
In Practice

The Strategic Use of Interests, Rights, and Power to Resolve Disputes

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To ensure success in resolving difficult disputes, negotiators must make strategic decisions about their negotiation approach. In this essay, we make practical recommendations for negotiation strategy based on Ury, Brett, and Goldberg's (1993) interests, rights, and power framework for dispute resolution and subsequent empirical research by Brett, Shapiro, and Lytle (1998). We discuss how negotiations cycle through interests, rights, and power foci; the prevalence of reciprocity; and the one-sided, distributive outcomes that result from reciprocity of rights and power communications. We then turn to using interests, rights, and power strategically in negotiations. We discuss choosing an opening strategy, breaking conflict spirals of reciprocated rights and power communications, and when and how to use rights and power communications effectively in negotiations.

Much of the recent negotiation literature focuses on using interest-based, or integrative (win-win) negotiation strategies to produce satisfying, mutually beneficial outcomes (e.g., Thompson 1998; Bazerman and Neale 1992; Fisher, Ury, and Patton 1991; Pruitt 1981). Although these prescriptions are attractive and useful, the reality is that negotiations, especially in the dispute

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context, often become ugly and difficult, making the use of integrative strategies neither easy nor effective. One party, for example, may not be willing to come to the negotiation table at all, an experience shared by many naive customers of small Hong Kong electronics shops who find that their expected purchase was replaced upon delivery by a significantly less expensive product. When returning to complain, they discover that the storekeeper (who very skillfully has covered his tracks) refuses to acknowledge their claims, exchange their purchases, or refund their money.

Once in negotiation, parties may find themselves drawn to respond to threats with counterthreats, escalating the negotiation to a standoff from which it is difficult or embarrassing to retreat and then move toward any sort of workable solution (Walton, Cutcher-Gershenfeld, and McKersie 1994). The dismissal of three employees at Cathay Pacific Airline, for example, spiralled into a series of threats between the Flight Attendants Union and Cathay Pacific management which ultimately escalated into a 17-day strike which cost the company millions of dollars (Tyrrell 1993).

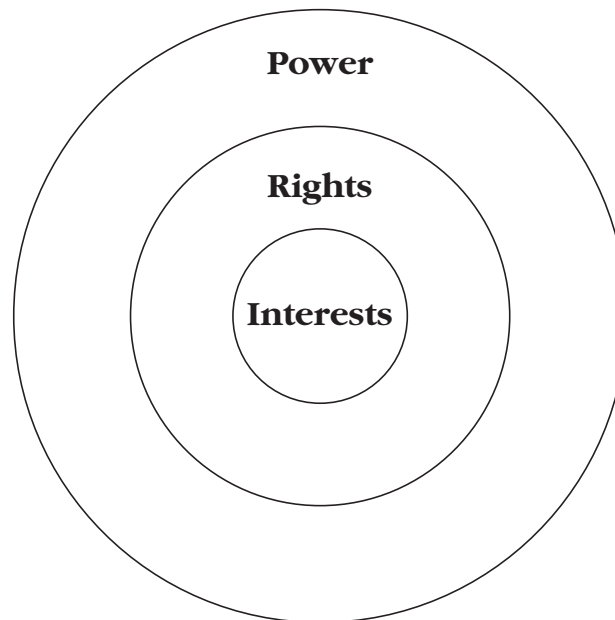
The escalation of such conflicts, whether resulting in strikes, long and arduous lawsuits, paralyzing power struggles, or simply the burning frustration of not getting what you think you deserve, is associated with tremendous costs in time, effort, money, resources, and lost productivity. While parties involved in conflicts may be aware of the costs, negative consequences, or the ineffectiveness of persisting with an obviously ineffective approach, they do not seem immune from getting drawn into the downward spiral. They may respond in kind to contentious approaches without a great deal of forethought about the implications for how the ensuing negotiation is likely to evolve. As a result of this failure to carry out their own strategy, parties may find themselves completely unable to engage the other party to get what they want.

Negotiators, in our opinion, need to become more strategic in the selection and implementation of approaches to negotiation rather than merely sticking to one familiar approach or being reactive to the provocation of the other party. Our purpose in this essay is to provide negotiators with strategic options for negotiating the resolution of disputes. These options are set in the context of the framework of interests, rights, and power developed by Ury, Brett, and Goldberg (1993) and on recent empirical research presented by Brett, Shapiro, and Lytle (1998). Our focus is on the practical implications of this theory and research for managing the negotiation process strategically: knowing when and how negotiators can effectively implement interests, rights, and power strategies in negotiations, as well as how to deflect other negotiators intent on using contentious rights and power strategies.

Interests, Rights, and Power: Three Approaches for Resolving Disputes

According to Ury, Brett, and Goldberg (1993), disputants can choose to focus on several different approaches to negotiate: interests, rights, or power.¹ Focusing on interests means that the parties try to learn each other's underlying needs, desires, and concerns, and find ways of reconciling them in the construction of an agreement. A focus on interests provides the opportunity for learning about the parties' common concerns, priorities, and preferences, which are necessary for the construction of an integrative, or a mutually beneficial agreement that creates value for the parties. Focusing on rights means that parties try to determine how to resolve the dispute by applying some standard of fairness, contract, or law. A rights focus is likely to lead to a distributive agreement — one in which there is a winner and a loser, or a compromise that does not realize potential integrative gains. Focusing on power means that parties try to coerce each other into making concessions that each would not otherwise do. A power focus also usually leads to a distributive agreement, and potentially can result in a desire for revenge or the creation of future disputes.

Figure 1
Three Approaches to Resolving Disputes



The interrelationship between these three approaches is illustrated in Figure 1 as three concentric circles, with reconciliation of interests occurring within the contexts of the parties' rights and power, and determination of rights occurring within the context of parties' power to abide by the determination (Ury et al. 1993). Ury et al. argue that all three elements exist within a single dispute and that, while negotiating, parties may choose to focus on interests, rights, or power as well as cycle among these three approaches. In other words, interests, rights, and power provide three different strategic alternatives for negotiating the resolution of disputes. The extent to which parties utilize all three approaches within a single negotiation is one of the questions addressed by our research.

The Case of Scott and Rapid: An Empirical Study

In order to study how parties negotiate the resolution of disputes, we audio-taped 25 negotiations of a simulated dispute between the president of a small printing company (claimant) and a large computer company (defendant). Half the claimants and half the defendants were students in a negotiation class; the other half were either students who had not taken the negotiation course or were employed managers. The purpose of having students negotiate with non-classmates was to control for class history, past and future, that might artificially inhibit contentious communications relating threats of rights and power. All negotiators had at least five years of business experience and 90 percent had (or were in the process of completing) an MBA degree. Men composed 73 percent of the sample and women 27 percent. The average age was 28.

The dispute resolution simulation was Goldberg and Brett's (1998) *Rapid Printing versus Scott Computers*. In this simulation, officials at Rapid had the idea to link their major customers to Rapid's typesetting computer. This entailed placing a computer at each customer's site and linking the computers to Rapid's main computer. Rapid contracted with Scott Computers to provide the necessary hardware and software for this project. The dispute arose because Rapid claimed that Scott had agreed to supply the hardware with applications software, in addition to the operating system software; Scott disputed this claim since the contract between the two companies did not mention applications software. Rapid faced bankruptcy if the software it believed it was owed was not made available. (The system does not work without the applications software and Rapid, because it is receiving no revenue from the new project, cannot make the payments it owes Scott under the contract.) Rapid also could threaten negative publicity for Scott, a firm that is a relatively new entrant in providing computers to the printing industry.

We selected this simulation because the contract established a basis for a rights focus; the threat of bankruptcy and the bad publicity served as a basis for a power focus; and the parties' mutual interest was clear — getting Rapid's system working and generating profits with Scott equipment.

Table 1
Negotiation Process Coding Categories

Code	Average Frequency	Definition	Example
1. Procedural Remarks	2.7%	Refer to the process or rules of the negotiation itself, or how the negotiation is to proceed.	How shall we proceed? I suggest that we discuss our views on each issue first.
2. Positive Expectations	0.5%	Refer to positive expectations for the negotiation interaction. May include recognition of similarities in preferences or concerns, or in identifying common goals.	I know both of us can benefit from coming to an agreement.
3. Interests	20.8%	Interpret facts with reference to the wants, needs, or concerns of one or both parties. Why the negotiator wants or feels the way he/she does.	In order to be able to pay you, we need the software to generate profits.
4. Rights	6.0%	Non-proposal related comments or references to norms, standards, fairness, justice, or contractual issues.	That is not in the contract. I am not allowed to give those things to you.
5. Facts	26.2%	Substantive statements about the roles, situation, or history of the dispute. This includes not only the giving of such information, but requests, responding to requests, interpretations, clarifications, repetitions, summaries, or disagreements about facts.	My understanding of the situation is that... My salesman said... It seems that it is my vice-president's word against your salesman's.
6. Attacks	1.2%	Uncooperative statements which are attacking, accusatory, or disapproving.	You violated the contract! Your sales representative lied!
7. Intimidations	2.7%	Uncooperative statements of negative consequences that may affect one party as a result of the power, status, or ability to impose harm.	If you refuse to agree now, my company will pursue our lawsuit and surely win in court.
8. Concessions	1.7%	Statements which change the initial offer, position, or proposal away from the target.	I will give you ___ if you give me ___.
9. Requests for Proposals	2.1%	Questions asking for a proposal or offer.	What are you willing to pay? What would be an acceptable solution?
10. Tentative Proposals	18.1%	A statement that does not necessarily ask the question "why" or respond to "why" the negotiator wants something, but is an offer proposing a tentative solution incorporating what he/she wants. These statements are flexible and not absolute.	Perhaps we ought to consider using Rapid as a Beta site.
11. Absolute Proposals	2.5%	An offer or proposal that is stated in an inflexible, absolute form, or resistant way. Communicating a required solution or condition if any agreement is to be reached. Includes an element of uncooperativeness.	We must get at least ___ or there will be no deal.
12. Residual	15.5%	Any statements that do not fit into the above categories.	Yes...; No...; I don't know...; OK...; Uh-huh...;

Another important feature of the simulation for our research purposes was that the outcome was open-ended. The simulation allowed the participants to be creative in negotiating and constructing an agreement.

Each pair of disputants recorded their negotiation. These tapes were transcribed and the transcriptions divided into complete thought units (subject-verb phrases) within speaking turns. Each thought unit was categorized into one of the twelve codes that are defined in Table 1. Two coders, blind to the hypotheses, independently coded each transcript, with inter-coder reliability over .80 for all codes. Negotiators also reported their agreements in writing, which were coded into the seven nondiscrete categories (a dyad could receive more than one outcome code) defined in Table 2. Inter-coder reliability for these outcome codes was .87.

Table 2
Definitions of Dispute Outcomes

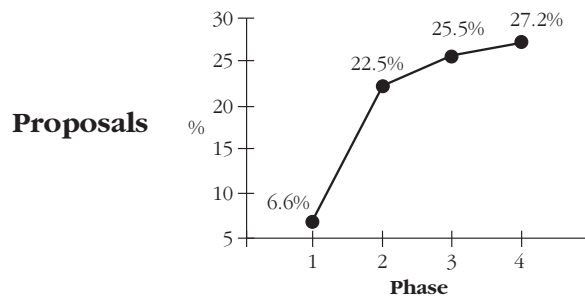
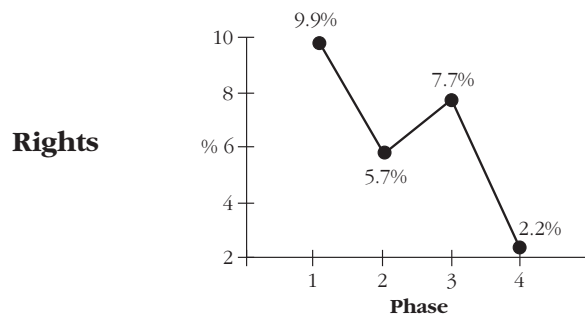
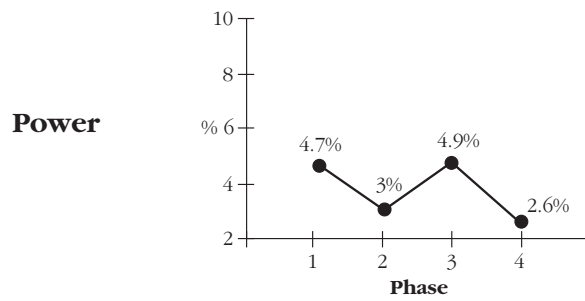
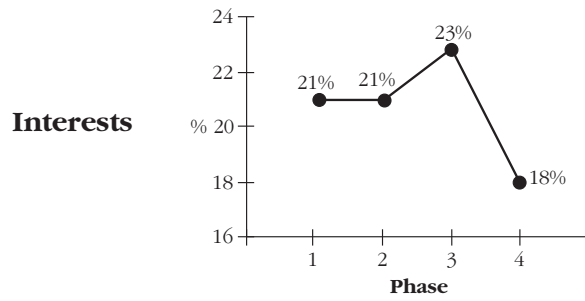
Distributive Outcomes	Integrative Outcomes
1. Scott pays Rapid for lost profits	1. Rapid to be a "beta test site" for Scott's new software
2. Scott to forgive all payment of debt	2. Rapid to participate with Scott in jointly marketing Scott's new software
3. Scott to forgive some payment of debt	3. Rapid and Scott enter into an arrangement to share Rapid's profits in lieu of payment
4. Software price to be reduced	

Cycling through Interests, Rights, and Power: Empirical Findings

We found that parties moved frequently among interests, rights, and power in the same negotiation. A dyad, for example, might begin by discussing the facts of the case, then set out positions in terms of power, go to interests, change the focus to the rights each party perceived it possessed, make tentative proposals for settlement, fall back to a power duel, etc. These changes in strategic focus occurred in 23 of the 25 dyads; two of the dyads eschewed rights and power. The focus also continued changing throughout the negotiation. Across dyads, however, there was a stronger focus on rights and power in the first and third quarters of the negotiations than was the case during the second and fourth quarters.

Figure 2 shows the relative frequency of interests, rights, power, and proposal communications in each quarter of the negotiations. During the first quarter of the negotiations, the relative frequency of interests, rights, and power communications was interests 21 percent, rights 9.9 percent, and

Figure 2
Relative Frequency of Interests, Power, Rights,
and Proposal Statements in Each Negotiation Phase



power 4.7 percent.² There was discussion of settlement proposals in 6.6 percent of the communications during the first quarter. Thus, during the first quarter of the negotiation, parties seem to be setting up their positions as well as communicating their perceptions of their rights and their sources of power. The second quarter of the negotiations shows a decrease in the frequency of contentious communications. Power decreased to 3 percent and rights to 5.7 percent of the communications in the quarter, while interests communications remained relatively stable at 21 percent. During this quarter, the frequency of proposals increased significantly, to 22.5 percent from 6.6 percent in the first quarter, reflecting greater activity toward defining the limits and characteristics of potential solutions to the dispute.

The third quarter of negotiations was characterized by an increase in the frequency of interests, rights, power, and proposal communications. Communications involving interests increased from 21 to 23 percent, rights increased from 5.7 to 7.7 percent, power from 3 to 4.9 percent, and proposals from 22.5 to 25.5 percent. Why were parties turning to rights and power communications relatively more frequently in the third quarter? We suspect that some negotiators were emphasizing the unacceptability of the proposals they were receiving. Others, having received an acceptable proposal, were probably using rights and power communications to try to coerce a more favorable distributive split. During the last quarter, use of interests, rights, and power communications decreased. Interests decreased from 23 to 18 percent, rights from 7.7 to 2.2 percent, and power from 4.9 to 2.6 percent. The most activity during the fourth quarter hinged on the parties cementing an agreement by exchanging proposals. Proposals increased from 25.5 percent in the third quarter to 27.2 percent in the fourth quarter.

Consistent with Ury, Brett, and Goldberg (1993), we found that most negotiators cycled through all three approaches during their negotiations. Across the 25 negotiations that we studied, however, we found more emphasis on rights and power in the first and third quarters than in the second and fourth quarters of negotiation. Our finding that there were different strategies used by each negotiator in the same negotiation led us to another level of inquiry. There is substantial research indicating that reciprocity, or the greater than base-rate probability that an act will be conditional on the partner's prior act (Gottman 1979), pervades negotiations (Deutsch 1973; Putnam and Jones 1982). Yet, if negotiators are cycling between interests, rights, and power, how much reciprocity is going on in these negotiations?

Reciprocity of Interests, Rights, and Power

The literature on reciprocity of communications during negotiations asserts that a variety of different types of communications, including cooperative, distributive, procedural, and affective are reciprocated (Donohue 1981; Putnam 1983; Weingart et al. 1990). In other words, negotiators tend to reciprocate each type of communication previously spoken by their partners. This literature suggests that interests, rights, and power

communications will be similarly reciprocated. However, because we found a significant degree of cycling between interests, rights, and power, we wondered whether reciprocity coexists with the movement among negotiation strategies.

Our results indicate that although there was a significant amount of movement between strategies, a reciprocal response was in fact the most likely response to communication involving interests, rights, or power. No other response was as likely as a reciprocal response, and the reciprocal response occurred with a greater than chance probability. Interests were reciprocated 42 percent of the time, rights 22 percent, and power 27 percent. Proposals for settlement were reciprocated 43 percent of the time, and general facts about the situation 55 percent. These reciprocity percentages are all significantly different from the base rate level of chance reciprocity, which is 10 percent for each category.

Reciprocity of rights and power communications, although significant, occurred less frequently than reciprocity of interests, facts, and proposals. This finding led us to investigate the implications of reciprocating rights and power communications. The negotiation literature suggests that when rights and power communications are reciprocated the negotiation may enter a negative conflict spiral and the outcome may be in jeopardy (see, e.g., Rubin, Pruitt, and Kim 1994; Schelling 1960; Weingart 1997).

Reciprocity and Dispute Outcomes in Cases Involving Rights and Power

Ury, Brett, and Goldberg (1993) suggest that the process of determining who is right or has more power results in a competition between parties over who will prevail. This claim is generally supported by research reporting that the higher the overall frequencies of arguments, personal attacks, threats, and demands, the more likely that outcomes will be one-sided or distributive (Olekalns, Smith, and Walsh 1996; Pruitt and Carnevale 1993; Rubin and Brown 1975). Parties may argue about who is right or wrong under the contract or the law and who is more powerful without addressing the underlying reasons why the dispute has happened in the first place. Compared to a power approach, we believe a rights focus may be somewhat less damaging to the relationship if the dispute is taken out of the parties' control and decided by a court or a third party. Power approaches, on the other hand, may be more contentious if there is direct interaction, and may create new disputes and leave open opportunities for revenge. Both of these approaches, however, may have high costs in time, effort, and money, and leave little opportunity to address the causes of the dispute or to create mutually beneficial solutions.

We found that the relative frequency of reciprocated rights-and-power statements correlated significantly with the degree to which the outcome of the negotiation was extremely one-sided ($r = .38, p < .05$). Across negotiations, the more frequently contentious communications about rights and

power were reciprocated, the more likely that the outcome of the negotiation benefited one party to an extreme. Interestingly, in this case where Rapid had neither rights (there was nothing in the contract regarding the software that Rapid was demanding) nor power (Rapid was in dire financial straits), the reciprocal focus on rights and power benefited Rapid's outcome.

Rapid's plight was similar to the frequent situation that occurs in world financial markets, when one country is unable to meet its debt payments and is bailed out by other countries concerned about the global impact of the first country's default. Although some may question the wisdom of bailouts, sometimes they can be a technique in one's favor. Our research suggests strongly that Rapid can negotiate a much better distributive outcome for itself by engaging Scott in a conflict spiral of reciprocated rights and power communications. Of course, this is a risky strategy for Rapid. Scott might simply let Rapid go bankrupt in response to such a strategy rather than offer what would keep Rapid in business (although not meeting all of Rapid's desires). The research suggests that if Scott wants to keep Rapid in business, but not pay too much, Scott must avoid getting drawn into a conflict spiral.

Strategic Implications for Negotiations

Our data-based exploration of the interests, rights, and power strategies for resolving disputes provides a number of insights into contentious negotiations. First, our research affirms that negotiators use a variety of different approaches during dispute resolution negotiations. One approach is interest-based, but negotiators may spend substantial time discussing facts, making proposals, and posturing with respect to rights and power. Using these different approaches strategically, particularly confronting rights and power strategies when they are used against you, is an important negotiation skill. Second, our findings with respect to reciprocity help to explain why it is so difficult to keep a negotiation focused on interests if the other party uses rights or power. While reciprocity can help to keep parties focused on interests, it can also draw parties into conflict spirals. Knowing how to manage reciprocity so as to sustain your negotiation strategy regardless of the other party's approach is another important negotiation skill. Third, the one-sidedness of distributive outcomes is affected by reciprocity of rights and power communications. Therefore, strategies for refocusing the negotiation away from rights and power are important negotiation skills.

In the remaining sections of this essay, we focus on strategies for managing dispute resolution negotiations and offer practical recommendations to negotiators concerning: which strategy to use when beginning negotiations; how to deflect rights-and-power strategies and refocus the negotiation on interests; when to use rights-and-power strategies; and how to implement rights-and-power strategies effectively.

Starting the Negotiation

There is no one “best way” to approach a dispute. How you begin a dispute resolution negotiation should be a strategic choice based on a careful analysis of the parties, their goals, and the situation. Before going to the negotiation table, it is important to evaluate the pros and cons of beginning with facts of the case, rights, power, or interests against the unique features of each dispute situation.

Facts. Beginning the negotiation by discussing facts helps delineate the area of dispute: what parties agree about and what they do not. In some cases, discussing the facts can be constructive in discovering what the situation is and what the problems are or even identifying what a potential solution might be.

Negotiators may find that there are no facts in dispute, but that the interpretation of the contract or the law is in dispute. In such cases, seeking advice from third parties or legal experts to clarify how a court would interpret the contract and law may give parties a realistic assessment of the rights context of their dispute and provide impetus for settlement.

Alternately, the parties may find that they do not agree on the facts. In the case *Rapid versus Scott*, for example, Scott argued that its representative had never offered the applications software, while Rapid argued that the Scott representative had promised the software for free. Unless one party can provide the other with new, credible information supporting that party’s interpretation of the facts, the dispute over the facts is likely to spiral into a he said/she said situation, which is unlikely to result in any sort of solution to the dispute.

Rights. Opening the negotiation by presenting an interpretation of the rights framework of the dispute, if you believe that it is in your favor, is a strong offensive opening. A rights opening lets the other party know that you think you should prevail in the dispute and why. For example, Scott could open the negotiation with the statement that there is no legal basis for Rapid’s claims because there is no mention of applications software in the contract, and therefore, no court would find in favor of Rapid. Of course, had the other party already accepted this interpretation of the rights framework, there would likely be no dispute to resolve.

Such an opening, we believe, may encourage a reciprocal defensive response presenting an alternative interpretation of the rights framework. For example, Rapid could counter that there was a verbal agreement between the two representatives, and that Scott should honor this agreement. The parties may then engage in a series of rights-based communications, each trying to convince the other that its interpretation is correct and the other side’s is incorrect. Without an independent interpretation of the disputed rights framework, the parties are likely to have difficulty reaching agreement, unless one capitulates on the rights question, or both turn away from trying to resolve the rights dispute.

Power. Opening the negotiation by discussing your power to coerce the other party to concede may result in a short negotiation, if your power is credible and the other negotiator concedes. For example, Rapid might assert that if Scott does not immediately provide the required hardware, then Rapid will warn Scott's biggest potential new customer, with whom Scott is currently bidding for a contract, to go with a different company since Scott has proved dishonest and unreliable. This threat could worry Scott enough to make concessions to Rapid in order to avert the potential negative consequences.

The other negotiator, however, may understand that carrying out a threat requires an expenditure of resources. Knowing that you would rather not have to act on your threat to use power, the other negotiator may call your bluff and walk away, leaving you in the position to act on your threat or lose face, neither of which is a desirable option. Given human nature, the more likely response of the other negotiator is to counter-threaten, generating an escalation of conflict and commitment to disputing.

Interests. We see few risks in opening negotiations by focusing on the other party's interests, asking questions, and giving a little information about your own interests. An interests approach is particularly appropriate if the other party is thought to be generally cooperative and you are aware of a possible solution that might be acceptable to both parties. For example, Rapid might choose to begin with an interests approach, highlighting its underlying needs and concerns about the situation, such as quickly fading competitive advantage, desperate need for income, and inability to pay back lease payments until the company begins to generate profits. Scott may then respond by noting its interest in fully developing the applications software (which is not yet ready), its need of a testing site in which to do this, and the possibility of forming a relationship with Rapid in order to accomplish this objective.

By strategically reciprocating information-sharing, negotiators should be able to move from sharing interests to sharing interests-based proposals to settlement. Those interests-based proposals will contain elements that are both integrative (i.e., using Rapid as a testing site for Scott's software, joint marketing agreements to advertise this new service) and distributive (i.e., how much if any of Rapid's back lease payments are forgiven by Scott). It may be possible to resolve the dispute without ever resolving who was right and who was wrong under standards of fairness, contract, or law or who has the greatest power to harm the other.

The risks in opening a negotiation with an interests approach are that you send a message that you are seeking settlement, and even might share a little confidential information to try to get settlement negotiations moving. These seem to us to be minimal risks. Sending a message that you are seeking settlement does not reveal your bottom-line settlement terms. Sharing a little information about your own interests does not mean you reveal all your

interests and priorities to the other party without receiving information in return. Effective negotiation requires balancing cooperative and competitive (or individualistic) orientations (Putnam 1990; Walton and McKersie 1991; Walton, Cutcher-Gershenfeld, and McKersie 1994). Our recommendation to open negotiations by focusing on interests is geared to give the cooperative orientation a chance.

Breaking the Spiral of Reciprocity

A negotiator may sometimes feel trapped in the throes of a conflict spiral, where the negotiation has deteriorated into a back-and-forth battle over facts, rights, or power statements with little chance of progressing to a more productive exchange. There are several options to break the bonds of reciprocity and move the negotiation toward a more effective interests-based discussion.

Do Not Reciprocate. A negotiator can simply refuse to reciprocate communications involving facts, rights, or power, and instead ask an interests-based question. A number of theorists and commentators also recommend not reciprocating rights or power (Fisher, Ury, and Patton 1991; Lewicki et al. 1994; Osgood 1962; Pruitt and Carnevale 1993; Schelling 1960; Ury 1991).

When dealing with some insensitive negotiators, it may take several redirections of communications over facts, rights, or power before the other party realizes that you want an interests-based conversation. To the critics who say that refusing to reciprocate rights and power threats sends a message of weakness, we would point out that, by refocusing the negotiations on interests, we are not advocating that negotiators make concessions substantively or strategically. Indeed, by refusing to be drawn into a strategy that will not further his or her interests, the negotiator has strongly defended the preferred interest-based approach to negotiations.

Our research shows that refusing to reciprocate rights or power communications may be effective in refocusing the negotiation. In our study, there were 499 instances in which a negotiator made a rights or power statement. When the other negotiator reciprocated, the focal negotiator stayed with rights or power 39 percent of the time. When the other negotiator did not reciprocate, the focal negotiator stayed with rights or power 22 percent of the time (and hence was refocused 77 percent of the time). This pattern of reciprocity suggests that at least some negotiators were using rights and power communications without considering the implications of generating a conflict spiral. Furthermore, once their rights or power communication was reciprocated, some negotiators, not wanting to encourage a further spiral, may have backed off. Despite this pattern of backing off from reciprocation, the study suggests that if you want to get the other party to refocus, refusing to reciprocate rights or power communications is one good way to do so. Refusing to reciprocate was an effective strategy from both negotiators' perspectives, regardless of their specific roles.

Do Not Make Unilateral Concessions. Osgood (1962) suggests a unilateral strategy called “GRIT,” or Graduated and Reciprocated Initiatives in Tension Reduction, for breaking out of a conflict spiral. This strategy proposes offering a concession to the other party, announcing that this concession is intended to break the escalation, inviting the other party to reciprocate the concession, and then making the unilateral concession.

We found that making unilateral concessions was not effective for refocusing negotiations in our study. Concessions were not as effective in refocusing negotiations from rights and power (60 percent refocus) as were other noncontentious communications (77 percent refocus). In negotiations that have not reached impasse, making concessions may actually encourage, rather than stop, a conflict spiral. The unilateral concession may be seen as a reward for contentious behavior, and therefore encourage the repetition of such behavior in the hopes of accruing more concessions.

Combining Types of Communications. Although not reciprocating rights-and-power communications was an effective way to break the bonds of reciprocity, research suggests that reciprocating may be instinctive (Gottman 1979). Lerner (1985:44) explains: “We all recognize intellectually that repeating our ineffective efforts achieves nothing and can even make things worse. Yet, oddly enough, most of us continue to do *more of the same*, especially under stress.” Many negotiators with whom we have discussed the nonreciprocating strategy are uncomfortable with it, because they believe that it conveys a message of weakness.

We thought it might be possible to reciprocate a rights-or-power communication and also change the focus away from rights or power by combining it, for example, with an interests-based question or a proposal for settlement. In the context of labor negotiations, Walton, Cutcher-Gershenfeld and McKersie (1994) suggest that managers combine “forcing” (distributive tactics and threats) with “fostering” (integrative tactics and information sharing) strategies to achieve better negotiated outcomes. Putnam (1990) points out that negotiators often mix cooperative and competitive negotiation orientations in the same statement, creating equivocal messages about their intentions. For example, Scott might first threaten a countersuit to collect the back lease payments due Scott from Rapid. The Rapid representative could then respond with a combined statement: “You know, your reputation could be seriously compromised by suing us, as we could just as easily go to all the other printing companies and let them know how you have cheated us. . .but this is not going to solve the problem. Right now, we don’t have any money to pay you and, even if you sue us, you will not be able to collect. Why don’t we try to find a way to discuss this problem that might give both of us a chance to get what we really want out of this situation?” Given the seemingly natural tendency to reciprocate especially negative behaviors (Gottman 1979), sending a combined communication at least gives the negotiator a choice of what to reciprocate.

So, too, an opening toward interests may be more appreciated and therefore more likely to be reciprocated when it is associated with power (Lindsfold and Bennett 1973).

Our results support the combination strategy. A conflict spiral was avoided 75 percent of the time when a negotiator reciprocated a rights-or-power statement and combined this contentious response with a noncontentious communication. Nonreciprocation alone resulted in a change of focus only slightly more frequently (77 percent of the time). Reciprocation combined with a noncontentious communication and nonreciprocation were approximately equally effective in changing the focus of the negotiation from rights or power.

Label the Process. Several commentators have suggested that recognizing or labeling a tactic as ineffective can neutralize or refocus negotiations (Fisher Ury, and Patton 1991; Putnam and Holmer 1992). This suggestion is supported by our results. We found that process-labeling statements were relatively infrequent responses to rights-and-power communications, but were quite effective when they were used, refocusing the other negotiator 82 percent of the time. A negotiator in the Rapid role, for example, might say "If you don't give me the applications software you owe me under the contract, I will take you to court for breach of contract." The Scott negotiator might reply, "We can argue all afternoon as to whether the language in the contract pertains to application software. I think it does not; you think it does. We are never going to agree about that. Let's see if we can move on. What about. . ."

When to Use Rights or Power in Negotiations

Maintaining a primary focus on interests, in our view, will in most cases result in a satisfying, mutually beneficial outcome that has the potential to resolve the underlying causes of the dispute. This preference for an interests-based strategy, however, does not mean that negotiators should never use rights or power in negotiation. When and how to effectively use rights or power is a strategic decision that needs to be based on an analysis of the specific dispute situation.

One time to use rights or power is when the other party refuses to come to the negotiating table, despite significant efforts to encourage that party to do so. In such a situation, no negotiation is taking place, and little is lost by threatening action based on rights or power. Perhaps the threat will convey to the other party the severity of the situation. For example, if Scott continuously refused to answer Rapid's phone calls, faxes, and attempts at beginning discussions, Rapid could resort to filing a lawsuit against Scott, which would force some sort of engagement in the negotiation process.

Another time to use rights or power is when negotiations have broken down, interests-based negotiation is exhausted, and parties are at an impasse. A credible threat, especially if combined with an interests-based proposal for resolution, may restart the negotiations. As in the previous situa-

tion, since negotiations are hopelessly stalled, not much is lost in threatening action based on rights or power. Disputants should be sure, however, that they have truly engaged in an interests-based approach and that they are not moving to rights or power prematurely. The other side, for example, might see no reason to make serious steps toward agreement if you have not shared interests and formulated specific requests or steps toward progress. Focusing on discussion of details, asking specific questions, and making very specific requests can sometimes avert an evolution towards rights or power.

Alternately, we found in our study that negotiators used rights and power most often two times in negotiations: at the beginning, and in the third quarter. Rights and power communications early in the negotiation may not always be intended as threats, but merely as information. But, consider what information such statements convey. “There is no mention of applications software in the contract, and my lawyer tells me that a judge will not rule in your favor without having your claim in writing”, a Scott representative might say. This statement says, “I’ve discussed the case with my attorney, who tells me the contract is in my favor, I’m not afraid to go to court.” If you know that the other party does not agree with your interpretation of the rights base of the dispute, why risk directing the focus of negotiations to these disputed rights? It may be a better strategy to hold this information back to be used (if necessary) later in the negotiation.

Rights-and-power communications used in the third quarter of the negotiations may be attempts to influence the distributive outcome of the negotiation. For example, the Scott negotiator, in rejecting a Rapid offer, might say “I will not pay for your lost profits, the contract does not say anything about the application software, I have talked with my lawyer, who assures me that the contract is in my favor. I will go to court before I offer to pay for any of your lost profits.”

In both of these examples, the threatening information is credible and serves an informational purpose. In the third quarter example, however, the threat has an additional function of turning down a proposal, underscoring the unacceptability of the offer. Using threats in the third quarter of the negotiation to try to claim more value from an agreement that both parties realize is acceptable may be a risky undertaking. Clearly, some of the third quarter threats in our study were of this nature. Conceding to a threat involves loss of face, and sometimes a negotiator will prefer to walk away from an acceptable settlement rather than to concede further and lose face. If a negotiator does choose to make threats for this purpose, it may be strategic to combine these threats with some sort of positive, interests-based incentive for the other side in order to help them save face.

The Effective Implementation of Rights and Power Strategies

Although the decision about when to use rights and power strategies is an important one, how these strategies are implemented determines their success in transforming the negotiation back to a productive interaction and

effectively meeting your interests. Rights-and-power communications are implicit or explicit threats. They state what the negotiator's views are of his or her alternatives to settlement. Using threats effectively means getting the other party to the negotiating table, and once there, getting an acceptable agreement. Effective threats are specific and credible, focus on harming high-priority interests, and leave a pathway back to interests.

Credibility. First, threats based on rights or power must be credible. The other party must believe that you are able and willing to actually carry out your strategy. Credibility is increased by specifying a number of key details about when, where, how, and by whom this strategy will be carried out, as well as by demonstrating that you are prepared to begin the implementation. For example, Rapid could make a power-based threat to Scott: "If you do not provide us with the proper equipment, we will make your life miserable" or "I demand that you provide us with software." These threats are not very specific and, we expect, not very believable. Rapid must tell Scott exactly what aspects of the software to fix, how it might be fixed, what the finished product should do, by when it will be available, and what will happen if Scott does not comply. A detailed, well-constructed threat, whether rights or power-based, is much more convincing when the initiator expresses what will be done to implement the threat rather than communicates some vague actions stemming from a fleeting emotional state.

Harming High-Priority Interests. Second, threats based on rights or power must be carefully focused on the other party's high-priority interests. If they are not, there will be little incentive to comply with the threat. This focus should be something that either the person or the company really does not want to happen, or conversely, something that they do not want to "give up." The object of the threat must be something that really makes the person want to comply with your demands. Depending on levels of personal power and connection, it might be better to focus on the company's interests than those of a specific individual. This is because the company may choose to sacrifice the individual doing the negotiating if things get out of control. On the other hand, if the individual is an integral part of the organization, then that individual's interests can also be a focus.

For example, Rapid could focus on any of Scott's high-priority interests: its desire to keep a good reputation, its goal to penetrate the printing industry market, its interest in corporate profits, etc. Scott's threats can focus on Rapid's desire to develop competitive advantage, to achieve the status of an industry leader, and to make profits. Any strategies that make meeting these interests impossible or difficult are good bases for threats. For example, Rapid can threaten Scott with negative publicity in the printing industry, which is a strategic target for Scott. Scott can tell Rapid that Scott has software that will make Rapid's strategy a reality, but threaten that Scott will only provide that software if Rapid agrees to pay the full terms of the contract.

Leave a Pathway Back to Interests. Most importantly, a pathway must be left for the other party to turn off the threat. In other words, there must be some way for the other party to save face and reopen the negotiations and avoid the threat. If you do not provide some way to turn off the threat, you force yourself to have to implement the threat. Once you put your threat into action, you often lose your power and any ability to influence the other party to meet your demands. A good way to turn off a threat is to combine the threatening rights-or-power communications with an interests-based proposal that indicates not only what you need in order to reach agreement, but also something positive that you are willing to do in order to reach agreement.

A threat typically defines a *negative* consequence: “I will take you to court” or “I will inform my colleagues in the printing industry about my negative experiences with your product and with your company.” If you threaten, but add “if you can agree to (meet my demands in the specified way by the specified time), then I will help you to publicize your product” or “we will work together to develop a product to make your company profitable again.” The other party may have a positive incentive to meet your demands and to turn off your threat.

If You Act on a Threat, You Lose Your Power. It is imperative to remember that once you carry through with your threat, you frequently lose your source of power. You may have already harmed the other negotiator’s interests to such an extent that he or she has little ability or reason to come back to interests and meet your demands. For example, if Scott actually does successfully sue Rapid for back payments, then Rapid will be bankrupt and have no ability to make these payments to Scott. Scott, therefore, will have won the battle but lost the war. If, on the other hand, Scott helped Rapid become profitable again by setting up a test site for the applications software, then Rapid would have some profits to make payments.

Usually, the point of making a threat is actually *not* to follow through with it. You do not want to have to implement your threat. You want the other party to meet your interests and turn off the threat. Any time you make a threat, however, you must be aware that the possibility exists of having to actually implement the threat. Therefore, think carefully before framing your threat. You must be willing to suffer the consequences.

In sum, a good way to implement either rights-or-power strategies is to follow this sequence: State (1) the specific, detailed demand that you are making and the deadline by which it must be satisfied; (2) the specific, detailed, credible threat (rights or power-based) that harms the other side’s underlying interests; and (3) the specific, detailed positive consequence that will follow if the demand is met by the deadline.

Conclusions

In difficult negotiations that have the potential to evolve into conflict spirals, trying to focus exclusively on interests is not always an effective strategy. We propose that it is necessary to be well-versed in interests, rights, and power approaches to dispute resolution negotiations and to know how to move effectively among these three strategies during the course of a negotiation.

Our study affirms that dispute resolution negotiations do cycle through interests, rights, and power strategies. Reciprocity can direct a negotiation toward interests, or toward a rights or power-based conflict spiral, and hence, a one-sided distributive outcome that leaves significant joint value on the table. Yet, even though the allure of reciprocity is strong, we found that negotiators can deflect rights and power strategies and refocus disputes by: (1) not reciprocating rights and power communications and responding with a noncontentious communication; (2) not making unilateral concessions and thereby not reinforcing contentious strategies; (3) combining reciprocity of a rights-or-power communications with a noncontentious communication; and (4) labeling the process as ineffective and calling for a different approach to the negotiation.

But even these steps may not be enough to ensure successful resolution of difficult disputes. One must also evaluate the pros and cons of beginning negotiations with different strategies as well as the conditions which call for a change in strategy. Furthermore, the negotiator who lacks the skills to implement interests, rights, and power strategies to their maximum potential risks losing the advantages that each strategy has to offer, and perhaps ending up worse off than before the negotiations began.

NOTES

1. Ury et al. also note that negotiators may choose not to confront and “lump it,” that is live with the unsatisfactory situation. The strategic advice in this article is geared to negotiations in which parties confront either face-to-face or electronically. The advice does not preclude the utility of other dispute resolution strategies, such as lumping it or involving third parties. We would also like to point out that the strategies discussed in this article have not been much researched in other cultures (see Tinsley 1997 and 1998 as an exception), and therefore should be used with caution when negotiating cross-culturally.

2. Percentages refer to the proportions of total communications, or thought units, in the quarter.

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