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DISPUTES AND NEGOTIATIONS

A CROSS-CULTURAL PERSPECTIVE

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P.H. Gulliver. Disputes and Negotiations:
A Cross-Cultural Perspective

Sandra B. Burman and Barbara E. Harrell-Bond
(Editors). The Imposition of Law

To Marilyn
who helped make this a better book

PREFACE

Negotiation is one kind of problem-solving process—one in which people attempt to reach a joint decision on matters of common concern in situations where they are in disagreement and conflict. In its simplest and most general form, this book is a study of the way in which two parties negotiate with each other in the endeavor to resolve a dispute between them and to discover a mutually acceptable, tolerable outcome. In their disagreement or competition with each other, they neither seek the deciding judgment of a third party nor resort to the sheer force of violence against each other. Rather, by the exchange of information, they explore the nature and extent of their differences and the possibilities open to them, they seek to induce or persuade each other to modify their expectations and requirements, and they search for an outcome that is at least satisfactory enough to both parties. If negotiations are to be "successful"—that is, if an outcome can be discovered that each party can accept and agree to—then initially at least, one of the parties must have been mistaken in his assessment of what he would be prepared to accept. It is more probable, however, that both parties come to modify their initial demands and their responses to the other's demands. Thus the outcome is frequently some kind of compromise. However, compromise is not at all inevitable: The negotiators may be able to discover some acceptable outcome that they had

not originally conceived of or considered, which offers advantage to both of them.

The study of negotiations has attracted the attention of a diverse variety of social scientists. The result is that there has been a gradual accumulation both of materials—conceptual, experimental, and empirical—and of general or partial explanations and theory. Game theorists and some decision theorists have sought to get at the essentials of decision-making and the associated strategies in situations where two or more parties are interdependent, and where, therefore, the outcome of their conflict and competition must be a product of their joint requirements and the interaction of their separate choices. Such theorists have deliberately concentrated on the logical and hypothetical conceptualization of problems and processes wherein many of the variables of the real world are held constant or ignored. Bargaining theorists, mainly economists, have sought to develop theory that would enable them to predict the outcome of negotiations, chiefly with reference to wage rates. Social psychologists, concerned with interpersonal behavior and the nature of interaction under conditions of conflict, have been especially active in devising and carrying out experiments and laboratory simulations of real-life conditions in order to investigate and to reach generalizations about particular aspects of negotiations. Political scientists studying international conflict and industrial sociologists studying labor-management disputes have inevitably been more concerned with the patterns of real-life negotiation and their explanation. In addition, a growing number of sociologists and social anthropologists have come to recognize that negotiation is one means by which social relationships and even whole institutions, such as a hospital or school, are organized and adjusted. So far, however, the theoretical dimensions and implications have been poorly developed.

Partly because of this diversity of intellectual background, concerns, and approaches, but also because of the marked complexity of the many variables involved in negotiation, there has been relatively little consensus. The study of negotiations is still in the formative stage of tentative conceptualization and hypothesis, with a paucity of specifically directed data collection and analysis.

Social anthropologists have contributed very little to the study of this area of human behavior and interaction, although they inevitably confront it in their field research. This may explain why the acknowledged specialists in other social sciences have almost entirely ignored the cross-cultural dimensions and empirical data that undoubtedly would raise questions about some of the assumptions and preconceptions that are current in the investigation of negotiations. Moreover, it has been overlooked that

the reference to cross-cultural data provides a useful test-bed of hypotheses and ideas.¹

As a working anthropologist, my own approach to the investigation of negotiations is frankly and obviously cross-cultural. My interest in the subject was originally aroused as a result of my research in non-Western societies and cultures. It so happened that I worked in a number of African societies in which judicial institutions were little developed (or they had been rather ineffectively imposed by alien government) and where, therefore, interpersonal and intergroup disputes were dealt with by a variety of other processes. Principal among those processes was negotiation. It became a major preoccupation to discover and to understand how people negotiated and how in consequence they resolved their disputes.² Seeking to generalize from my own field materials and particularist analyses and conclusions, I found little assistance from my fellow anthropologists. It seemed sensible, therefore, to go to the work of social scientists who appeared to be studying the same kinds of problems in the Western context. In their work I found a great deal of illumination, insight, and stimulus. I also found that it was possible, tentatively, to generalize across diverse societies and cultures. In this recourse to the work of Western-oriented social scientists, I brought not only the cross-cultural approach inherent in anthropology, but also an expertise in the study of microsociological relations and processes and a concern for empirical, real-life data as these have been developed in social anthropology since the time of Malinowski.

The endeavor in this book, therefore, is deliberately cross-cultural: to show that patterns of interactive behavior in negotiations are essentially similar despite marked differences in interests, ideas, values, rules, and assumptions among negotiators in different societies. That endeavor is supported by data from rather intensive investigation of particular cases where people were in dispute and conflict with one another and where they sought a negotiated resolution and outcome. Much of this empirical material comes from my own research in Africa although continually I attempt to complement and, as it were, match my African examples with comparable data from Western instances. The latter are drawn chiefly from

¹ The neglect of cross-cultural reference and pertinent data is quite obvious, for example, in three symposia of writings by scholars working in the field of negotiation: Young, *Bargaining: Formal Theories of Negotiation* (1975), and Zartman, *The Negotiation Process* (1977), which contain papers by economists, political scientists, and sociologists; and Druckman, *Negotiations* (1977), which contains papers by social psychologists.

² My data and analysis for two East African societies—the Arusha and the Ndendeuli—are given in Gulliver (1963 and 1971, respectively).

industrial negotiations, without doubt the area of richest empirical materials.

I do not attempt in this book to produce theory that is either predictive of the outcome of negotiations or prescriptive of the behavior of negotiators. Probably the majority of specialists assume that the major concern should be with the outcome of negotiations and how it is determined. There is a good deal of faith that sooner or later it will be possible to develop understanding and theory to the point of being able to predict what the outcome will be in particular cases. "A theory of negotiations is a set of interrelated causal statements which explain how and which outcomes are chosen [Zartman 1975:70]." In that sense this book provides no theory. I have little expectation that such theory is likely to emerge in the near future, except perhaps for very limited, largely artificial cases. Such predictive theories as there are remain untested and the theories themselves intrinsically depend on conceptual assumptions that certainly cannot be made in the context of actual, concrete cases. The complexity of variables involved in real-life situations (some of which are scarcely knowable, such as negotiators' mental processes) and the high degree of uncertainty with which actual negotiators must cope, make it unlikely that we can predict with any useful degree of reliability. Since we are unable to predict, it is obviously difficult to prescribe behavior that negotiators should follow. I prefer not to attempt what seems presumptuous in view of the present state of our understanding.

My principal intention is to identify some common patterns of behavior and interaction among negotiators and to present these in the form of general models. With the use of these models, I hope to make some advance in the explanation of what happens in negotiations, how it happens, and why. Various parts of these models are illustrated and exemplified by reference to recorded, real-life cases but I am mindful that my data are neither plentiful enough nor altogether complete. There are irresolvable problems in knowing and recording what happened in specific cases. In consequence some social scientists eschew the reference to concrete reality and instead concentrate on logical conceptualization. There is some usefulness in so doing, of course, but ultimately, to be more than intellectual puzzle games, theory and concepts must be brought back to some kind of real-life context if they are to explain anything at all. Despite the genuine problems of data collection and the possible accusations of naive empiricism, I prefer to start from a real-life context, not because this is necessarily the only or even the best approach, but because I have come to this study directly as a result of attempting to understand what happened in specific, actual cases.

Whether my models of negotiating behavior are "correct" is not the

principal issue. What I intend and hope is that they may prove useful in directing inquiry and in developing understanding in the study and explanation of negotiations. These models are based on certain assumptions, which will become clearer in the main body of the book. I briefly outline them as follows: Negotiations comprise a set of social processes leading to interdependent, joint decision-making by the negotiators through their dynamic interaction with one another. These processes involve the exchange of information (and its manipulation), which permits and compels learning by each party about his opponent, about himself, and about their common situation: that is, about their expectations, requirements, strengths, and strategies. As a result of learning, there is modification of expectations and requirements such that the negotiators may shift their demands to some point at which they can agree. Negotiators continue to exchange information and to explore possibilities so long as they consider that they may gain an outcome that is more advantageous than the status quo. Negotiations are thus a dynamic process of exploration in which change is intrinsic: changes in each party's assessment of his requirements, in his expectations of what is possible, preferable, and acceptable, and changes in his understanding of the opponent's assessments and expectations. Analysis of negotiation is necessarily the analysis of process and change within the ineluctable interdependence of the negotiating parties.

This study begins with the identification of negotiation as a distinctive social process of decision-making. For this purpose, in Chapter 1, the contrast is drawn between negotiation and adjudication. I argue that although scholars have proposed a number of characteristics that tend to distinguish these two major processes, none is altogether decisive, especially in a cross-cultural perspective. The focal distinction is shown to lie in the locus and nature of decision-making: joint, interdependent decision-making by the parties themselves in negotiation and decision by a third party in adjudication.

In Chapter 2, I examine some of the dimensions of the study of joint decision-making. First, I look at the contributions of theorists working in abstract, logicoconceptual terms. The intention is not primarily to make a sustained critique but rather to discover the significant variables to be considered. The theorists themselves have proposed certain key variables; in addition, however, it is most revealing to examine the limiting and simplifying assumptions that the theorists have made, which, being inapplicable to real-life situations, are therefore in effect variables to be considered. Second, I look at the problem of multiple criteria. Most disputes concern several issues and most issues involve several attributes by which they are assessed. This multiplicity, in which these various criteria are necessarily interdependent in some degree, has largely been ignored in problem forma-

tion, theoretical conceptualization, and analysis. The proper study of joint decision-making must, however, take full account of multiple criteria and of the ways by which actual negotiators attempt to cope with them. Finally, there is an outline of the approach adopted in this book—historico-ethnographic. It concentrates on real-life situations and takes as full account as possible both of the variables identified in conceptual theory and of empirical data concerning actual negotiators dealing with their disputes.

In Chapter 3, I define and distinguish certain terms that have been confused in the literature and are critically used in the analyses that follow. These terms are *negotiation* and *bargaining*, *disagreement* and *dispute*, and *outcome*.

The core of the book is contained in Chapters 6 and 7. There I describe and discuss two interconnected, processual models of negotiation. First, there is a model of the repetitive, cyclical exchange and interpretation of information through which negotiators develop and adjust their expectations and preferences and attempt to influence and alter those of the opponent. Presentation of this model involves consideration of the nature of information exchange, the formation and modification of a negotiator's preference set, expectations about the opponent, and the choices of strategy and tactics. Second, there is a model of the progressive development of negotiating interaction from the initiation of a dispute to the affirmation of some agreed outcome. This model constitutes a flexible sequence of overlapping phases, in each of which there is a distinctive kind of interaction and effective purpose. Each phase makes the succeeding one possible in a patterned progression toward an outcome. These phases are considered separately, though the tendencies for overlapping are noted. They are (1) the search for an arena of confrontation; (2) agenda compilation and the definition of issues in dispute; (3) the emphasis on differences and the exploration of the limits of the field of dispute; (4) the narrowing of differences and the reduction of issues, thus revealing the obdurate issues in the context; (5) preliminaries to bargaining; (6) final bargaining to an outcome; (7) the symbolic affirmation of that outcome and of the negotiators' accord; and (8) perhaps the execution of the terms of agreement.

The propulsive dynamics of negotiation are discussed in Chapter 6. First, I reexamine the internal dynamics of negotiation, giving particular attention to the intrinsic contradictions of antagonism and coordination between the negotiators. These dispositions, though continuously present throughout negotiation, alternate in predominance and each promotes the resurgence of the other. Second, I consider the potential power that each party possesses, which may be transformed into negotiating strength as each attempts to induce or coerce the other to shift his expectations and demands. Such power and associated weaknesses reside in material re-

sources and normative claims; both are liable to be affected by the impingement of third parties whose interests and values are touched by the dispute and the disputants. An operational scheme is suggested by which to incorporate the notion of power into the study of negotiations and decision-making. In Chapter 7, the direct intervention of a third party as a mediator is considered in the context of the processual interaction of the negotiations.

The concepts, arguments, and general framework of analysis presented in this book are illustrated at relevant points by examples drawn from actual cases. Further empirical exemplification is given in Chapter 8 with the presentation in detail of two recorded cases of the negotiation of disputes: one from the Arusha of Tanzania and the other from labor-management relations in the United States.

In conclusion, I point to some further aspects of negotiation that require investigation, and I briefly examine the process of the negotiation of a dispute in a public arena and two comparable processes: private, dyadic negotiation of disagreement and conflict in interpersonal relations, and the more or less continuous negotiation of conflict in social relations by which whole institutional complexes are organized and adjusted.

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