Looking at Negotiation and Dispute Resolution through a CA/DA Lens

Lawrence Susskind

Negotiation analysts have increasingly focused on the internal decision-making dynamics in the minds of the parties. They ought to give more attention to the ways in which meaning is jointly constituted through sequences of verbal and nonverbal exchanges. The tools of conversation analysis (CA) and discourse analysis (DA) can be helpful in this regard.

Key words: negotiation, conversation analysis, discourse analysis, jointly constituted meaning, social constructionist perspectives, dyadic framing, CA and DA in negotiation.

Introduction

As the material presented in this special issue makes clear, studying negotiation interaction in close detail raises intriguing and vital questions for both scholars and practitioners. Conversation analysis (CA) and discourse analysis (DA) offer powerful lenses through which we can examine interaction patterns central to negotiation and mediation. And, shifting our primary unit of analysis from a single social actor (or disputant) trying to manipulate the behavior of a negotiation counterpart to a jointly created discourse gets us closer to the social constructionist perspective that characterizes much of

Lawrence Susskind is the Ford Professor of Urban and Environmental Planning at MIT and vice-chair for instruction at the Program on Negotiation at Harvard Law School. His e-mail address is susskind@mit.edu.

10.1111/j.1571-9979.2010.00264.x

contemporary theory and research in the human sciences. Earlier individually focused considerations of negotiating style, strategy, and tactics can now be supplemented with new ones such as "jointly constituted meaning" or "locating meaning in the sequence rather than the utterance" that require a truly dyadic framing of negotiation exchanges. While negotiation analysis has always assumed that each negotiator must convince someone else of something, it has not been focused primarily on the ways in which parties communicate to ensure that they understand each other.

Our challenge is to integrate this new perspective with a substantial body of work dealing with negotiation analysis. We need to figure out how to reconceptualize what individual negotiators can and should do in the context of negotiation, which is much more of a mutual activity than it has often been understood to be. We also need to think about how dispute resolvers can and should capitalize on this knowledge.

The Road Ahead

CA research relies on a carefully chosen, technical vocabulary as well as a set of concepts that are not easily mastered without substantial training. In addition, the "practical" import of basic CA findings may not be apparent, or they may require several additional translation steps that dilute their meaning. Those directly engaged in tackling "real-world" problems may find themselves impatient with the slow pace of basic CA and DA research, while those doing such research are likely to resist starting with (complicated) practical problems, preferring instead to stay with simpler situations that are "uncontaminated" by additional confounding factors.

Negotiation instructors and analysts at the December 2008 symposium on negotiation and communication from which the articles in this special section were drawn were troubled by the content of some of the research materials that the CA and DA analysts chose: a role-played video, a police interrogation tape, and a small claims mediation tape. For CA and DA researchers, just about any "real-life" interaction, videotaped and transcribed, provides a resource for analyzing the structure of talk.

For the negotiation specialists, however, the small claims mediation tape (a different mediation from the one discussed by Phillip Glenn in this issue) contained such problematic practices that it was difficult to focus on how the parties spoke with each other without shifting into an analysis and critique of what they were saying. Not only did the role-play suffer from poor acting performances, but also the script portrayed behaviors that were clearly at odds with the notions of "best practice" favored by the negotiation and mediation professionals in attendance. This raised questions about the value of different kinds of data. What counts as "good data" for basic research in CA and DA may not be the same as the material negotiation instructors prefer to use for their own prescriptive analyses. To what extent should we be studying best practices? Typical practices? Problematic practices?

Embracing the theoretical assumptions of CA and DA may mean challenging the cognitive, individualistic starting point that characterizes a lot of the research in the negotiation and dispute resolution field. Shifting the unit of analysis from a single social actor (or disputant) — and the way that person thinks — to patterns of jointly created negotiation discourse might seem inappropriate to some negotiation experts who rely on a rational actor framework (that assumes certain decision-making biases) in which the individual negotiator tries to maximize his or her interests (or utility) by presenting or withholding information of various kinds. CA and DA zoom in on what it takes for the "other side" to *understand* such information along with the many messages encoded in the words and mannerisms used to present it. For most negotiation analysts, this level of detail may be more than they can or want to absorb.

In the end, scholars and practitioners from both fields share a desire to help individual negotiators become more effective. So this is not a call to abandon traditional ways of framing negotiation that have yielded an enormous amount of insight. Rather, our challenge is to integrate the two perspectives to understand how negotiators can contribute to jointly constructed meaning while they also attempt to manipulate decision making on the other side.

The Practical Value of Basic Research

CA and DA researchers may not be the best people to figure out how their insights (however, quickly or slowly they emerge) should be used by negotiation analysts and instructors. I'm already inclined to use certain ideas presented at the symposium whether or not they seem important to CA and DA analysts. For example, before the symposium, I had not thought very carefully about communication as "jointly constituted meaning," "the need to view people as active sense-makers," or the importance of "locating meaning in the sequence rather than the utterance." Just those three ideas have radically altered my understanding of the role that communication plays in negotiation and mediation. Whether or not CA and DA experts think about these ideas in the same way that I do is not important to me. Likewise, whether I use their glossary or invent my own for translating such concepts into terms I can use to analyze and teach negotiation will most likely be of little concern to most of them.

Moving from "Is" to "Ought"

I've learned that CA and DA experts are loathe to take a prescriptive stand (on anything!). So, moving from "is" to "ought," when all kinds of non-objective judgments inevitably come into play, is not something of equal interest to our two communities. That does not worry me. We should each do what we do best.

On the other hand, I think we need to talk about whether our joint focus should be on typical practice or best practice. Because the broader CA and DA community is not eager to take a prescriptive stand, the negotiation and mediation community should select the examples it prefers to have the CA and DA community review. The landlord–tenant dispute discussed in this special issue offers a wonderful example. The mediator who is the focus of the tape is employing standard practices (although not every mediator would apply them in exactly the same way or with the same style). The staged video used at the Negotiation and Communication Symposium, however, was too far from current notions of best mediation practice to be useful to us. I suspect that most CA and DA analysts would be indifferent. So, if that is true, members of the negotiation and dispute resolution community should ask CA and DA analysts to review tapes whose content exemplifies the actual practices *they* prefer.

A Social Constructivist Perspective

I believe that taking an individualistic stand (i.e., asserting that the individual and his or her negotiating style ought to be the unit of analysis in negotiation) has become harder to justify in light of what we learned at the symposium. On the other hand, many negotiation analysts already take a game theoretic (i.e., dyadic) approach. So, we may not be quite as far apart as the CA/DA community fears. Strategy and tactics are undoubtedly the primary focus of the negotiation and dispute resolution community, but our unit of analysis is actually a sequence of interactions. So, when we try to help individuals become better negotiators, we urge them to think about the interests of the other side ("walk a mile in their shoes") and to anticipate how the actions they take are likely to be interpreted by and responded to by the "other side," given the other party's options and reservation values. We — the negotiation and dispute resolution community — have not, however, given sufficient attention to how we talk or the way in which a sequence of utterances does or does not convey the meaning we intend.

It is my hope that this special issue will raise the consciousness of the negotiation and dispute resolution community with regard to the unanalyzed impacts that our communication practices can have. And, we should turn to the CA and DA community for help. The CA/DA community, in turn, ought to focus on accounts of negotiation and dispute resolution that reflect what is currently being taught in the field and accept the fact that negotiation analysts are committed to generating what Howard Raiffa calls "useful prescriptive asymmetric advice." That is, we want our theoretical insights to help negotiators and mediators achieve their objectives.