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Charles P. Taft

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## *Negotiation Principles: In Law or World Affairs*

*Charles P. Taft\**

“NEGOTIATION” IS A SUBJECT seldom taught in law schools. It should be part of every law school curriculum—as a required course. Every lawyer soon learns, in active practice, how important it is.

There are certain principles of sound negotiation (or “dickering,” in colloquial speech) that every lawyer should know—or anyone engaged in any profession, business or enterprise, for that matter. These principles apply almost exactly alike to a negotiation involving a legal action or to one involving national or international frictions—to settlement of a personal injury claim, or a dispute between the United States and Russia. For example, a negotiator never should let the other party know that he can make the final decision. Always leave leeway for consulting the “home office.” This maxim applies to a settlement of a legal claim or of an international dispute.

We lawyers are (or should be) part of the process of enlarging the area of understanding talk and cooperative action between both sides in a dispute, by clarifying the facts of their relationship. We do not always ourselves negotiate, but we are all around the fringes of it, and negotiation is, or should be, the major part of that enlarging process. The other major part is living together under the contract. The way they live together is a principal illumination of our judgment.

So it is that comparable negotiation and accommodation in living together likewise apply to international relations.

Because I want to relate it to our own experiences, I begin at home. When I went to school and college and law school, nobody taught me anything about dickering. When I paid for anything, there was a fixed price usually marked on it, though perhaps marked down.

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\* Of Cincinnati; former Mayor, Prosecutor, etc., and now City Councilman of Cincinnati; distinguished lawyer, writer, governmental, and diplomatic service expert; formerly and presently chief in many civic, church, legal, business, and other organizations.

(EDITOR'S NOTE: This is a revision of extracts from a speech delivered very recently to the Annual Spring Alumni Luncheon of Cleveland-Marshall Law School.)

When I spoke at the dedication of the new Yale Law School eleven years after my graduation, I complained bitterly that they had given me no training in what I found I needed frequently in law practice, namely some idea of how to dicker. The complaint did not really register for another ten or fifteen years. They have a course now in negotiation, and there are at least a few text books. But negotiation is no part really of the formal education of most people, even lawyers.

I developed during this same period a growing interest in compromise, but I found that my efforts sometimes shocked some good friends of mine in the ministry. Finally, I induced them to see that laymen may frequently find themselves faced with choices between limited alternatives, and there are times when all the alternatives could be bad. Firing the girl in the reception room or the square peg in the round hole farther up—this is the most unpleasant task there is. The head of an organization may be faced with a question of conscience on policy. Does he keep one of his assistants and prejudice the organization, or fire him?

So I succeeded in getting my National Council of Churches Department of Church and Economic Life to work on a paper on compromise, not as an evil thing, but as a problem of life. A theologian did a draft in which he stated eloquently that laymen and clergy were sometimes faced with choices like those I have described, and that it would be their duty as Christians to make a choice of the lesser of two evils. I turned the page, and he wrote, "Of course, he should realize that in doing so, he is committing a sin."

*That* I will not take; and some good theologians agree with me. Certainly we must, in making the choice, realize that we have hurt someone, perhaps ourselves, and be very conscious that we must try to bring the world around us to the point where such choices are not limited only to alternatives that are undesirable. But it is not *sin*, except perhaps in the vicarious sense of missing the ideal mark.

And we need to be a little humble about our own convictions. As Cromwell said in a famous debate in 1647:

Truly we have heard many speaking to us: and I cannot but think that in most that have spoken there hath been something of God laid forth to us; and yet there have been several contradictions in what hath been spoken. But certainly God is not the author of contradictions.

Compromise makes you analyze your real convictions. Analysis of our real convictions along with the facts is even more necessary in foreign relations. The risk of receding from an essential principle of our lives is far greater, and the recovery far more difficult than in legislative negotiations among ourselves, for instance, or in a collective bargaining operation. But the need still is for accommodation (or "compromise") on a basis that helps to preserve the peace and prevent an accidental toe-stubbing toward a deadly holocaust. In seeking this objective, we cannot afford a sterile absolutism that says, *Nyet!* in English.

Our "ideology" says that we can never deal with the Russians because they cannot tell the truth and never have kept an agreement. They are determined, we say, to conquer the world by force or subversion. The first requirement is to meet them, stand up to them, and talk back to them.

Does our actual experience justify the idea that there can be no area of maneuver without giving up basic convictions? Have we ever changed positions and found we had not lost anything? Have foreign nations, especially the Russians, *ever* yielded in negotiations, or kept an agreement?

Their record is bad. Joe Johnston of the Carnegie Endowment put together ten years ago some eight or ten examples that bear this out fully and completely. We got nowhere even after a pretty firm-looking agreement. As the Vice President said at Fordham:

Even more impressive than [Mr. Mikoyan's] mental ability and shrewdness were certain intangible qualities—a steel-like toughness of character and an almost arrogant faith that his cause was right and that it would inevitably prevail. In this man there was no flabbiness, no softness, none of the uncertainty of the pragmatist seeking a philosophy. He had found in the Communist system the inalienable truth and neither facts nor arguments could shake his faith . . .

But we were able to negotiate a cessation of the Berlin blockade. We did actually negotiate a Korean truce. If our ideology were correct, we should never have started even discussion of an Austrian treaty. When we had straightened out all the tough questions in a draft of that treaty, with concessions from our side, and the Russians continued to delay with picayune technicalities, it was easy to say, what use was all this? But then, for reasons we do not altogether understand even now, the Soviet position shifted, and all the prior work made possible taking advantage

quickly of the break in the clouds. At the end of January, 1959, for whatever reason, the Russians quit dumping tin and agreed to an export quota.

It is hard to remember that the Russians, even the leaders, are real people, living, breathing human beings, or (in religious terms) capable of redemption. George Kennan's fascinating story of our relations with Lenin and Trotsky in 1917 and 1918 are colorful and therefore helpful. If Stalin was a monster, as Krushchev said, he is gone, and we are back with a new leadership of politicians closer to our Anglo-Saxon models, and with a new generation coming up. Mikoyan's answers to questions of reporters in print and over the air waves were not so different from some American or British politician's artful dodging. We can even give credence to Harrison Salisbury's discerning piece in the New York Times with the theme, Mikoyan "discovered his impressions [of the United States] were badly distorted," and the headline "Mikoyan May Spur Fuller News of United States."

I am not urging any relaxation of suspicion, both as to motives and as to objectives. But the Vice President had it right also in praising the firm challenge to Mikoyan by the labor leaders. Refusing to meet and talk to him is puerile. Far more of us should be able to talk or at least understand the Russian language when we do meet him. That ability told the same skilled reporter's ear the rude character of Mikoyan's reply when he was asked whether Mao, Head of State in China, was now the leading theoretician of the Communist world. The rudeness was at least some evidence that perhaps the Kremlin is not happy about communes in rural China, which the Soviet leaders don't want in Russia. Splits among the Communists are important to us.

This requirement for keen open-minded observation at first hand of our world neighbors, and dispassionate review of our own convictions in regard to them applies elsewhere, too. We cannot afford irritation and annoyance with India, any more than we can with Canada. We cannot take Japan for granted, any more than we should have taken Iraq as fixed in our orbit. Can we take business associates for granted?

Secrecy as contrasted with security is a disease in this context. I was in the State Department long enough to discover that the "leaks" came usually on items that were kept secret after really good reasons for secrecy were gone. Keeping "secrets" from our major allies is no way to build a firm partnership. In the case of Britain and atomic energy, she had produced much

of the secret herself and fully collaborated on the inside of the Los Alamos operation, under a wartime agreement to share. But this agreement the U. S. Administration was unwilling even to admit to Congress, when the McMahon Act was being adopted.

How do these principles of negotiation apply specifically now in relation to Russia?

We have to begin with close observation and unemotional conclusions about the Soviet leaders.

I am completely convinced that *given the present situation* they do not want all-out war.

This gives no promise as to what they want under other conditions. It places a great burden on us to see that the relative balance of power of defense and retaliation continues.

Clearly since we also do not want all-out war we become responsible to prevent any accidental or mistaken outbreaks that could trigger all-out war. My assumption is that if they do not want it either, they are assuming responsibility, perhaps only in their own curious way, for the same objective.

This means that we should work on points of tension where trouble could come or accidents happen. By "work on" I mean take fresh looks and use imaginative flexibility, all within the context of the principles we decide are really essential to the preservation of our interests.

For instance, missile bases in Europe are sitting ducks for Russian missiles. What do they accomplish for us? Something perhaps, but we should be sure what it is.

With some progress at Geneva on tests, perhaps further progress can not come at this session, but perhaps again it could come at the next. We must never be discouraged, but press for discussion on every front, and renew it whenever it stops.

On surprise attack we have made no headway. We sent reasonable military people and competent scientists to Geneva. They sent politicians, and nothing happened. Why? What are we looking for, to prevent? There is no statement of the United States position as yet, even though Ike is supposed to have called down McElroy for commenting on the subject. And yet surprise attack seems to me, on my assumptions, less of a problem than a mistake that might send a bomb on its way. I am very happy that bomb carrying planes are no longer winging over the Pole.

All of this, you see, is part of the process of negotiation or

dickering by which you get out of fixes. That process in diplomacy has been so downgraded that we do not understand it, and particularly do not remember how long it takes.

Man is not "obsolete," and the old ways of living together by accommodation are not gone. There have been world powers long before us and the USSR, and in the days of religious war they were as powerful relatively, as deadly, and as ill-disposed as any today.

We can not get along with any but our strongest people at the State Department. Gromyko, Malik, Mikoyan, Menshikov know the United States, and young Troyanovsky is an expert translator. Who in our foreign office knows Russia and Russians like that? Apparently, Chip Bohlen's recall "for consultation" evidences some consciousness of this, but unfortunately he has gone back to the Philippines.

As you see I have said nothing about International Organization.

The United Nations is essential as a forum and framework. All our negotiations and conversation should be related to it, even by dragging it in. But the formation of new relationships should be clothed in pragmatic terms adequate to meet the need, without reference to "one world or none." If we get an agreement on inspection, I do not care if the teams have no name at all, so long as they bring Russians and others together, and, as a very great American put it, enlarge the scope of objective discourse.

Let the new organization, therefore, be set up to meet the specific needs. We would be in a tough way, even if there were no Communists at all. The problems in economic areas, with exploding nationalisms, would be difficult anyway, as we are seeing in relation to the Common Market in Europe (6 countries), and the proposed free trade area (17 countries), or in Algeria, middle Africa, Latin America, and the Near and Far East.

It is easy in this area to find false comforts. The idea of total disarmament may be one, and yet partial disarmament in connection with an area of tension, as in effect we did in Austria, may be a very worthwhile experiment.

Migration of peoples may be another possibility. I doubt if it could solve the Polish border problem, but it did work between Greece and Turkey, and it must be used for Arab refugees.

We hear of a new Russian generation which has no longer

the old time Bolshevik cast. Will the Russians change, or rather will their leaders change, in character, to the improvement of our relations and the gradual disappearance of the cold war?

These are probably false comforts, but every one deserves a new look, and a new try, always with both our feet squarely on the ground of our defense policy. Mutual terror is buying us time; let us see that we use it effectively.

Incidentally, just to cheer you up, a grave danger is that somebody becomes convinced that he has an air-tight defense against missiles. He might then lose his part of the mutual terror.

But probably now our gravest danger is Red China. We cannot count on a split with Russia. My principal objection to the Committee of One Million against Recognition of Red China is that they apparently want us never to recognize China. They deny it when pressed, but they would apparently permit it only when the regime is overturned. I do not think that happens any more, especially in China.

There are three requirements for recognition in traditional diplomacy: De facto government; actual establishment of authority over the area; and carrying out international obligations.

The first two China complies with; the third probably not. The British have had little results from their recognition of Peking. How much carrying out of obligations will one require? This deserves a very careful look, from the standpoint of our best present and long term vital interests.

Balance against the self-satisfaction of non-recognition, the futility which we went through in two experiences while I was in the State Department during the war, with non-recognition of Argentina and Bolivia. Non-recognition got us nowhere. My beloved chief, Cordell Hull, said he would never recognize the So and Sos. But he did. We had to.

Recognition implies no admission of the morality of the new regime, or at least it should not if it is done properly; and it may reserve a refusal to recognize some acquisitions of territory, as in the case of the Baltic countries.

Here again convictions must not mean absolutism.

So we are faced with a situation which is as close to life and vital issues as those with which lawyers deal. Is there a principle of justice and right in the world? This question is there, and we face the kind of conviction in the opposing leaders which denies it. Mr. Nixon said at Fordham:



No matter how repugnant the Communist philosophy is to us, we must recognize the fact that those who subscribe to it are true believers. And this, rather than the military or economic power of the Communist empire, is the major source of its strength and its insatiable drive toward world domination.

So we, who profess to be heirs of Greek thought and idealism, of the Roman government of politics and accommodation, and of the trust in one God of justice and mercy and love which comes from our Judaeo-Christian beginnings, must believe, hold on, and live out our convictions—and negotiate. We, and not Mr. Mikoyan, will win this negotiation.