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Negotiation and Bargaining

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Negotiation is the process of conferring with others to reach an agreement. Bargaining occurs when there is a dispute over the terms involved. A straightforward allocation of adequate resources would involve negotiation, but if there is a shortage of time, money, or materials, then the parties will bargain over the exact distribution to promote their own best interests. Collective bargaining is a structured process where a group such as a union will negotiate with an employer as a single unit about terms of their employment contract.

The basic conditions for negotiation are that the parties are voluntary participants and there is a positive bargaining zone. Thus, there is no negotiation in mugging at gunpoint or when groceries are offered at a fixed price in the store and there are sufficient paying customers that the storekeeper has no incentive to

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lower the price. A bargaining zone is a range of exchange where one side is willing to offer and the other is willing to accept. If neither side is willing to extend the zone then there is no room for meaningful negotiation.

There are several other necessary elements for negotiations to be successful. Initially, the parties involved must have the power to settle. Second, all the parties involved need to be willing to take part in the negotiation. If critical parties are absent or if one party is not prepared to bargain in good faith, then there is little hope for a workable agreement. Moreover, the parties need to be psychologically prepared to negotiate; if there is high emotion, inadequate information, or failure to formulate a negotiation strategy, then the parties' negotiations are unlikely to be productive.

The parties must in some way be mutually dependent and have the ability to influence each other. Such influence can be seen as having something the other party desires or having the means to increase benefits for the other side (or conversely the ability to inflict distress). A negotiator needs some form of leverage to provide an incentive to the other side to alter their behavior. Where the power is completely disproportionate, meaningful negotiation with the other party is also unlikely to occur. Parties must also have some sense that delay will result in some adverse action. If only one side is under great time pressure, then the party with time to spare is likely to use that leverage to extract greater substantive gains from the party that is looking for a quick solution. The Paris peace talks to terminate the Vietnam War illustrate this: The Vietcong were able to procrastinate to the point where the Americans made substantive concessions to hasten the negotiation. On a more mundane level, the householder with leaking pipes needs a repair urgently and thus will be in no position to bargain with an available plumber.

If there is a better deal available elsewhere or the psychological stress is not worth the potential benefits, then people will break negotiations. Contemporary negotiation theorists often refer to the point at which someone will walk away by saying that any deal must improve on a party's "best alternative to a negotiated agreement."

Finally, participants must feel that there are settlement options available that will meet their needs. In some cases, one party will not want to create a precedent of compromise or will want to establish a principle, even at the risk of losing the case entirely. Thus, people charged with a criminal offense will often be unwilling to make a plea bargain in order that they can have a public hearing that they believe will lead to complete exoneration. Similarly, tort cases where one party is looking for definitive vindication may not be suitable for negotiation.

Types of Negotiation

In very broad terms, we can classify negotiation as belonging to either of two schools: the so-called positional negotiation and interest-based negotiation. *Positional bargaining* is a negotiation strategy in which the disputant takes a series of positions that represent alternate solutions. It is also referred to as *distributional bargaining* because its primary function is to allocate a limited resource. The positions are rank ordered by the negotiator according to his or her preferred outcomes. The initial position represents the maximum gain, and each subsequent one represents a compromise from that ideal. Each party will have at

least two positions: the opening position and the “bottom line.” Agreement is reached when the parties' positions converge and they enter an acceptable settlement range between these two extremes. An example of this sort of negotiation would be one between a car salesman and a potential customer. The dealer has a bottom line of \$20,000 but feels that the completely naive customer would pay the sticker price of \$25,000. The customer is unwilling to pay more than \$22,000 but starts at \$18,000 to give himself some flexibility in the negotiation. So the customer offers his \$18,000 and the salesman demands \$25,000, although they both know that they will make concessions toward the other: They subsequently try to concede in as small increments as possible without forsaking the deal. They may come to an agreement in the range of \$20,000 to \$22,000.

Positional bargaining occurs most typically when the parties are not significantly interdependent and when there is no value placed on a continuing relationship. It also comes into play when there are limits on the negotiation—for example, when there is restricted time or when the items or services are not fungible and are strictly finite. Therefore, at a flea market, for instance, positional bargaining would be the standard way of reaching a settlement on the price of items for sale. The goal of each party is to win as much as possible, where a win for one side is thought of as a loss for the other. A distinct disadvantage of this approach is that it is difficult to alter position while saving face: If a car dealer says that his “bottom line” is \$25,000, then it becomes hard for him to subsequently make concessions or justify a new, lower price. Moreover, if prices are somewhat arbitrary, as they are at a flea market, then argument over two proposed prices for a good can quickly descend into a contest of wills, which itself can sabotage a possible settlement. The adoption of positional bargaining fosters gambits, bluffing, extreme posturing, and game-playing in that it is driven mainly by the best individual payoff, however that may be accomplished.

Positional bargaining may be contrasted with *interest-based bargaining*, which focuses on satisfying as many interests or needs as possible for all negotiators (alternatively named *principled bargaining* or *integrative bargaining*). It does this by using a problemsolving approach, which tries not to distribute rewards in a win/lose manner. It has different initial assumptions from positional bargaining in that it recognizes that each party has multiple interests—a concern not only for the substance of the agreement but also for how the way in which settlement is reached affects the parties' feelings about the result. If one side feels railroaded, unheard, cheated, or bluffed, then the process is in some way tarnished and more likely to unravel whatever the substantive agreement may have been. Interests may be combined in a variety of ways, leading to a wide range of possible solutions. Since resources are not seen as limited to the monetary offers alone, more factors can be brought into the negotiation.

Interest-based bargaining is a process involving several stages. As it is still an unusual way of negotiating, parties initially have to learn about and accept the procedure and realize it requires a modicum of trust and disclosure. Then, they have to define what they see as the issues in the case. This might be done by finding out the reasons behind a stated claim that may go beyond getting the best substantive payoff; a person may have a strong interest in perceiving that she has not been cheated or need to feel that her concerns have been heard and attended to. The initial monetary offer may then be framed in terms of these interests, say, precedent in other deals, the maximum that someone can afford, the average price based on research on the Web, or similar reasons.

Each side openly discusses its needs, interests, and concerns. The parties then collaboratively generate options for settlement based on the interests that have been voiced and the criteria that are mutually acceptable. This level of abstraction allows the parties to generate multiple options for settlement. A key element is for the parties to find agreement in principle, for example, that a dealer is entitled to a fair profit or a customer should not pay more for a used car than the blue book value. Thus, parties may agree on, say, the principle of splitting assets equally in a divorce or that a reasonable price for real estate is the middle estimate from three assessors. Many assert that it is easier to argue rationally about the foundation principle than it is to haggle over positions. The various options are then assessed, and some final bargaining occurs.

Consider an example: A worker asks his boss for a raise, and his boss responds that he cannot afford it. In a positional framework, this negotiation is liable to end in stalemate or at least with a disgruntled employee. With an interest-based approach, the two sit down and discover each other's needs and concerns. It could be that the boss would like to pay more but cannot afford to do so on his present margins. The worker is actually looking for money largely as a symbol of recognition for what he perceives to be superior performance. Collaboratively, they generate options that will satisfy both their interests: perhaps some nonfinancial reward for the worker, a delayed bonus contingent on greater projected profits in the future, the opportunity for overtime, and so forth. The investigation into the reasons behind the positions allows both parties more flexibility and creativity in attempting to resolve their differences.

Appropriate Bargaining Styles

Interest-based bargaining has great potential for reaching lasting settlements that satisfy specific interests in a way that promotes trust and good relationships. Interest-based bargaining does seem to offer the best means for disputants to reach agreements that approach Pareto optimality. However, it is not suitable for all disputes; it takes time, a cooperative environment, and a willingness to disclose information that in positional bargaining would often be a closely held secret. It is also quite a complex process requiring trust, skill, creativity, and practice. We are all more familiar with positional negotiation because it is more typical of our everyday encounters; yet we should recognize that it tends to bruise relationships because of the lack of trust and the subterfuge that it encourages. It may also lead to a less than optimal agreement because the full range of interests and potential exchanges remain unstated.

Contemporary research in negotiation has looked at both the rational quantitative dimension of negotiation and the more qualitative issues brought into play by the psychological dynamics and motivations of the parties. It recognizes that it is appropriate for most negotiation to incorporate both distributive and integrative elements. There has also been considerable work dealing with the role of third-party intervention to facilitate optimal outcomes, the ethics of negotiation, and the nature of apparently intractable conflicts.

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Further Readings

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