

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



**T**HE NEGOTIATION LITERATURE has long considered why people fail to reach mutually beneficial, or economically efficient, agreements. This failure has important implications for an overburdened legal system: when individuals fail to reach agreement, they often take their disputes into the legal arena. Many cases within the legal system do settle, but both short- and long-term failure to reach mutually beneficial agreements tax the system with ongoing case management. ...

The behavior of lawyers may play a role in breakdowns in conflict negotiation. The “lawyer as shark” metaphor, although a caricature, reflects a widely held view that lawyers must be aggressive and tough in order to best protect their clients’ interests. Lawyers are trained and steeped in the adversary system. This system, with its duty of zealous representation, encourages attorneys to exalt their client’s interests while ignoring or denigrating those of their opponent. Indeed, the popular saying “nice guys finish last” reflects a general perception, not limited to the legal context, that treating others in a fair manner may be a display of weakness that will lead to personal loss.

In the context of being a lawyer, such weakness may be deemed unprofessional or even potential malpractice. But if acting fairly does not hurt, and perhaps even helps, one’s ability to represent his or her clients, then lawyers need not fear that fair treatment of an adversary is irresponsible. This

article presents the results of two studies that suggest that legal conflicts might be more successfully resolved if lawyers paid greater attention to issues of fairness of process, or procedural justice, in legal negotiation.

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**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

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their outcomes, or even about the distributive justice of their outcomes, but also care, independently, about the fairness of the process by which those outcomes were obtained.

Our goal is first to test the hypothesis that procedural justice plays a role in shaping the acceptability of negotiated dispute resolution outcomes. Two correlational studies test the argument that the willingness to accept bilateral negotiated agreements is shaped by the fairness of the negotiation process separately from the objective or subjective quality of those agreements. ... Our second goal is to explore the difference in procedural justice effects in bargaining that is largely distributive versus bargaining that has a greater potential for being integrative. Because procedural justice is characterized by increased levels of trust and participation, we hypothesize that settings high in procedural justice may lead to increased disclosure of information, the necessary predicate to integrative agreement, and that such information disclosure is in fact likely to create agreements that are more integrative.

Study 1 tests the effects of procedural justice on outcome acceptance in a situation in which there is little opportunity for reaching an integrative agreement, although both parties gain from reaching an agreement within the zone of possible agreement. ... Study 2 uses a similar negotiation, but one that involves greater opportunity for the parties to make an integrative agreement. In Study 2, we seek to explore the effects of procedural justice on both outcome acceptance and integrativeness of the negotiation process and outcome.

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**THE PARTICIPANTS IN THIS STUDY** were first-year law students. The students were enrolled in a required law school class within which they participated in a negotiation exercise that included a simulation of a negotiation between two attorneys. In this exercise, each student was randomly assigned a role as a lawyer for either a homeowner or a contractor in a dispute over a building contract.

Regression analyses [in both studies] indicated that people were more willing to accept the agreement and were less interested in moving forward to arbitration if they rated their negotiation as procedurally fair. ... The analysis indicates that procedural justice had an influence beyond that of outcomes, but it does not directly compare the magnitude of that influence, so it does not show that procedures are more important than outcomes. However, the influence of procedures is distinctly important, and significantly so.

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.

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**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. ||||

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