

Encyclopedia of Law & Society: American and Global Perspectives

Negotiation

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Book Title: Encyclopedia of Law & Society: American and Global Perspectives

Chapter Title: "Negotiation"

Pub. Date: 2007

Access Date: December 08, 2014

Publishing Company: Sage Publications, Inc.

City: Thousand Oaks

Print ISBN: 9780761923879

Online ISBN: 9781412952637

DOI: <http://dx.doi.org/10.4135/9781412952637.n486>

Print pages: 1057-1061

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<http://dx.doi.org/10.4135/9781412952637.n486>

Negotiation is the process of joint decision making in social interactions dealing with conflict resolution, or handling collaborative future interaction. It is a communication among individuals and groups trying to forge mutually beneficial agreements. Scholars consider that, in the context of mediation, arbitration, and litigation, negotiation is the most common form of dispute resolution. Negotiation allows the involved parties to resolve their differences without third-party intervention, to manage the decision-making process, and to control the outcome.

Parties engage in negotiation to improve their initial conditions and to resolve problems when no relevant, fixed procedural system exists, or when the parties prefer to work outside the system to reach better solutions to settle what each will give and take, or will perform and receive. Both participants must recognize that their relationship consists of mutual interdependence, and entails management of tangibles such as price or the terms of agreement and intangibles such as self-esteem, reputation, or values. In part an unstructured process, negotiation is thought to be the least formal, most flexible of the disputeresolution methods that include mediation, arbitration, or adjudication.

From the perspective of negotiation, one may analyze a wide range of social relationships and interdependencies—among individuals and within social groups such as families, firms, tribes, ethnicities, religions, classes, or nations—whether occurring when parties assemble formally around a negotiation table, or as an implicit, informal part of day-to-day life. Some social theories regard any interpersonal communication as a kind of negotiation, seeing individuals' interactions as a continuous negotiation over resources such as self-esteem, recognition, and status. Thus, any situation in which the presentation of the self should be managed can be regarded as a negotiation.

Approaches to Negotiation

Negotiation literature describes two primary approaches of negotiation: distributive (adversarial) and cooperative (integrative). The approach that one uses greatly affects the parties' relationship, the manner of conducting negotiations, and the ultimate outcomes. Most early negotiation theories dealt with the *distributive* style, “a kind of contest in which each party is trying to win” (Schelling 1960: 3), investigating the

strategies used to maximize their share of the resources in dispute, to minimize losses, and to achieve domination. These theories presumed an argument over a single matter (such as money) and the parties' inherently contrasting interests on that matter, making one's victory the other's inevitable loss. Each side takes on rational, clever, skilled, and goal-directed behavior; establishes its starting point and the best possible outcome; and determines their bottom line and their ZOPA (zone of possible agreement). This interaction follows a sequential pattern: presentation of one party's demands or proposals, interpretation and evaluation by the other, and counterreactions ranging from rejection to acceptance. The series of concessions between the high and low opening demands and the convergence closer to the midpoint was a form of negotiation dance.

The study of the competitive decision-making process of negotiators, which flourished because of national security concerns during the Cold War era, was significantly influenced by game theories, associating the negotiators' choices to the larger context of conceptualizations concerning individual choices. The game-theory approach to negotiation involved extensive research, which attempted to solve negotiators' problems based on theoretical multiple-choice games such as the famous *prisoner's dilemma* game, or the negotiator dilemma, and that calculated each [p. 1057 ↓] decision's risks. Power, a zero-sum resource, existed for one side or the other; tactics based on potential power were linked to possible outcomes.

Gradually, the emphasis on competitive methods of negotiation from a purely game-theoretical perspective was supplemented by an evaluation of the parties' subjective preferences and a search for gains left on the table. Studies of cognitive psychology challenged the full-rationality assumption of game theory, developing and elaborating the emphasis on biases and heuristics within the negotiation process. Scholars still study and explore other judgmental and emotional biases, establishing new paradigms of rational decision making and strategic planning in negotiation.

The *cooperative* mode of interdependence, well known in the negotiation literature, was considered an alternative motivational orientation to the competitive or individualistic orientation. Though several scholars previously emphasized the importance of integrative bargaining or collaborative mediation, it was not until the 1980s, as the Cold War began to recede, that this integrative style prevailed. In 1981, Roger Fisher and William Ury published their book *Getting to Yes—Negotiating Without Giving In*,

symbolizing a shift in perspective on negotiation from a competitive to a cooperative activity. In establishing the negotiation procedure, the authors distinguished between *positional* bargaining—divided between hard and soft (competitive and cooperative)—and the *metagame*. This second negotiation procedure, usually implicit, can escape notice; but it may prevent the either-or dichotomy of the hard-soft negotiation. Parties in a positional bargaining situation better perceive themselves as collaborative problem solvers and, hence, enter into a principled negotiation. The term *integrative bargaining*, variously known as cooperative, collaborative, win-win, or problem solving, describes a negotiation in which the parties' goals are not mutually exclusive and in which both sides can achieve their objectives. Fisher and Ury suggested basing the negotiation on four principles:

- 1. Separate the people from the problem. They advised negotiators to be soft on the people and hard on the problem, to depersonalize, save face, and maintain the relationship.
- 2. Focus on interests, not positions. The antifoundational assumption of the principled negotiation approach is that positions in negotiation veil its true movers or interests—that is, needs, desires, concerns, and fears. Later approaches differentiated between types of interests, some focusing on needs and values as the key for understanding interests.
- 3. Invent options for mutual gains. Keeping a collaborative, respectful atmosphere enables parties to brainstorm and generate creative options. Other scholars noted that the parties should work on their differences, avoid making premature judgments or fixating on one solution to expand the pie, create alternatives, and construct a “bridge solution” to the problems they encounter.
- 4. Insist on using objective criteria. This latter principle involves choosing between the options and regulating the negotiation by the parties' own agreement. They can choose a standard of fairness, efficiency, science, and even law, and avoid the dominance battle.

In his writings on the evolution of cooperation, Robert Axelrod opined that the optimal strategy in cases of repetitive prisoner dilemmas is that of tit for tat: begin cooperatively, retaliate if the other side is competitive, and forgive if the other side

becomes cooperative again. His writing is another manifestation of the growing interest in collaborative negotiation and the need to prove its strategic rational advantage.

Conflict Resolution

This new approach to negotiation, which in fact regulates the negotiation as a rational, collaborative, decision-making process, has a role in the development of the new discipline of conflict resolution. It marks the inherent tendency toward settlement and collaboration, which does not follow a purely socialscientific approach. In other intellectual spheres, Fisher and Ury's ideas recall the pragmatic emphasis on problem solving, needs-based analysis, and the call against either-or positional logic. The negotiation style they offered also parallels the feminine decisionmaking style as described at the same time by Carol Gilligan. Gilligan described a relational attitude of women and girls who go beyond the positions in [p. 1058 ↓] search for a transformation of a competitive situation through dialogue and problem solving.

The dominance of the principled negotiation integrative approach and its influence on the development of the mediation and conflict-resolution disciplines have attracted some criticism, which claims that the approach blurs the distinction between description and prescription. Others have stressed the altruistic, utopian values behind the holy grail of negotiation. Some have suggested that the adversarial mode cannot realistically be eliminated from the problem-solving process. Managing the tension between cooperative and distributive moves in negotiation and describing mixed bargaining situations were a few of the ways to balance the integrative constructive picture and to make it more realistic. Simultaneously, clinical negotiation courses have propagated in business, law, and government schools, and many academic programs have been established around the world constructing and developing the new discipline. Negotiation courses are offered today in many law schools; the original Negotiation Project, established by Fisher, resides within the Program on Negotiation (PON) at Harvard Law School.

Strategies

A large literature and many theories try to prescribe methods of how to negotiate or plan the negotiation at the prenegotiation phases. Scholars have suggested the following ideas as crucial for negotiation success:

- identify the common problems,
- find a mutually accepted definition to the problems and for framing it,
- determine the goals and objectives of the process and create a mutually accepted plan of the negotiation's agenda, procedures, and setting,
- evaluate and prioritize one's goals and possible payoffs, including identifying one's best alternative to a negotiated agreement (BATNA),
- agree on the order in which the issues should be discussed,
- keep awareness of the concerns, fears, and positions that lie beneath the interests of self and the other since their interrelation is a pathway to the solution,
- determine the zone of possible agreement (ZOPA) between the least and most-favorable solutions,
- identify the other's emphasized issues,
- identify points where issues could be packaged,
- develop and locate supporting facts and arguments to one's views and anticipate counterarguments the other side might present, and
- try to find out about the other's interests, alternatives, personal negotiation style, and approach to negotiation.

Much negotiation research aims to understand the elements influencing individual approaches, referring to various factors:

Personal Conflict Style

Researchers have suggested that individuals tend to develop conflict strategies compatible with their personality traits; the strategies are classified as integrative, distributive, or avoidance. One of the popular typologies is based on the relation

between the dimensions of care for the self and care for the other, positing five possible conflict styles: dominating, obliging, avoiding, collaborating, and compromising.

Trust

Another characteristic affecting cooperation constitutes one's ability to believe and act based on the other's words, actions, or decisions. Scholars suggest two types of interpersonal trust and distrust exist: calculus based and identification based. Each would determine the negotiator's ability to cooperate.

Different Values and Multiculturalism

Personal and cultural values tend to influence individuals who negotiate in a process that appears as an apparently rational decision-making process.

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Furthermore, what appears rationally accepted is culturally determined. According to this approach, most of the prescribed methods of negotiation, including Fisher and Ury's, are based on Western codes of interaction and communications that are individualistic and modern, emphasizing the content of a spoken text (these cultures are known also as low-text cultures). Different cultures hold disparate views regarding fairness, justice, anticipation of possible resolutions, significance of the written versus the spoken word, promises, or apologies.

Power Differences

From an interpersonal perspective, the sources of power applied in influencing others in negotiation affect the development of cooperation. Influence is the ability to change the beliefs, attitudes, or behaviors of another party; power is the potential for such influence. The softer the power base, the less surveillance and continued social dependence on the influencing agent are required to maintain the changes in the target of influence.

Some argue that reciprocal relationship in social agreements would last as long as the payoff is worthwhile for the less powerful party. According to this view, the power difference is what enables cooperation and reciprocity. Reciprocal relationships appear in two forms: a positive and negative balance equilibrium. A positive balance grants legitimacy to a situation in which the dominated get more than they invest. The negative balance enables a situation in which the dominated are requested to invest more than they acquire. Once a pattern of interdependency has been established, norms that sustain this situation are formed.

Conclusion

In the legal arena, negotiation was first acknowledged as crucial for understanding law by Henry Hart and Albert Sacks's postwar legal process school of thought. They contended that private ordering was the bottom layer of the pyramid of social order and focused on examining law in negotiation and context to comprehend its operation. Robert Mnookin and Lewis Kornhauser returned to the private-ordering notion in the 1970s, using the phrase "bargaining in the shadow of the law," which reemphasized the importance of negotiation to law. The inclination toward cooperative negotiation was imported into legal discourse, and the contextualization of legal rules through negotiation was reexamined.

In the broadest sense, negotiation studies tend to individualize and subjectify social interaction into a private business, where principles are subject to negotiation, differences are always individual, and no value is sacred. This tendency was challenged as the interest in integrative negotiation and other problem-solving mechanisms emerged. Many human-rights advocates—some of them lawyers—saw negotiation, with its needs emphasis, in opposition to the rights discourse in which they believed; they feared the privatization of social struggles.

Disciplines that have been developing negotiation studies, such as game theory, social and cognitive psychology, and instrumental economics, are supplemented today by an interest from political philosophy, narrative studies, literature, and linguistics, creating a richer perspective for the field. In the twenty-first century, the critique of the rights discourse and the strengthening of ideas such as multiculturalism and legal pluralism

may reinforce the importance of negotiation as a process striving for a dialogue and for recognition in a world lacking a comprehensive rule of law or common standard, and within the complex private interaction of multiple identities and singular life histories.

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<http://dx.doi.org/10.4135/9781412952637.n486>

See also

- [Conflict](#)
- [Dispute Resolution, Alternative](#)
- [Dispute Resolution, Psychology of](#)
- [Game Theory](#)
- [Mediation](#)
- [Relativism, Cultural](#)
- [Reciprocity](#)
- [Settlement](#)

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