

POWER IS THE ESSENCE OF NEGOTIATION

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Power pervades all aspects of bargaining and is the key to bargaining effectively. Your goal is to acquire power.

Sources of Power (or Ways to Acquire Power)

1. Legitimate power: Power that flows from your official position

Legitimate power flows from your position. For example, your job title provides power (e.g., arbitrator, mediator) or lack thereof (e.g., custodian).

Legitimate power is bounded by domains of application. As a mediator you have legitimate power over the rules of the mediation session, but you do *not* have legitimate power over the terms of the contract (you can gain power in other ways to help these matters along)

2. Expert power: Power that flows from your knowledge

People give power to people they think “know” what they are doing (e.g., expert witnesses). The Holiday Inn Express commercials are a take-off on this concept of expert power.

Expert power is bounded by domains of knowledge. Different people gain expert power in different domains. A custodian has expert power about cleaning. A lawyer has expert power about the law. You have control over your expert power. You can increase your knowledge.

3. Referent power: Power that flows from your attractiveness/charisma

People give power to others they find charismatic or attractive – people follow charismatic and attractive others, and find them persuasive. This referent power comes from the desire of people to identify and associate with attractive and charismatic others.

People who are dynamic are more persuasive. People who are liked by others are more persuasive. You have control over your referent power. Anyone can become more dynamic and better liked by others.

4. Information power: Power that comes from what you learn through informal channels of communication (e.g., networking)

Information power flows from information you learn about how to *really* get things done, the *de facto* versus *de jure* way things occur, and what *really* is going on.

Information power is social and under your control. It can be increased.

5. **Coercive power: Power that flows from rewards and punishments you control**

Rewards can range from social approval to money. Rewards can be tangible or intangible. Respect, fear, admiration, sympathy and liking all can be rewarding to people, as can moneys, goods and services.

Punishments are as diverse as rewards, ranging from social disapproval to fines. Disrespect, disapproval, dislike and social rejection can be punishing, just as can taxes/fines and repossession of belongings (e.g., foreclosures, car repossession, etc.).

Punishment works in the short-term only.

People don't like punishment. Punishment creates a desire for revenge. People will comply in the short term to avoid punishment, but they will resist and seek revenge in the long term.

Even in the short-term, not everyone should use punishment. Coercive power (punishment) will be accepted more easily from people with legitimate power. People who have referent power (liking) have access to a lot of punishment (social disapproval and rejection), but their use of it is not easily *accepted*.

Rewards work in the short-term or long-term.

People like rewards. Power can be gained by *rewarding* other people. Compliment others, thank others, approve of others, respect others, accept others – these are rewards each of you has to give. Ask yourself the extent to which you use them in your law practice.

Rewarding other people also increases your referent power (others will like you more), and often increases your information power (people tell things to those they like) and legitimate power (you are likely to be promoted more easily if others like you).

Summary

Power is the essence of bargaining, and you can increase your power in a number of ways. Regardless of how you increase your power, power is the essence of bargaining and you want it.