁸ But it's quirky and selective about the data it receives, which can lead to mistaken conclusions and poor decision-making. The analytical system, on the other hand, is disciplined and more systematic. It explicitly evaluates information in making a decision. But it may not always yield a clear answer. Finally, it may miss the forest for the trees.

Individuals vary to the extent that one or other mode of reasoning is dominant.⁹ Each mode, alone, is incomplete, and there is, as we will discuss later, often an interaction between the two.

Another difference between the two modes—particularly relevant when we're locked in conflict with an enemy—is their operating speed. The intuitive system responds instantly, while the analytical system, which requires real effort and is ponderous and time consuming, plods far behind.¹⁰ Indeed, the intuitive system may have evolved to protect us from imminent physical threats. However, it is not very discriminating when it comes to threats. It works pretty much the same whether the threat is to our physical safety or to something more conceptual: a relationship, a business, a self-image, anything that's important to us. It floods us with adrenaline so we can fight or flee. This is terrific when we're dealing with a saber-toothed tiger, but not so useful when we're sitting in our office with Fred and Evelyn dealing with questions like, Should I negotiate with Bikuta? Once our emotional alarms and "hot cognition" buttons are triggered, it may take time—minutes, hours, or even days—before we are truly capable of thinking logically. And even then, intuition may continue to run the show.

WHAT ARE THE TRAPS?

The conversation with Fred and Evelyn illustrates why intuitive judgments are not always wise. Fred's perspective reflects a number of traps, or cognitive distortions, that commonly lead us to refuse to negotiate when we probably should. These "negative" traps are in the left-hand column below, and they are by far the more common response when we are in conflict with an enemy. But a second set of traps, listed in the right-hand column, can have the opposite effect, causing us to negotiate when maybe we shouldn't. Evelyn's perspective reflects some of these "positive" traps.

Negative Traps Promoting Refusal	Positive Traps Promoting Negotiation
Tribalism	Universalism
Demonization	Contextual rationalization and forgiveness
Dehumanization	Rehabilitation and redemption
Moralism/Self-righteousness	Shared fault and responsibility
Zero-sum fallacy	Win-win
Fight/Flight	Appeasement
Call to battle	Call for peace/Pacifism

- a) **Tribalism** involves an appeal to a group identity, where you see your own side—the in-group—as familiar and reliable, while the other side is an out-group that should be distrusted and disfavored. The group identity rests on shared characteristics such as family or kinship structures, language, religion, race, ethnicity, or a common history. In our example, Fred perceives Bikuta as a member of a foreign tribe—the Japanese—who are different, don't think the way "we" Americans do, and who are not to be trusted. At the opposite extreme is the trap of **universalism**. This presumes that people are all essentially the same and underestimates the importance of differences created by culture, history, and group identity. In Evelyn's words,

"People are people. Any businessman wants to make money for his company."

- b) **Demonization** is the tendency to view the other side as "evil": not just guilty of bad acts, but fundamentally bad to the core. Fred sees Bikuta's actions—secretly opening a factory in China, manufacturing a competing stent, and asking for a reduction in the license fee—as revealing his underlying character. Evelyn's perspective reflects the opposite extreme: **contextual rationalization**. She suggests that Bikuta's behavior is best understood as the product of external pressures and thus can be easily forgiven.
- c) **Dehumanization** involves seeing the enemy as being outside the moral order, less than human. Said to be a central process in prejudice, racism, and discrimination, this trap justifies treating the "other" as an "object." Fred's characterizations of the Japanese lean in this direction. More extreme examples can easily be found. In 2008, Imam Yousif al-Zahar of Hamas characterized Jews as "the brothers of apes and pigs" before calling them a people "who cannot be trusted" and "have been traitors to all agreements."¹¹ The opposite trap might involve a belief that all people are capable of change and deserve an opportunity for **rehabilitation** and **redemption**. In Evelyn's words, "Give Mr. Bikuta a chance to do the right thing."
- d) **Moralism** and **self-righteousness** create a tendency to see the other side as entirely at fault while you are innocent and worthy. Fred feels Bikuta is completely to blame, has purposely and flagrantly violated the joint venture agreement, and deserves moral condemnation. The opposite trap is the tendency to assume that in every conflict there is **fault on all sides** and that the burden of responsibility should be shared. Evelyn suggests that while Bikuta may be at fault, you are partially responsible as well for not being more attentive to Bikuta's desire to enter the Chinese market.
- e) The **zero-sum** trap involves seeing the world in terms of a competition: what one side wins, the other side must lose. Conflict is seen as purely distributive: anything that benefits your enemy is necessarily bad for you. Reducing the license fee,

according to Fred, can only help Bikuta and hurt you. One sees this trap everywhere. In divorce disputes, for example, spouses often argue over the allocation of money, or time spent with the children, as if more for one spouse can't possibly be good for the other. The opposite trap is the naïve assumption that *win-win* is *always* possible, that the pie can always be expanded so that both sides are better off. Evelyn suggests that if joint venture sales will be expanded by reason of lower license fees, both you and Bikuta could be better off economically. She may (or may not) be right.

- f) The *fight/flight* trap involves seemingly opposite behaviors, but both are automatic reactions and relate to "hot cognition." In the face of intense conflict, you may: (1) unthinkingly charge into battle or, (2) at the other extreme, flee, conceding what is important to you in the hope of avoiding a fight. Fred obviously wants to fight. Evelyn wants neither to fight nor to flee, but she is perhaps inclined toward *appeasement*. Better to negotiate with Bikuta and make concessions, she argues, than fight a possibly losing legal battle.
- g) The final trap, the *call to battle*, involves a political figure, business executive, or family member mobilizing his or her "troops" for a fight in a righteous mission against evil. This call uses the language of war and will often rhetorically draw upon demonization, tribalism, dehumanization, and moralism. While the leader inevitably claims his motivation is only to do what is best for the group as a whole, the call to battle often serves the leader's own political interests as well. Far less common is the opposite extreme, a *call for peace*, based on the premise that almost any conflict can be avoided or ended through sensible peace-seeking initiatives. The call for peace may invoke notions of universalism, forgiveness, redemption, and shared responsibility.

What is critical to understand is that *each column represents a cluster of reinforcing prisms that can distort judgments*. The negative traps are most prevalent when we see our adversary as an evil enemy. Even in business cases like Bikuta, where the adversary clearly isn't evil, we can

easily fall prey to these negative traps and *perceive* our opponent as evil, which causes us to speak and behave as though the opponent *is* evil. This is equally true in the international and personal realms. The negative traps encourage us to exaggerate the costs of negotiation and underestimate the benefits; the positive traps do just the opposite. Both are common default modes for dealing with conflict, and many of us have a decided preference for one or the other. Which way we lean is largely a function of basic personality style, but it is also influenced by past experiences, stories that have been handed down to us, and the personal narratives from which we draw our deepest sources of identity. Fred, for example, sees himself as a warrior, a champion against injustice. His worldview: "The world is a harsh place; people will exploit you if they can." He is quick to see evidence that confirms this story. Evelyn is an optimist, a peacemaker whose instincts tell her that going to battle is unproductive. Her worldview: "There is good in everyone; all you have to do is tap into it." She focuses selectively on evidence that confirms *her* story.

In sum, it is not that Fred and Evelyn are completely ignoring the need for analysis and relying solely on intuition. Rather, I believe that they each started with a gut reaction to your news about Bikuta, jumped to a conclusion, and then hired the analytical system as a lawyer to argue the case. It's as if the intuitive part of their brains has taken charge of the analytical investigation. That's why neither seems at all open to the other's perspective. Indeed, knowing them as well as you do, you could have almost predicted their advice before the meeting.

How can you avoid these traps? A critical first step is to recognize and acknowledge them. Be aware of your strong emotions. There is no way to avoid them, especially when you are in conflict with a devil. Another step is to expose yourself to different perspectives, as you've done by calling Fred and Evelyn to your office. They are not persuading each other, but if you feel pulled in both directions, that can slow you down and prevent you from making a hasty decision.

Now you are going to shift gears and consciously open yourself to careful analysis. For that, you may need expert help.