Justice in Negotiation

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Power is not all in determining the outcome of negotiation. If it were, the structural dilemma—whereby weak negotiate with strong and gain favorable (even asymmetrically favorable) outcomes—would not exist. The structural dilemma is an interesting analytical problem, since many negotiations involve asymmetries that require explanation (Wriggins 1987 ; Zartman & Rubin 1996 ; Habeeb 1991). Some of these can be artificially eliminated by manipulating definitions of power. Thus, the standard behavioral definition of power as the ability to move a party in an intended direction (Tawney 1931 ; Simon 1953 ; Dahl 1957, Thibaut & Kelley 1959) brooks no dilemma, since it is conclusionary or outcome-directed ; the existence of power is proved by the outcome and therefore the most powerful must always win, because the winner is always the most powerful, that is, the most able to move the other party.

The other common definition of power, which identifies it with resources, poses the structural dilemma most clearly. Actors with an overwhelming imbalance of resources frequently do well (Morgan 1994, p. 141) but also frequently do poorly in negotiation, and indeed, contrary to common wisdom, negotiations among unequals tend to be more efficient and satisfying than negotiations among equals (Pruitt & Carnevale 1995 ; Rubin & Zartman 1995). A more behavioral basis or source of power that is common to many approaches is the value of alternatives, variously termed security points (Zartman 1987, pp. 12–13), damage (Harsanyi 1977, pp. 179), reservation prices (Lax & Sebenius 1986, p. 51), threat potentials (Rapoport 1966, p. 97), security levels (Rapoport 1966, p. 101), resistance points (Walton & McKersie 1965, p. 41), best alternative to a negotiated agreement or BATNA (Fisher & Ury 1981), among others. Here too, however, the power of alternatives leaves many negotiated outcomes unexplained (Hopkins 1987). Power alone, by any but a tautological definition, does not always account for the maintenance of a veto over conflict resolving proposals ; conflict is often preferred over a negotiated order by weaker parties under great pressure.

An alternative explanation revives the element of justice as a basis for

acceptable orders or as a criterion for conflict termination (Zartman, Druckman, Jensen, Pruitt, & Young 1996, Zartman 1995). In the process of negotiating the exchange of division of items contested between them, the parties come to an agreement on the notion of justice that will govern this disposition ; if they do not, the negotiations will not be able to proceed to a conclusion. Individual notions of justice act as a substantive veto on agreement, and must be coordinated and accepted as the first stage of negotiation. This notion of justice constitutes a formula, on the basis of which parties then proceed to the disposition of details. The formula can be a procedural rule for establishing terms of trade, or one or more principles of justice on which such terms can be based (Zartman 1978 ; Zartman & Berman 1982). Inherent in this argument is the recognition that power alone cannot either produce or explain agreement and cannot substitute for justice determination in the process of negotiation (Young 1994 ; Zartman 1995 ; Zartman, Druckman, Jensen, Pruitt & Young 1996). The analytical questions then becomes : What is the meaning of justice in negotiation and how is it determined? What alternative outcomes and explanations of outcomes are provided by power and by justice?

The most prominent notion of justice is that of equality or impartiality. Equal treatment is seen as fair treatment and equal outcomes are just deserts. Equality in its many forms is a common point of agreement for combining competing claims, forming a floor (and hence, bilaterally, a ceiling) on relative gains and providing an acceptable formula for agreement as split-the-difference in the end when other criteria have run out. It is also the basic element in the entire procedural ethos under which negotiation takes place, that of reciprocity or the equal exchange of equal concessions (Keohane 1986 ; Larson 1988). Where equality is desired but cannot or need not be determined, a looser form known as equivalent justice is often used. The basis of justice in these cases is simply an exchange deemed appropriate or roughly similar, and justice is to be found not in the relative size of the shares but in the mere fact of the exchange, as opposed to receiving the first item as a gift.

Yet there are also well-established principles of inequality that serve as notions of justice in particular circumstances—equity (or merit or investment), in which the party who has or contributes the most receives the most, and compensation (or need or redistribution), in which the party which has the least receives the most. Even inequalities are equalizing measures, however, exchanged for some past or future equalizer, in the case of equity or compensation, respectively. Compensation is based on equalizing payments to one side, and "entitlement" and "deserving" are brought about through exchange for some external or non-tangible good from the receiving side, or for a good

somewhere else on the time dimension (past or future). Thus, permanent seats on the UN Security Council were given to the Five Great Powers as a down-payment on future security, not because the Powers had nuclear weapons ; merit scholarships are not given because of entitlement for intelligence but as a trade-off for future contribution to society (or to alumni funds) ; and developing countries receive compensation for reduction of ozone-depleting substances in exchange for future development (or for past mistreatment) (Benedick 1991, pp. 152–57).

Without recognition of such exchanges, unequal divisions are unacceptable and negotiations stalemate. Thus, unequal justice norms can also be interpreted as a different kind of equality, not in exchange for the other party's contribution but in exchange for one's own contribution. The justifying criterion shifted from an interactional (between-party) to an internal (within-party) exchange. Such equalizing is the meaning and purpose of equity in the legal sense, where various instances of compensatory justice are invoked to temper the severity of partial justice principles (Deutsch 1985, Homans 1961, Adams 1965, Messe 1970). Furthermore, starting positions of unequal as well as equal justice may yield equality as the distribution rule through a negotiating process.

A third type of justice principle is equal only in that it is to be equally applied ("equality before the law") but it designates a winner, according to an established rule or generalized formula. Priority (partial) justice refers to principles from external sources that decree a particular outcome—"first come first served," "finders keepers," "winner take all," "polluter pays," "riparian rights," "noblesse oblige," "primogeniture," and many others. These principles are usually absolute, incontrovertible, and indicate total allocation, not sharing. Since they are principles that favor one side, they are usually adopted to justify opening positions or the wants, needs and interests of each side, but they may also be used as the basis of agreement under the equal application principle.

Thus, as illustrated, there are many principles of justice but they can all be grouped into three categories—*priority* (sometimes called partial), *equality* (sometimes called partial or impartial) including equivalence, and *inequality* (sometimes called proportional) including equity and compensation (Young 1994 ; Aristotle ; Deutsch 1985 ; Zartman 1987 ; Cook & Hegtveldt 1983 ; Stolte 1987). All variations can be reduced to these three types, and any kind of outcome—final or proposed—can be classified in one or a combination of these principles. Outcomes are negotiated first among expressions of these principles, until deductively or inductively a formula is arrived at to govern the negotiated agreement. Sometimes, the stakes are such that a single, simple principle can constitute that formula ; in other circumstances, they may be complex enough to

require a formula of compound justice, involving a pairing or combination of principles to constitute the agreement.

The process of arriving at an agreed principle of justice in negotiation can be seen as evolving through three stages: absolute, comparative, and jointly-determined. Different parties may initially have different notions of justice (often priority justice) that favor their positions (were they to decide the outcome unilaterally). However, they must place their own position ("Justice for me") within a social context ("Justice for me compared to you") relating to relative gains and losses. While a party acting alone would most likely adopt a self-serving notion of justice ("I deserve the goods"), the fact that it has to negotiate means that winning outright is not an option and a different notion of justice is needed; all things being equal, equality is the most frequently-held norm ("I deserve to do at least as much as you"). When the two comparative or social evaluations of justice are combined, a jointly-determined outcome is (or is not) produced, and the negotiation can go on to apply it. It should be remembered that these are analytical stages and their neat, discrete quality is not always reflected in the messy world of reality.

Determining the agreeable, applicable one among the three principles of justice is only one step in establishing the negotiation in justice; the other step concerns the referent or application of the principle: equality or inequality or priority of what? If parties want to maintain their parity or equality in arms, they must decide which of many parts or measures of armaments they will use. When the UN Security Council enunciated the equivalence formula of "territory for security" for the Middle East in resolution 242 in 1967 they only started the process of determining what was territory and what was security in each of the occupied territories along the Israeli border, which was in turn the necessary prelude to the detailed question of how much territory for how much security. When the Serbs, Croats and Bosnians came to an understanding about the semi-federative relation within Bosnia at Wright Patterson Air Base in late 1995 (the referent question first), they then had to decide the type of justice that would govern relations within and between the parts (the principle question). When legislators on a tax reform bill establish the new code on the basis of equality (flat rate), equity (regressive), compensation (progressive) or some priority principle, it still has to decide what is to be the referent of the principle (income, sales, head or other).

The propositions, or hypotheses, to be tested, then, can be stated in the form of a necessary proposition, "if there is a final agreement, then there was a prior agreement on justice;" the stronger necessary and sufficient form, "if there is an agreement on justice, then there will be a final agreement;" and its converse, "if

no agreement on justice, no final agreement." As in many hypotheses, it is important that the two variables be kept separate and that separate evidence be found for each, lest the statement become an identity and agreement itself be taken as evidence for the existence of a shared sense of justice. Like war and peace, justice does not always wear a badge and is not present only when declared. Thus evidence in this inquiry may require interpretation, without thereby diluting its strength. Evidence may come in one of three forms. There may he explicit statements, either invoking justice itself or referring to its principles, such as equality or need or equity. There may be statements of position or policy which refer to principles of justice without explicitly naming them, and yet using them as justifications. And there may be policy or position statements which contain principles presented as self-justifying, where they analyst may be required to point out the justice principle. Thus, like M. Jourdain, negotiators may he "speaking justice" without knowing it, although like any good diplomats they may also speak justice implicitly and indirectly but perfectly consciously. Like any good diplomats, negotiators may also speak justice explicitly but perfectly insincerely, using the term to cover its opposite. Such subtleties are no less present here than in any other research on power, interest, or preferences, which is the more common language of negotiations analysis.

The following analysis will examine the role of justice and fairness in the negotiation process. The first task is to seek to establish the proposition by looking for the separate, coincident and causal existence of the two variables, by examining a number of cases of negotiations that are relatively diverse and important and are deemed successful because they have achieved a final agreement. Was that agreement preceded by a joint agreement on the sense of justice which would govern the outcome? Was there an absence of agreement until that common principle of justice was established? Would power alone have produced different outcomes and different explanations? These cases, chosen because they provide interesting and diverse illustrations of the propositions, include the negotiations over southwestern Africa (Namibia and Angola) between 1977 and 1988 ; over disarmament in Europe between 1984 and 1986, and the 1962 Cuban Missile Crisis.

Negotiations over Namibian independence pitted South Africa against the Namibian national liberation movement, the South-West African Peoples Organization (SWAPO). and also against Angola and Cuba, in the presence of a number of mediators, including the Front Line States, the Western Contact group, the United States and the Soviet Union (Crocker 1993 ; Zartman 1989, ch. 5).

South Africa consistently proclaimed that a just solution was to be found in procedural terms, through a general election, although it attached a number of conditions—no external pressure, no violence—that would ensure that a friendly neighbor could be assured. This was stated as a self-justifying principle of priority justice on many occasions. Said Prime Minister B. J. Vorster to the South Africa Senate in 1967, "There is only one solution ..., namely, that the people of South West Africa should be allowed to decide their own future unhindered and without intereference."

As South Africa began to lose control of who "the people" were (the referent question), however, its spokesmen began to add the second priority principle of friendliness, stability or peacefulness, also presented as a self-evident value. The new Prime Minister P. W. Botha declared on 5 August 1979, "The South African government, as well as the leaders of South West Africa, attach great value to an internationally acceptable solution ;... however,... if an eventual choice should be between stability or [sic] chaos, we shall choose stability." The South African position was to trade in its rule of Namibia (South West Africa) for independence in such a way as to install a minimally friendly government, but it was couched in terms of priority principles of justice—free and fair elections under conditions of peace and stability.

SWAPO's position was simpler but also presented in terms of priority justice : It's ours, we fought for it, repeated SWAPO leader Sam Nujoma on many occasions. FLS allies finally brought SWAPO around to agreeing to UNR 435 providing for one-person-one-vote elections under paired UN and South African auspices that SWAPO, which had already been declared "the sole legitimate representative of the Namibian people," felt were unnecessary. "South Africa's only role," said SWAPO's UN observer The Ben Gurirab (NVT 12 June 77), "is to announce publicly that it accepts all UN resolutions on South West Africa and that means withdrawing from the territory, agreeing to UN-controlled elections, and releasing political prisoners."

The priority justice positions of each side did little to satisfy the other, and it is little wonder that the negotiations deadlocked. Even more striking was the fact that the mediators also clung to a principle of priority justice, rejecting any notion of division, exchange or sharing. UN Ambassador "Andrew Young and Vice President [Walter] Mondale have said that the US is no longer committed to linkage policy with South Africa, as pursued by [former Secretary of State] Henry Kissinger. 'Under his approach, the United States agreed in effect to limit its pressure on South Africa to largely philosophical criticisms in exchange for Mr. Vorster's cooperation with regard to Rhodesia and South West Africa.' Officials now explain that 'the State Department is no longer willing to hold back

on South Africa in the hope of obtaining action on majority rule in Rhodesia and a new status for South West Africa.' " (NYT 18 May 1977) The US supported the UN position that the answer to the conflict lay in the priority principle of one-person-one-vote under UN auspices. Although this position was softened slightly a year later to allow paired UN-South African auspices in hope of extracting a South African agreement to UNR 435, it remained the essential basis of US policy, "the Carter Administrating in effect [taking] the position that South Africa should cooperate on South West Africa and Rhodesia for its own good,...." (NYT 3 December 1978). While a single, well-chosen principle of priority justice may well attract the adherence of both sides in some cases, in others such as the Namibian instance it is not seen as just by both parties and so raises unreal hopes on one side while alienating the other.

It was a new linkage by the succeeding mediator which provided a principle of equivalence if not of equality. The objections of each side to the other's principle were to be met by a paired withdrawal of Cuban troops from Angola and of South African troops from Namibia, after which the free and fair elections could be held. As Assistant Secretary of State Chester Crocker explained in a Voice of America interview on 23 June 1982, "The relationship that exists between these two issues was not invented by the Reagan Administration or by the United States—it's a fact, it's a fact of history, of geography, of logic. It's also a fact that no party can lay down prior conditions or preconditions to any other party.... The South Africans cannot be threatened into leaving Namibia—excepting on terms which are in some minimal sense acceptable to them ... The same applies the other way. And given the history, and the lack of confidence that exists on both sides of that border, we believe that it's unrealistic for any side to say to the other, 'You go first.' What we're seeking is parallel movement on the two questions—South African withdrawal from Namibia as provided under the UN plan, Resolution 435, and Cuban withdrawal from Angola." The new formula was facilitated by a change in parties, the state of Angola replacing the movement of SWAPO in dealing with South Africa. The confrontation of two sovereign states with their own national interests helped the applicability of an equality priciple of justice, with the referent question still to be specified.

The equality (or equivalence) principle of a paired withdrawal formed the basis of the eventual solution in 1988 and, perhaps as important, guided in its spirit the search for just and equivalent implementing details for the final agreement—"a reasonable and balanced" set of conditions in the words of one side's spokesman and "a just and fair settlement" in the words of another's (NYT, 31 August 1988; Washington Post, 12 August 1988). Angolan president Eduardo dos Santos finally indicated on 24 July 1986 that "we believe the time

is right for negotiation of a just political solution" (FBIS Africa, 24 July 1986, SADCC meeting), and Cuban President Fidel Castro stated in the midst of the final negotiations, "If the agreement is completed and respected, Angola and Cuba will carry out a gradual and total withdrawal of all the [Cuban] internationalist contingent in Angola. There is a real possibility of a just and honorable solution to the war" (NYT 27 July 1988). The formula was specific enough to be considered an instance of equality, rather than simply equivalence, since the items exchanged—the withdrawal of foreign troops—were the same and even the number of troops—90,000 South Africans and 80,000 Cubans—was nearly identical, even if their distance and their timetable for withdrawal was not fully coincident ; most importantly, of course, South African gave up colonial sovereignty with its withdrawal, whereas Cuba gave up contracted assistance. The formula was not merely based on "getting something" in exchange for independence but rather a matched and balance trade-off that provided the guide for further details. It is noteworthy that the one missing element in the application of equal justice to both areas was the holding of elections in Angola, parallel to those in Namibia ; this item, not part of the Washington Agreement of December 1988, was the basis of the complementary Estoril and Lusaka Agreements of May 1990 and November 1994, respectively, which provided for the settlement of the internal Angolan conflict. The shift from priority to equality principles of justice that both sides could subscribe to provided the basis for the negotiated agreement in southwestern Africa.

The Stockholm Conference on Disarmament in Europe (CDE) represents a very different test for the notions of justice in negotiation. It shows that a common notion of justice (the principle question) can be identified early on but can run up against the referent question, that additional principles of justice may be required to keep negotiations moving, that that internal changes in the parties and in their relations with each other may be required in order to be able to complete the principle and resolve tile referent questions, so as finally to arrive at an agreement.

The 1975 Helsinki Final Act contained, among other things, both a no use of force (NUF) declaration and a few limited but instructive confidence-building measures (CBMs). In 1978 France proposed a European disarmanent conference "from the Atlantic to the Urals" (in a Gaullist phrase), initially focusing exclusively on CBMs. The relationship between the conference and the measures was debated at the Madrid meeting of Conference on Security and Cooperation in Europe (CSCE) in 1983, resulting in the Madrid Mandate for "a process of which the first stage will be devoted to the negotiation and adoption of a set of mutually complementary [confidence and security building] mea-

sures... [over] the entire continent of Europe." The conference began in Stockholm on 17 January 1984.

The careful wording of the mandate represented both a clear agreement on the principles of justice and a troublesome ambiguity on its application. The "mutually complementary measures" were to be an exercise in equal justice, since they were to be equally applied to all parties within the area and this equality of treatment was a crucial rule of standing and treatment for the CSCE members, but most particularly for the NATO and Warsaw Pact partners. Yet the referent question recognized that equality was hard to find in reality, for several reasons. CPSU General Secretary Leonid Brezhnev expressed the clash between principle and referent quite succinctly in an interview with *Der Spiegel* on 2 November 1981 : "We naturally expect reciprocal [i. e. equal] steps from the West. Military preparations in the European zone of NATO do not start from the continental edge of Europe" (Borawski 1992, p. 28). The same problem was analyzed in careful detail by US Ambassador James Goodby (1988, 164, 154) :

> The value of confidence–building measures is greater far the United States than for the Soviet Union... because greater openness in military activities should better serve the interests of the United States.... In addition to this well–known problem, the Soviets faced another dilemma peculiar to the Stockholm Conference—how to reconcile their interest in a European security conference with their instinct that any agreement emerging from it should apply to US forces and territory with no less rigor than to Soviet forces and territory.... The asymmetrical geographical coverage probably caused real concerns in some quarters in Moscow, however, and the Soviet delegate sought to compensate for this by making proposals that affected the West to a greater extent than the East (... ceiling on exercises,... high threshold on notification,... naval activities on the high seas, [and]... air activities.)... Thus they sought to achieve not only a geographic offset to the unequal treatment they tried to portray in the outcome of the Madrid mandate, but also to provide for coverage of those U S forces that they perceived to be a special threat to themselves.... A third category of obstacles common to many of the issues above stemmed from the asymmetries in the way US and Soviet forces are structured and trained.

The negotiations faced a dilemma : How to implement the agreed principle of equality when its implementation could not be accomplished with equal interest and equal effect? Either the principle had to be changed, from equal to unequal justice, as the Soviets tried by seeking compensation for the asym-

metries, or ways had to be found the apply the mandated principle of equality. As Soviet Ambassador Grinevsky said (or was instructed to say) as late as 22 March 1985 in Round V, "Most of the proposals... [in NATO's SC. 1 Amplified] continue to be aimed at laying bare the military activities of the Warsaw Treaty countries, at securing unilateral military advantages. As before, they do not meet the requirements of equality of rights, balance and reciprocity, equal respect for the security interests of all participating states [Borawski 1992, p. 65]." Until the referent question could be answered satisfactorily, the principle question remained abstract and negotiations were stuck.

The negotiators were working on the problem, however. A little publicized "Walk on the Wharf" in Stockholm by Ambassadors Goodby and Grinevsky produced the suggestion of a new and complementary principle of equivalence—Soviet agreement to CBMs in exchange for US agreement to a renewed NUF declaration. The suggestion was conveyed to President Reagan who included it as an apparent "precipitating act" (Saunders 1988, p. 437) in his speech to the Irish parliament on 4 June 1984. Equivalence of issues did not replace equality of application as the governing principle of justice; it only facilitated it, and other changes were needed to make the latter acceptable.

These changes came with the leadership succession in the Soviet Union, not as a matter of personality or idiosyncracy, but as a matter of the redefinition of Soviet interests that made the application of the equality principle possible. Confidence-building leading to arms reduction in Europe became a prime Soviet interest, therefore allowing a focus on "the whole of Europe" without implying asymmetry. The Europeanness of the Soviet Union was a historic Russian theme of importance to Gorbachev, overriding perceptions of geographical imbalance. In the midst of Round VIII, the first summit meeting between Reagan and Gorbachev, in Geneva produced a final statement which "reaffirmed the need for a document which would include mutually acceptable confidence-and security-building measures and give concrete expression and effect to the principle of non-use of force [Borawski 1992, p. 77]."

Acceptance of the two principles of justice—equality and equivalence—allowed the negotiators to move ahead to the details of the agreement, translating the principled formula into specific measures, for the first time. The informal structure which took over by Round VII and characterized proceedings through 1986 testified to the effect of agreement on the formula, allowing parties to work together in search of agreeable provisions (Borawski 1992, p. 76). In the end, Ambassador Barry, Goodby's successor, judged, "We gave away more than we wanted, but we got... a fair bargain, ..." (Washington Post, 22 Sept 86).

Power alone could not have produced and could not explain the agreement.

Even though the agreement on terms close to the American position came after the weakening (as prelude to the eventual collapse) of the Soviet Union, it was not the pressure of that asymmetry that caused the Soviet Union to agree. The key to that agreement was its formulation in acceptable terms of justice, and until that was accomplished, the negotiations were stuck.

The third case is the well-known Cuban missile crisis of October 1962, on which much has been written, particularly as a case of national security and of Cold War confrontation. It was also an almost-textbook case of negotiation, involving a few simple moves. Countervailing power was used to carry the crisis into stalemate, from which war, capitulation, and a negotiated deal were the only ways out. Insistence on capitulation, which was within the grasp of US power, would have produced war ; negotiation was necessary to produce a way out that avoided war or what Khrushchev termed "untying the knot" (Khrushchev 1962, p. 642). Even though the result reflected the unbalanced distribution of resource power, it became possible only when a notion of justice was addressed and resolved, and the process of resolving involved a number of attempts to create the appropriate balance by criteria of justice.

The installation of Soviet missiles in Cuba was decided in June 1962 (Khrushchev 1970, 493–94) and discovered by the US on 16 October (R. Kennedy 1969, 1). The Soviet action was later justified as a deterrent against an American invasion of Cuba, based on an absolute priority principle of collective defense, equally applied : "We had the same rights and opportunities as the Americans.... governed by the same rules and limits...." (Khrushchev 1970, pp. 496, 493–95 ; Khrushchev 1974, p. 511). For the US, the right of self-defense against an aggressive move received very little mention in the Executive Committee and was assumed as the legitimate expression of an absolute priority principle of justice (Rusk in Trachtenberg 1985, p. 171 ; R. Kennedy 1969). Discussions centered on the choice of an appropriate American response between air strike and blockade, neither of which would have resolved the issue and removed the missiles (J. F. Kennedy & Dillon in Trachtenberg 1985, p. 195). The quarantine was chosen as the first response to force withdrawal from the Soviet Union ; air strikes were left as the second, in a threat position (R. Kennedy 1969, 32–33 ; Rusk & McNamaras in Trachtenberg 1985, p. 173, 182 ; R. Kennedy in Trachtenberg 1985, p. 200). It was early decided that the quarantine around Cuba would not be traded against a Soviet blockade of Berlin (Trachtenberg 1985, pp. 178–79). The purpose of the quarantine was to impose a stalemate that would force a decision and would provide an item for trade against the removal of the missiles, as the expression of a priority justice principle but one that was uninteresting to the Soviet Union.

After others unsuccessful stabs at an exchange, the appropriate referents for equivalent justice limited to the Cuban area were offered by Khrushchev in his letter of 26 October: US promise not to invade Cuba in exchange for missile "demobilization" (Khrushchev 1962, p. 642, 645). The second Khrushchev letter of the following day repeated equivalence but in more nearly equal terms but no longer limited to the Cuban area: Soviet missiles out of Cuba in exchange for US missiles out of Turkey (Khrushchev 1962, p. 648); the president considered that it might "make a good trade" whereas the State Department, in rejecting it, proposed the rejection of any equivalence ("no trade could be made" [J. F. Kennedy in Trachtenberg 1985, pp. 199, 201; R. Kennedy 1969, p. 79]). The Executive Committee instead opted to take up the previous offer: Soviet offensive weapons nut of Cuba in exchange for US removal of quarantine and assurances against invasion (R. Kennedy 1962, p. 649).

Justice is never mentioned in the Kennedy–Khrushchev exchanges. There was much discussion of terms of trade, the ingredients of equivalent justice, however, and in the debate over the two Khrushchev letters, President Kennedy clearly indicated that "we have to face up to the possibility of some kind of trade over missiles" (J. F. Kennedy in Trachentenberg 1985, p. 199). Grudgingly, Khrushchev—who having less to crow about, crowed more—indicated that "by agreeing even to symbolic measures, Kennedy was creating the impression of mutual concessions (Khrushchev 1974, p. 512). Before his assassination, Robert Kennedy planned to conclude his book with a chapter on justification (R. Kennedy 1969, p. 106). Despite a lack of explicit references to please researchers, there is no doubt that the last days of the crisis and the bulk of the bargaining were spent in an intense search for terms of trade that would justify the withdrawal of the missiles, the lifting of the quarantine. and the negotiation of an agreement.

Table 1 Principles of Justice

Case	initial principles	referents	principle of agreement
Namibia	SA: priority (conditional elections) SA: priority (friendly relations) SWAPO: priority (liberation) US: priority (one person one vote)	who votes?	US: equality (equivalence) — (paired withdrawal from Namibia & Angola)
CDE	CSCE: equality (CBMs by all of Europe)	what is Europe?	US–SU: equivalence (CBMs for NUF)
Cuba	SU: priority (collective defense) US: priority (self defense, remove missiles) SU: equality/equivalence (remove missiles—Cuba for Turkey)		SU: equivalence (remove missiles for no invasion in Cuba)

Conclusions

Negotiation analysis has been presented here in order to show the interaction of conflict and order. Conflict occurs when interest-based positions rooted in absolute priority (or other) principles of justice are incompatible with similarly based and rooted positions held by other parties. Order through conflict resolution is provided when the incompatibility is overcome, either by the mutual acceptance of a priority principle and its referents or by the joint determination of a principle or equality or inequality and its referents. It is not yet clear what governs the choice of original principles nor the acceptance or determination of mutually agreeable principles, beyond the obvious (but basic) notion that original notions of absolute justice are chosen to favor the interests of the holder and mutual positions are chosen to preserve those interests in combination in the best way perceived. It is clear, however, that power alone, in any non-tautological definition, does not explain why a particular notion of justice is adopted or why a particular outcome is reached independent of justice considerations. The selection of an agreed sense of justice, however, does allow the parties to move on to a more detailed settlement of their conflict, and in its absence no such settlement is possible.

Political practitioners, including negotiators, are neither philosophers no theorists. They therefore do not observe the niceties of analytical sequencing nor the neatnesses of analytical concepts. Identifying such concepts and sequences is therefore a matter of interpretation, as always. But the evidence of the role and importance of justice in conflict and order is clear, in both the decisions and words of the actors. Political analysis has long compartmentalized its treatment of political phenomena according to discrete variables, so that discussions of power, order, and institutions rarely meet discussions of justice, principles, and motivations, or meet only in glancing encounters. Without more sustained meetings, the analysis of conflict and order is incomplete. A new type of analysis of negotiation has been presented here that brings normative considerations back in and put them in their place.

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