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Governance and negotiation: context revisited

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Governance and Negotiation: Context Revisited

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Summary:

Context is acknowledged as a significant feature of a negotiation. Background information about the relationship between the parties, available resources and organisational data are readily identifiable as key components of the contextual make-up of negotiations. However, information deriving from the broader setting of the negotiation may be less well-utilised or simply taken-for-granted in a negotiation. This paper suggests that this broader setting, discussed under the rubric of governance, is a critical facet of the context of negotiations. The paper explores the notion of governance and traces its relationship with negotiation. It then offers a framework that sets out the different governance approaches and allows for identifying and assessing potential negotiation strategies according to the dominant governance mode. It concludes that while a mix of governance approaches may be present in negotiations, identifying 'ideal types' or dominant governance modes assists in choosing appropriate strategies for successfully undertaking negotiations.

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Abstract

Context is acknowledged as a significant feature of a negotiation. Background information about the relationship between the parties, available resources and organisational data are readily identifiable as key components of the contextual make-up of negotiations. However, information deriving from the broader setting of the negotiation may be less well-utilised or simply taken-for-granted in a negotiation. This paper suggests that this broader setting, discussed under the rubric of governance, is a critical facet of the context of negotiations. The paper explores the notion of governance and traces its relationship with negotiation. It then offers a framework that sets out the different governance approaches and allows for identifying and assessing potential negotiation strategies according to the dominant governance mode. It concludes that while a mix of governance approaches may be present in negotiations, identifying 'ideal types' or dominant governance modes assists in choosing appropriate strategies for successfully undertaking negotiations.

Introduction

The success of negotiation strategies depends crucially on the planning preparations of the negotiators (Hawkins and Hudson, 1990). A critical part of planning is developing an understanding of the context of the negotiation, usually achieved through gathering and assessing available information about the circumstances of the negotiated issue (Thompson, 1991). Negotiators then build their tactics by reference to the background information about the situation under negotiation, together with their knowledge of the negotiation team members (Barry and Friedman, 1998; Weingart, Hyder, and Prietula, 1996). However, these contextual elements remain focused on the particulars of the organisation or negotiating team and are less directed at the strategic level and the overarching structural and relational environment in which the negotiation takes place.

The aim of this paper is to analyse the context of negotiations and to put forward a possible framework that may offer a broader, more comprehensive understanding of the elements and associated outcomes of negotiation strategies. Context is a well accepted element of the negotiation mix and used as a basis for developing negotiating strategies, particularly in the planning stage (Hudson and Hawkins, 1995). However, as we will argue, the crafting of a strategic response to context at the level of overarching governance mode is less well developed. The paper sets out and discusses the array of governance mechanisms as a way of identifying key modes or 'ideal types' for governance and offers a suite of responses which enable the development of appropriate strategies for negotiations. In doing so, this paper begins to develop a contingency framework for negotiation across the different governance models.

Interest in both the theory and practice of negotiation has increased in recent times and there is a trend in current thinking in that studies are returning to a consideration of the social aspects of negotiation (Bazerman, Curhan, Moore and Valley, 2000). We argue, in this paper, that a social aspect that requires greater consideration is how different modes of social organisation (governance) impact on negotiation.

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This paper first presents theories of governance and the three principle governance modes are elucidated. The major forms of governance are bureaucracy or state, market and network and these differing approaches to social organisation are argued to have a direct bearing on the calculations required to develop successful negotiation strategies. Theoretical perspectives on negotiation are then explored prior to examining the relevance of considering negotiation through a governance lens. The paper concludes that the concept governance extends conventional notions of context in negotiations. The governance framework developed in this review is suggested to offer a new way of mapping the contextual environment and provides a useful tool for selecting possible negotiation strategies.

Negotiation

Negotiation has been defined as “a process of potentially opportunistic interaction by which two or more parties, with some apparent conflict, seek to do better through jointly decided action than they could otherwise” (Lax and Sebenius, 1986:11). Negotiation literature emphasises the importance of planning and that planning and preparing involves considering all the circumstances around a negotiation.

A consideration of context is therefore critical in negotiation as it defines the boundaries in which a negotiation is to occur and shapes the rules under which a negotiation is conducted. Numerous studies have previously considered context and/or situational differences and their impact on negotiation together with important implications for the behaviour of parties in conflict (O'Connor, 1997; Olekalns, 2002). These studies have focused on contextual aspects such as temporal and social frameworks (Thompson and Hastie, 1990; Olekalns, 2002; Gelfand et al, 2006), physical environment (see for example Boulle, 1995) and the history and prior relationship between the parties (Harwood, 2002). Such studies have examined issues including power, future expectations of the relationship between the parties and accountability to others (Bazerman, et. al 2000)). However, these elements can be determined at the level of the negotiation itself, and have mainly focused on the interactions between the parties/actors. This paper expands on this body of work by considering negotiation context from a more macro perspective and examining the effect of the broader environment through a governance lens. In offering a conceptualisation of the possible impact and import of governance on negotiation, this paper advances prior theory on negotiating within different governance frameworks.

The global business environment is today characterised by three primary governance arrangements – state (bureaucracies), markets and networks. Each of these governance modes are underpinned by a set of assumptions that guide the nature of relationships and their operation, including, we argue, the nature of negotiations within the relationship and in regard to the negotiation relationship. Organisations, and individuals working within them, need to understand the various governance modes and their dominant organising properties and be able to adjust various aspects of their business practices to accommodate for different views on business operations to achieve organisational success. A critical business practice is negotiation, yet it has received relatively limited theoretical and empirical attention within the changing business environment.

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Much of the current negotiation literature has focused on analysis of the influence of information technology as a negotiation medium, on multi-cultural negotiation and an increasing number of studies that identify the specificity of industry context and its influence on negotiation, for example, complex infrastructure negotiations. These literatures collectively have recognised changes to the environment in which negotiations take place and the tools available to undertake such negotiations, but have not systematically recognised or coherently theorised the emerging governance mechanisms under which all organisations, and the people within them, now operate and the impact this has on negotiation practice.

The coming together of two such diverse fields of research may appear at first to be irreconcilable. Cohen (2008) points out that negotiation research and analysis has tended to focus on the individual and on individual behaviour, while governance research is interested in institutions and institutional change. However, like Cohen (2008) we too identify many similarities in the elements of negotiation and governance theories that bear further consideration.

History of Negotiation and Context

Since the publication of Walton and McKersie's (1965) seminal work on labour negotiation, the analysis of negotiations has largely been focused on the distinction between distributive and integrative negotiation strategies. Distributive strategies are those that view negotiation as a zero-sum or fixed-pie game. The aim of a distributive strategy is to gain maximum for self or to win the negotiation at the expense or loss of the other party. Distributive negotiations rely on non-disclosure of information and the disguising of true positions. Conversely, integrative negotiations are those that are interest-based and a major objective is to uncover interests so as to maximum joint, rather than individual gain (Lewicki, Saunders and Barry, 2006).

Research subsequent to 1965 has tended to find that negotiations are rarely completely distributive or integrative but that most negotiations, particularly complex ones, either flow through various stages of integration and distribution (Walton and McKersie, 1965) or, that negotiations are far more dynamic than stage or phase models suggest and that integrative and distributive tactics occur rapidly as a response to each other and are therefore interdependent processes (Lax and Sebenius, 1986; Putnam, 1990).

It has been argued that certain contexts lend themselves better to either integrative or distributive tactics. Monetary negotiations where there is no ongoing relationship with the other party are circumstances under which distributive tactics are considered most appropriate. Such situations require no attendance to establishing and maintaining a relationship with the other party and therefore the negotiation can proceed based solely on driving the best bargain through using whatever tactics will gain the most significant portion of the 'fixed pie' (Lytle and Brett, 1999; Kersten, 2001). Conversely, in negotiations with ongoing relationships and more than one issue, integrative tactics that uncover and focus on interests are considered optimal (Lewicki, et al. 2006).

More recently some authors have sought an alternative to the integrative/distributive dichotomy arguing that it does not fully explain some of the behaviours occurring

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within negotiations in the current business, and particularly negotiations that involve international relations, may require different views on negotiation and supplementary behaviours. Shapiro (2000) suggests one method as 'supplemental joint brainstorming'. Similarly, Niemann (2006) proposes that supplementary to traditional integrative and distributive negotiation strategies that Habermas' concept of communicative action be reconsidered and that negotiating parties need first to enter into genuine debate so as to reach 'mutual understanding by entering into a reasoned and argumentative discourse about valid behaviour'. In this way, part of the negotiation process relates to forming similar world views. It could be argued that communicative action is not strictly negotiation, however, it bears all the characteristics in that parties have some conflict, in this instance of behaviour and view, and that parties can improve their situation through jointly decided action.

The world view with which negotiators enter a negotiation has implications for the tactics chosen and therefore the process of negotiations as well as their outcomes in that the way in which the negotiation is framed is central to the meaning negotiators place on the negotiation (Putnam, 1990). Several models of framing exist; however, a useful model is that of Ury, Brett and Goldberg (1988) that proposes negotiators consider negotiation through one of three lenses – interests, rights and power.. Individuals base their approach to negotiations on past experiences that shape their understanding of their environment. Therefore, we argue that individuals who undertake negotiation are influenced by the institutional arrangements, and therefore the corresponding governance mode, under which they operate. Each of the ideal governance modes construe interests, rights and power in different ways.

Bazerman and Neale (1983) draw attention to issues of rationality inherent in earlier works, particularly game theory and its wide use as an analysis tool for negotiations. They argued that behaviour in negotiation is often irrational and that this is influenced by (1) the way in which issues are framed in a negotiation, (2) overconfidence in judgement, (3) a lack of ability to take the perspective of the other party, (4) escalation of commitment to a failing action, and (5) a bias towards viewing negotiations as a fixed sum game rather than uncovering any integrative potential. One of their key suggestions for improving negotiation outcomes was the importance of choosing a negotiator based on characteristics "other than job title or elected position" (p. 64). An issue then for bureaucratic governance is that negotiators are often selected on the basis of their job title or seniority meaning that such negotiators may bring with them those characteristics non-conducive to a good negotiation result.

The influence of context on negotiations has been considered as emanating from a number of structural variables including power, deadlines and the opportunity for integrative solutions as well as from other people (Neale and Northcraft, 1991). Deadlines, opportunities and people are elements of the actual negotiation as it unfolds, whereby concepts of power, while influenced by the negotiation, are also influenced by social construction and prior understanding. Fisher (1983) identifies a number of categories of power including, among others, (1) the power of good relationships, (2) the power of a good alternative to negotiating, (3) the power of legitimacy and (4) the power of commitment. Power is influential in negotiation outcomes and under different governance arrangements, different categories of power can be seen to be more critical. For example, relationships are central to network

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governance arrangements, therefore the power attributable to good relationships becomes more central.

Negotiation through a Governance Lens

The linking of governance and negotiation is not entirely new. Lewicki (2006), for example, points out that negotiation has tended to be theorised and analysed within a market context but that other contexts exist that have not yet been broadly considered. The challenge of theorising negotiation in contexts other than markets, in particular different governance systems, has only very recently been taken up. Research and theoretical development to the topic have been incremental and tended to focus on one aspect rather than develop an overarching framework for considering negotiation within the context of governance, to the detriment of understanding the utility of a suite of responses to the different governance approaches.

Cohen (2008) identifies 'new governance' as being associated with democratic values and popular deliberation and considers that this depiction has many similarities with current normative models of negotiation. Drawing on excerpts from *The Negotiator's Fieldbook*, (Schneider, Kupfman and Honeyman, 2006) Cohen (2008) identifies the growing trend in normative models of negotiation towards participative, creative problem solving models likened to Habermas' "Communicative Action". Such approaches to negotiation are non-strategic and rational (Cohen, 2008) and their success is reliant on:

- Actors having a shared and common lifeworld
- Actors recognition of one another as equals, with equal access to discourse
- Actors' ability to empathise

Interestingly, her study of the negotiations surrounding large dam projects identified that, even where creative problem solving methods were used, negotiations still became 'bogged down' on financial matters and in particular the amount of compensation payable to individuals affected by the construction of large dams. We contend that this indicates firstly that the non-rational elements of negotiation and negotiators identified through game theory remain problematic and that, even within a collaborative, network environment elements of the market persist.

Negotiation today focuses on the need to be able to collaborate and joint-problem solve. These characteristics are also inherent, as Cohen (2008) argues, in 'new governance' models or networks where the central tenet is the need for genuine collaboration. The argument is cogent, however what is not clearly delineated is that 'new governance' is not aligned with negotiation theory in general, but with very specific characteristics of particular types of negotiations and that other governance modes may align with other types of negotiation.

A study by Ness and Haugland (2004) examined how governance mechanisms and negotiation behaviour co-adapted during the period of a contractual relationship with a fixed time period. Their findings indicate how governance mechanisms of price incentives, authority and trust/relational norms developed and coalesced over time. Ness and Haugland's study was conducted within a micro-environment of a single contractual relationship. However, at a macro level this co-existence or mixture of

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governance modes has been observed in the broader policy domain. Bogason and Musso (2006) offer that interorganizational governance arrangements require new relational approaches and suggest that negotiations need to take longer, are not locationally-bound and require new tasks such as brokers and drawing in a wider array of actors.

Governance Modes as Determinants of Negotiation Context & Style

Governance is essentially the purposive means for guiding and steering a society (Kooiman, 1993). It is about how processes and mechanisms for social organisation are arrayed and made operational, that is, mechanisms for deciding which decisions are made, how resources allocated and, the form of coordination to facilitate this process. At its core, governance is a mode of social coordination. Three main or ideal modes have been identified – the state or bureaucracy, the market and civil networks (Thompson, Frances, Levacic and Mitchell, 1991; Ouchi, 1980). Each of these modes represents alternative ways of organising society and is underpinned by a set of ideological assumptions and principles that guide their integrating mechanisms and optimal operating conditions. We argue here that, from a negotiation perspective, each of these three ideal modes can be considered in relation to the particular frames that parties bring to the negotiating table, and the form - interests, rights or power – such framing takes.

The state or bureaucratic model relies on organisations working through hierarchical relationships. In this model ‘legitimate’ authority provides the means of integrating and regulating the relationships between actors into a functional system of operation (Lowndes and Skelcher, 1998; Considine, 2001). Decision-making within this process is highly exclusive and communication is formalised and directed downwards through the chain of command (Ansell, 2000). The strategic arrangements through which outcomes are realised are generally procedures, rules and regulations, mandates and legislation and routines. The influence orientation in the bureaucratic mode is essentially based on a reliance on decision-making elites with a dependent chain of interaction.

Bureaucratic governance is most often associated with the power and influence of the state; however, many large private sector corporations operate within bureaucratic governance modes. At this time we focus on negotiation as it relates to the state rather than private sector bureaucracies. The current focus is on ideal or ‘pure’ governance modes. Private sector bureaucracies are therefore considered later in this paper as they fall within hybrid arrangements of both bureaucracy and market.

The implications for negotiations within state models of governance are that they occur under conditions related to the need to (1) address public interest, (2) abide by strictly defined rules and (3) involve a core group of ‘legitimate’ negotiation players/actors who work to regulation and are not easily able to bring in new offers as the negotiating party is not always able to make final decisions.

Negotiation in this governance mode therefore relies on top-down/vertical command and control methods, strict chains of command and management that takes place in intra-organisational settings. The aim of such negotiations is to bring about the equitable distribution of created value through procedures that ensure consistent outcomes for all stakeholders. Stakeholders to negotiations within bureaucratic or

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state modes of governance are not active participants to the negotiation process. However, negotiations occur within the public domain. Negotiations therefore take place in a controlled environment of authorised negotiators where outcomes are achieved through adherence to policy and procedure.

In contrast, the market mode of governance centres on private sector organisations operating through contractual transactions based on the concepts of demand and supply. For the market model the integrating mechanism is the formalised, mostly legal, contractual arrangements that use price signals to bring dispersed suppliers and purchasers together for short and highly specified exchanges. Management in this context is through arms-length transactions using written contracts, formal agreements and based on reliable performance and formal relationships. The key is self-interest co-ordinated through the invisible hand of supply and demand. The orientation of influence in this sense is independent, with individuals focussed on establishing strategic linkages to secure optimal outcomes while retaining an autonomous stance. Management is based on rationality and self-preservation. Transactions occur among businesses because each individual organisation is unable or unwilling to provide internally the resources they require and therefore must establish relationships with others. Although these linkages are thin and sporadic (Cooke and Morgan, 1993), the existence of a relationship aspect begins to move away from the vertical emphasis of hierarchy towards the horizontal.

Negotiation here is shareholder focused and self-interested. Unlike bureaucratic governance arenas that address public interest, markets seek to create value for profit maximisation. Interested parties in market negotiations are therefore driven by individual gain. Relationships within the negotiations sphere in this mode are set by the market and are short term as purchasers seek out the needed resources from multiple suppliers. Negotiations occur to obtain needed resources at a price that delivers maximum profit resulting in negotiations that are distributive – win/lose in nature. Each party seeks to gain maximum return for themselves rather than necessarily seeking ways to ‘expand the pie’ and achieve maximum joint benefit.

Network governance mode also has a horizontal rather than a hierarchical organising principle, the relationships and sphere of influence are interdependent drawing on social/communal relationships based on exchanges underpinned by the building of trust, reciprocity and mutual benefit. In this model communication is thick and the parties either have, or try to establish, extensive long-term knowledge of each other and their organisations (Ansell, 2000). Relationships, while valued as ends in and of themselves are also leveraged to achieve synergistic outcomes that are not possible in single organisation or committee operating modes.

Negotiation within the network governance mode is therefore not top-down and does not centre on the concept of self-interest. Instead the idea of network negotiation is very much focused on building relationships in which trust and reciprocity come to the fore. Stakeholders within networked arrangements are active participants in negotiations and as such are significantly influential in how negotiations take place and in their ultimate outcome. This relationship can be considered in light of Bovaird’s (2007) depiction of user and community coproduction where services (or goods) are provided through “regular, long-term relationships between professionalized service providers (in any sector) and service users ... where all

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parties make substantial resource contributions” (p. 847). Relationships between the multiple stakeholders/negotiating parties are collaborative and negotiations are integrative in that they focus on interests with an aim to maximise joint, rather than individual gain.

Putting It All Together

The previous section has demonstrated that each of the three ideal governance modes operate in different types of domains, exhibit different relationships and integrating mechanisms (Lowndes and Skelcher, 1998; Brown and Keast, 2003) and thus rely on different integrating mechanisms to lead to desirable outcomes. Further, it has been established that for each of these governance modes there is a need to be aware that there is an associated dominant negotiating strategy, which must be clearly understood in order to maximise outcomes, read negotiation and adjust behaviours in accordance with a dominant governance mode.

Table 1, provides a schema to articulate each of the governance characteristics and identify where each of the aspects is located and how the origins impact on the ways of working adopted. In doing so it establishes the terrain on which each of the governance modes may operate.

Table 1: Governance and Negotiation Schema

Governance Regime	State	Market	Social Networks
Domain of action And interest	Public Domain Public Interest	Private Domain Private interest	Civic Domain Community Interest
Integrating mechanisms and processes	Centralised/legitimate authority hierarchy, Procedures, rules, regulations and legislation	Exchange relationships Formalised, legal contractual arrangements	Social/communal relationships Social charter Compacts Negotiating Tables
Influence orientation	Dependent	Independent	Interdependent
Dominant Negotiation	Procedural	Arms-length Negotiated interactions, Performance specification, Bargained outcomes	Relational Negotiation Interest based Collaborative

The above discussion has focused on ideal governance modes. It should be noted however that the three governance types represent idealised governance modes and that in practice there is almost no pure type. For example there can, in fact, be hierarchies and/or markets as parts of networks, market arrangements in state modes and hierarchies in markets (Ouchie, 1980; Larmour, 1998; Lowndes and Skelcher, 1998). The implications for negotiation are that Table 1 represents a beginning framework for negotiation practice based on governance modes.

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Thus, as Bradach and Eccles (1991: 289) observe; “The ideal types ... serve as a useful starting point ... The assumption that these mechanisms are mutually exclusive, however, obscures rather than clarifies our understanding ... Price, authority and trust are combined with each other in assorted ways in the empirical world”. Further, as Lowndes and Skelcher (1998) have demonstrated the form of governance can shift according to the particular life cycle in which an organisation or network is situated. That is, governance modes can overlap and even co-exist throughout the lifecycle of an endeavour, including the term of a negotiation and the process and relationship development within negotiations are arguably a factor in changing governance modes (Ness and Haugland 2004). In addition, all three governance modes can be used simultaneously. The ability to shift between or draw from different governance modes allows for the establishment of hybrid organisational arrangements and provides the need for negotiation strategies that are able to bridge the gap.

As pressures for flexible and adaptable organisational forms continue, hybrid arrangements will proliferate and require researchers and administrators to establish more solid analytical and practice frameworks for negotiation within these mixed entities. As a first step in this process, there is a need to differentiate between hybrid inter-organisational networks that are primarily strategic and independent arrangements and, hybrid networks comprised of interdependent entities.

Hybrid Organisations, Hybrid Networked Arrangements and Negotiation: A Point of Differentiation

Hybrids are defined as organisational arrangements that draw on more than one governance mode and are comprised of mixed institutional arrangements (Borys and Jemison, 1989; Powell, 1987; Schaeffer and Loveridge, 2002). That is, by combining market contract, formal structural arrangements and relational trust, hybrids operate at the intersection of the idealised models and set the context for mixing and matching between the domains. The capacity to mix and match across governance regimes and associated structural arrangements provides the potential for a myriad of combinations and re-combinations of hybrid inter-organisational types (Kanter, 1989; Borys and Jemison, 1989).

Neale and Northcraft (1991, p. 177) present a negotiation framework which includes two broad categories: context (static) and negotiator (dynamic) effects. An important feature of the negotiation context, it is argued, is its integrating potential. Hybrid governance modes arguably provide some explanation for the dynamic potential for integration within a negotiation situation while shifting governance modes such as that defined by Ness and Haugland (2004) argue against Neale and Northcraft’s (1991) observation of a static context. Governance may therefore prove a useful new lens for understanding the dynamic interdependence of negotiation strategies identified by Putnam (1990).

Conclusion

As part of the planning process and strategising for negotiations, this paper has argued that a broader conceptualisation of context can offer a comprehensive understanding

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of the different bargaining approaches and clearer assessment of their outcomes. The governance framework developed here identifies the governance mode, together with the accompanying domains of action and requisite negotiation strategies.

It is contended that, as each governance mode is anchored by a dominant negotiation style, calculations about the format, process and progress of negotiations can be usefully made. The framework guides selection of negotiation style by identifying arenas of influence and integration mechanisms as contextual characteristics. In reality, it is acknowledged that the governance modes will be comprised of hybrid arrangements. The skill is to assess the mix of governance modes and to adapt to the associated governance approaches.

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