Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential

* * *

IN A WORLD OF RATIONAL ACTORS and perfect information, negotiation outcomes would hinge only on the existence of an overlapping bargaining range between the parties. In the legal realm, the potential transaction costs of litigation would provide additional incentive for nearly all suits to settle. However, even though a majority of lawsuits do settle, a significant portion still result in costly litigation, and a much greater number settle only after incurring substantial transaction costs. …

Individuals’ motivations play a critical role in understanding why legal negotiations often fail to yield settlements, or settlements earlier in the life of a legal dispute. Individuals have strong instrumental motivations—they want to achieve goals that match their preferences regarding the resolution of the dispute. Typically, these are goals that will maximize their own allocation of resources. Negotiation literature has suggested that negotiation failures happen, in part, because the desire to maximize gains and minimize losses leads individuals to act in ways that prevent mutually beneficial agreements from occurring. …

Research on the psychology of negotiation, however, has suggested that an exclusive or central focus on individuals’ motivations to maximize gain and minimize loss may miss an important part of the picture. This body of research conceptualizes individuals not as would-be rational actors led astray by their own cognitive mistakes, but rather as complex actors motivated by social concerns, and influenced by affective processes and cultural norms. Fairness motivations have also been considered…[but] fairness research relating to negotiated conflict has focused predominantly on outcome fairness, or distributive justice, with only limited attention given to the role of fairness of process, or procedural justice, in negotiation.

Research on procedural justice in psychology has produced a robust set of findings suggesting that individuals are motivated by concerns about the fairness of the process by which decisions are made, and that people place a high value on the fairness of the process by which decisions are made and on the fairness of the treatment they receive from others. Procedural justice research has shown that people care not just about maximizing
“The results of these two studies suggest that increased levels of procedural justice may encourage the acceptance of negotiated agreements.”

In Study 2, high levels of procedural justice led to higher joint outcomes, and also led to outcomes in which the results were more equally divided between the parties. Higher levels of procedural justice were also linked to a higher likelihood that information was disclosed that could lead to the opportunity for value creation; these results suggest that procedural justice facilitates an expansion of the negotiation pie by encouraging the requisite information disclosure.

**THE RESULTS OF THESE TWO STUDIES** suggest that increased levels of procedural justice may encourage the acceptance of negotiated agreements. … [However,] because the data are correlational, we cannot rule out the possibility that people were satisfied with the outcome or more willing to accept it for other reasons, and these assessments then in turn caused them to infer higher levels of procedural justice. …

The findings outlined support a view of negotiation behavior distinct from both the “lawyer as shark” and the utility-maximization paradigms. The findings suggest that when negotiators act in procedurally fair ways, they lose nothing at all in their “bottom line” in a zero-sum setting, expand the negotiation pie in a setting in which there is integrative potential, and in fact gain other important advantages in terms of agreement acceptance. … Thus the wise negotiator, to achieve successful outcomes, may want to act in procedurally just ways when dealing with others in order to foster greater acceptance of the agreement and more disclosure of value-creating opportunities.

We do not doubt that maximizing gain and minimizing loss are ostensibly the most important goals of the attorney agent. But procedural justice offers both a complement to the tools in a rational actor’s arsenal as well as an alternative vision of the basic tenets of a negotiator. This research challenges the premise at the heart of the rational actor model: what drives people in their assessments of outcome is not just the gain maximizing/loss minimizing analysis of the economic results that they achieve, but also how fairly they feel they have been treated in the negotiation process. 

Rebecca Hollander-Blumoff, associate professor of law, focuses her teaching and research on the intersection of law and psychology in the context of dispute resolution. Her co-author, Tom R. Tyler, is a professor of law and of psychology at New York University.