Justice and Power in Civil Law Negotiations

Peter J. van Koppen

The relationship between power and justice in civil law negotiations is discussed. It is argued that the concept of power is essential to understand justice behavior in civil law negotiations. Distributive justice appears to be hardly relevant in civil law disputes and should be replaced by retributive justice to understand the behavior of the parties. The analysis leads to the observation that justice is more likely to be relevant for the powerless party in civil law disputes than for the power-holder. I conclude that both the relative power and justice behavior cannot be studied without taking into account the perception by individuals of both the relevant norms and the salient characteristics of the interaction.

KEY WORDS: justice; power; civil law negotiations.

INTRODUCTION

The concept of power is traditionally omitted from research on justice behavior, but recently some authors analyzed the relation between power and justice behavior (Cohen, 1986, 1987; Cook and Hegtvedt, 1986; Greenberg and Cohen, 1982; Mikula, 1984; Reis, 1984). There is presently no consensus on what this relation looks like. Greenberg and Cohen (1982), for instance, suggested that “the extent to which actual allocations or reallocations in a given situation are consistent with any justice norm will depend to a large extent on the relative power of the individuals in that situation” (p. 452). The study by Cook and Hegtvedt (1986) supported that contention and—more important for the discussion in the present article—showed that differences in outcome are considered more unfair by the powerless than by those in a powerful position.

1Faculty of Law, Erasmus University, P.O. Box 1738, 3000 DR Rotterdam, The Netherlands.
The same arguments were made by Mikula (1984) and Reis (1984), but they postulated an even stronger relation between power and justice behavior. They do not use the concept of power but the perceived control by individuals. Perceived control, however, can be considered a direct consequence of the perceived relative power in an interaction. Mikula and Reis conceptualized the perception of injustice as equivalent to, or an instantiation of, the experience of loss of control. In their opinion (following Lerner, 1977), individuals derive expectations of events from basic and established beliefs regarding the appropriate distribution of resources. If these expectations are not met, an individual may experience insecurity. The motivation for justice, then, is one form of a more general motivation for control.

In this article the discussion is developed further. Focusing on civil law disputes, I propose that in these kind of microlevel interactions, the relative power of the individuals involved determines whether a justice motive arises or not and that the concept of power is essential in understanding justice behavior.

NEGOTIATING CIVIL LAW DISPUTES

The interaction between the parties in civil law disputes is usually most intense in the negotiation phase. Most disputes go through a period of negotiations and in fact most disputes are resolved with a negotiated settlement and never reach the court (Ross, 1980). A negotiated settlement, therefore, can be considered the normal, and a judicial decision the “pathological” manner to resolve civil law disputes (Llewellyn, 1960, p. 58). That does not imply that judicial decisions are not important in typical civil law disputes (Cooter et al., 1982; Mnookin and Kornhauser, 1979). If a party expects to win after the case is pressed to a court decision, he can take a stronger position in negotiations and is usually able to secure a more favorable negotiated settlement. The capacity to persuade or force the other party to yield—commonly denoted as the power—thus is an important factor in predicting the outcome of a dispute.

The role of power is firmly established in the literature on negotiations; the concept of justice is not. Some authors gave justice a distinct but minor role in negotiations. Pruitt, for instance, proposed that shared justice concerns of the parties may converge their positions to a “prominent,” just solution of the dispute (Pruitt, 1981, p. 58-64). Lamm (1986; Lamm et al., 1982) showed that concerns with justice can have the role of reducing the party's initial level of demand and thus decrease the level of conflict. In this article I take a different point of view on negotiations. Negotiations are examined from the perspective of the most important decision each party has
to make during a dispute: whether it is still worthwhile to continue negotiations or would it be better to go to court. As I show below, in that discussion the role of power and of justice becomes most visible.

For clarity, the discussion in this article is limited in two respects. I discuss only the position of the party who suffers most from the status quo, i.e., the party who usually becomes the plaintiff if the case goes to court. The same analysis can, *mutatis mutandis*, be made for the position of the defendant. Second, although a wide range of modes of third-party interactions exists between a formal trial and negotiations (Vidmar, 1981), the discussion is limited to cases in which the parties can choose between only two alternative modes of behavior: settling or suing.

**POWER**

The definition of power in social interaction has been a problem for many years (recent reviews are given by Debham, 1984; Lukes, 1986; Wrong, 1979). Without taking a stance in this debate, I use the definition that fits the microlevel interactions that take place in civil law negotiations best: "A has power over B to the extent that he can get B to do something that B would not otherwise do" (Dahl, 1957, pp. 202-203). Following this definition, the powerful party in negotiations has the capacity to persuade or force the other party to yield.

The power of the parties is both a relational and subjective factor in negotiations. It is relational in the sense that the power of A over B equals the dependency of B on A. The dependent party in turn can have power over the other party (French and Raven, 1959; Kelley and Thibaut, 1978). In a civil law dispute, for instance, the plaintiff may have a better case that results in a relatively favorable settlement, but the defendant usually can derive some power from the fact that if he does not yield, the plaintiff bears the costs of a formal lawsuit. The extent to which each party can control the negotiations thus depends on the mutual power, i.e., the ratio of the power of one party over the other and the power of the other over the one. The power of a party is subjective, because the power entirely depends on the perception of the parties. Moreover, all sources of power of a party depend on either a subjective judgment or on subjective expectation about future events.

The power of a party can be derived from a wide variety of sources, for instance, his esteem, his negotiation skill, or the resources he can command. The most important sources of power, however, are the available alternatives to the negotiations (Komorita and Leung, 1985, p. 229). It is generally assumed that parties negotiate and continue to negotiate as long as
they expect the negotiations to yield a better outcome than the alternative to negotiations (Bigones, 1976; Cook and Emerson, 1978; Gauthier, 1985, 1986; Hiltrop and Rubin, 1982; Johnson and Tullar, 1972; Kelley and Thi­baut, 1978; Komorita and Leung, 1985; Latour et al., 1976; Lax and Sebe­nius, 1985; Priest and Klein, 1984; Wheeler, 1975). For civil law disputes this means that a party will continue to negotiate as long as he expects the negotiations to produce a settlement that is more favorable to him than the expected judicial decision (i.e., of course, minus the extra costs of a lawsuit). In civil law negotiations, therefore, the power of a party is fore­most a function of the expected judicial decision. A powerful party can use the threat that he will turn to a favorable judicial decision, to persuade the other party to give in during negotiations. As noted above, the powerful party is only powerful to the extent that he subjectively expects a favorable judicial decision and he can exercise his power only to the extent that he is perceived to be powerful by the other party.

The more power a plaintiff has, the higher he can set the minimum set­tlement he will accept in negotiations—I call that the resistance point (Raiffa, 1982). The respective resistance points of the parties thus probably are the best measures for the relative power in a dispute. Both the perceived power and the resistance points are based on the estimations of winning in court by the respective parties.

Estimations of the chances in court are unreliable and parties can be very unsure about them. Judges often give different decisions in the same case, even in simple ones (Ten Kate and Van Koppen, 1984; Van Koppen and Ten Kate, 1984). Parties are often unsure whether they or the other par­ty can prove the necessary facts, and often it is not clear how the law applies to the present dispute. But usually parties, assisted by their attorneys, suc­ceed in making an estimation of what will happen in court that they consid­er more or less meaningful.

Legal norms, and how these norms apply to the dispute, are the most important footings for parties to estimate a judicial decision. At the onset of the negotiations, the estimations are usually imprecise, and so these esti­mations usually change over the course of the interactions. The interaction during negotiations, therefore, consists “largely of the invocation, elabora­tion, and distinction of principles, rules, and precedents” (Eisenberg, 1976, p. 639). These interactions serve, among others, to establish the mutual power of the parties, and to develop arguments on how the status quo re­lates to the breaking of a legal norm.

**JUSTICE**

Civil law disputes originate from the suffering of harm by the plain­tiff. The plaintiff perceives the harm to be related to behavior of the defen-
dant or to occurrences for which he holds the defendant responsible. The harm suffered by the plaintiff can range from a simple financial loss to more immaterial values as the loss of a job or more spiritual values as damage to his reputation.

Not every harm will or can lead to a claim against the defendant. In day-to-day life, people are harmed while there exists no norm that entitles them to a claim of retribution. If, for instance, a competitor opens a shop across the street, he draws away my customers, but he cannot be reproached for that. The harm must also be important enough to justify the trouble of putting forward a claim and only if the harm can be related to the breaking of a—subjective, social, or legal—norm, will a plaintiff forward a claim (Eckhoff, 1974). Furthermore, the norm must also entitle the plaintiff to (partial) retribution from the defendant. I propose that whether the defendant did or did not break a legal norm becomes relevant only after the plaintiff perceived the breaking of a subjective, personal, or a social norm. The motive generated from the last-mentioned norms gives the drive to put forward a claim, although many plaintiffs will first investigate—often with the help of an attorney—if there is any chance that their point of view is supported by the law and accepted in court. But foremost, a plaintiff brings forward a claim because he feels the status quo to be unjust or at least undesirable.

Both in law and philosophy a long-standing tradition exists to identify criteria for norms or standards of justice (Eckhoff, 1974; Gauthier, 1986; Rawls, 1971). Social psychological theory has adopted to that tradition and has identified either one single principle of justice, equity (Adams, 1965; Walster et al., 1978), or more than one principle of justice (Deutsch, 1975; Lerner, 1975, 1977; Leventhal, 1976; Reis, 1984; Sampson, 1975). Most research has been done using the principles of justice identified as equity (or contribution), equality, and to a lesser extent, need.

Unfortunately, the field of justice research in psychology has had little interest in law-related research until now. The predominant tradition in justice research poses several problems in applying its findings to civil law disputes, of which three are relevant to the present discussion: (i) What kind of justice is relevant in civil law negotiations: distributive or retributive justice?; (ii) the limited attention given to the role of the justice motive in justice behavior; and (iii) the relationship between the perceived status quo and the felt injustice.

**Distributive Versus Retributive Justice**

The main focus in justice research has been on distributive justice. Distributive justice is governed by rules that specify "criteria that define certain distributions of reward and resources as fair and just" (Leventhal,
Central to distributive justice are the following four dimensions: (i) things that are allocated to (ii) individuals, (iii) whose share can be described by a rule (iv) that confirms a justice principle (Cohen, 1987). As to the first two dimensions, justice research has been very limited: the main interest has been on allocation of positively valued goods (usually money) by individuals who are not among the recipients. This led Hogan and Emier (1981) to note that distributive justice is mainly concerned with the power-holders view; the problem is how to allocate resources that are available to the allocator. Their discussion leads to the conclusion that distributive justice is relevant only under very particular socioeconomic conditions, and it is useful chiefly for interpreting the actions of power-holders who must distribute scarce material resources among groups or individuals. For the non-power-holder questions of distributive justice seldom arise (Hogan and Emier, 1981, p. 130).

Civil law negotiations are typically situations where distributive justice is only partly relevant. Resources are not allocated to the parties, but transferred from one party to the other. The allocation is not done by a third party and usually one of the parties can be characterized as relatively powerful. In a typical civil law setting, the question is not one of distribution, but of retribution: some harm has occurred to the plaintiff, the plaintiff holds the defendant responsible for that harm, and expects the defendant to redress the harm as much as possible. Retributive justice is governed by rights and duties which are “conditioned by a transfer and which [serve] as the basis for a new transfer in the opposite direction or with reversed values” (Eckhoff, 1974, p. 3). In a retributive exchange one party hopes or expects to receive retribution usually at the cost of the other party; the other party may comply (partly) to avoid something that might be worse, e.g., an unfavorable judicial decision.

Also with respect to the last dimensions proposed by Cohen (1987) — justice rules and justice principles — distributive and retributive justice differ considerably. Principles that apply to a retributive exchange are, for instance: “(1) good shall be repaid by good; (2) hurt can be repaid by hurt; (3) a wrong shall be righted; and (4) after receiving an advantage one may expect a disadvantage” (Eckhoff, 1974, p. 30). The rules that are derived from these principles always involve a transfer from one party to the other. Complete compliance with the norm would mean, at least from the point of view of the plaintiff, a transfer that equals the harm suffered.

Distributed and retributive justice share the feature that both are only relevant if a conflict of interests exists: where there is no conflict of interest, there is no need for justice (Kelsen, 1957). But retributive justice is relevant to exchanges where a positive outcome for one party always means that the outcome of the other party is negative, whereas distributive justice is typi-
cally relevant for interactions where either all parties expect positive outcomes or all expect negative outcomes.

The Justice Motive

In the above discussion, I passed by the motive—commonly denoted the justice motive—that prompts individuals to adhere to justice principles or to urge others to adhere to these principles. Following Van Avermaet et al. (1978), a justice motive seems to arise in three psychologically different manners. First, a justice motive can arise as a reaction to an unjust situation. Perception of an unjust situation induces distress in the individual which leads to an impulse (the reactive justice motive) to restore justice (Walster et al., 1973, 1978). Second, an individual can behave justly, because he values a just distribution in itself. Here, justice behavior is not a means to escape injustice but is valued as such (the proactive justice motive; Lerner, 1975, 1977). Third, justice can be used strategically in a relationship, i.e., an individual gives up (part of) a payoff in favor of another individual with whom he expects to interact in future. Here, a payoff now is sacrificed in the expectation that it will yield a higher payoff in the future (strategic justice motive).

A justice motive aims at restoring justice by changing the perceived division of resources such that the division conforms to a justice principle. All three types of justice motives can result in a division that conforms to the same justice principle. The mere existence or creation of a division that is not in conflict with a principle of justice does not mean that a principle of justice is applied (Cook and Emerson, 1978, p. 723) or that any of the individuals in the interaction was motivated to restore or maintain justice. The essential element of any principle of justice is that it is prescriptive, i.e., that the principle puts constraints on behavior and on the results of behavior, either on the behavior of the individual (proactive justice motive) or on the behavior of others (reactive justice motive). Justice is only relevant and needed if it thwarts (other) interests individuals or others may have (Gauthier, 1986), and therefore justice provides a means for regulating existing social activities, rather than providing a basis for those activities in the first place (Hogan and Emmer, 1981). If the advancement of one's interests coincides with an application of a justice principle, the interests form a simpler and more elegant explanation for the resulting behavior. This implies that strategic use of justice (Mikula, 1984; Van Avermaet et al., 1978) is better understood from the perspective of the interests of individuals than from a concern with justice. This also implies that an assessment of the division
that results from an interaction gives no indication as to the presence or absence of a justice motive.

If the same distribution can result from different motives, then it is impossible to infer which motive is operative from a specific pattern of outcomes. Yet it is common in the literature to examine variations in the distribution of rewards and costs, and use these distributions to make inferences about the justice motive (Reis, 1986). If an individual gives up part of his available outcome to foster an expected future relationship, and the outcome reached corresponds to a justice principle, many researchers perceive the use of a justice principle. Van Avermaet et al. (1978, p. 432) propose to distinguish between such strategic use of just divisions and justice behavior that stems from a justice motive through the comparison of behavior of an individual across settings. However, that will not provide for a distinction of strategic use and the proactive justice motive.

An example of behavior that can be defined as such strategic use of justice principles is the commonly cited result that the equality principle is used if allocation is done among friends or if future relations are expected, while the use of the equity principle is more dominant in allocations among strangers and in one-time relations (Austin, 1980; Austin and McGinn, 1977; Eckhoff, 1974, p. 94; Greenberg, 1984; Morgan and Sawyer, 1967). This finding is often explained through an intervening variable: adherence to the equity principle creates and maintains differences between people and thus would strain a (friendship) relation (Greenberg, 1984; Leventhal, 1976; Reis and Gruzen, 1976). The above discussion suggests that justice behavior is not adequate to explain these findings, because the behavior is not constrained by justice principles. More important, there is a simpler explanation: A relative loss in a relationship now is expected to be compensated in the future, if allocation is done among friends or in continuing relationships (cf. Eckhoff, 1974; at least, that is true on a microlevel. On a societal level, principles of justice can originate because people experience the division prescribed by that principle to be beneficial in the long run).

In most negotiation interactions, strategic use of a justice principle is necessary to maintain the relationship. The parties have to adhere to some rules to induce the other party to continue the negotiations. A party who adheres to a justice principle for this purpose is not motivated to maintain or restore justice, but is motivated for the most favorable settlement.

The proposal of strategic justice motives stems from overlooking the original contention that a justice motive is a reaction to an unjust situation and serves as the impulse to redress the injustice, either on a cognitive level or through behavior (Adams, 1965; Lerner, 1980; Walster et al., 1973). The justice motive, therefore, is an emotional reaction to a situation that is perceived as unjust (Hogan and Emler, 1981; Walster et al., 1973, 1978; Lerner, 1975, 1977, 1980).
The assumption that distress or emotions are involved in this process has largely been untested (Greenberg, 1984), although some logical and empirical evidence exists (Greenberg, 1982, 1984). An important reason for the lack of evidence for this central conception of justice theories is that research has been directed exclusively to distributive allocating behavior, neglecting retributive allocations (Hogan and Emler, 1981; cf. Eckhoff, 1974). Distributive justice is a concern for the power-holder; his problem is how to allocate resources that are apparently available. Distress is more evidently present for the powerless when he experiences a lack of control in a situation that he perceives as unjust (Lerner, 1980; Mikula, 1984; Reis, 1984). In retributive exchanges such seems to arise more often than in distributive exchanges, where both just and unjust divisions of resources are readily available to the allocator. Greenberg's vain search (1984) for support for distress as the origin of justice restoring behavior may very well be caused by the fact that the main focus of justice research has been on distributive justice. Greenberg, therefore, concluded that “equity-creating behavior should be conceptualized as attempts to secure or approach equitable conditions actively [italics added], rather than escape from or avoid inequitable conditions” (1984, p. 182).

The close tie between justice theories and distributive justice is best illustrated by the following characterization of a typical study in this field of research (a review is given by McClintock et al., 1984). With little exception (e.g., Mikula, 1987; Mikula and Schlamberger, 1985), subjects are requested to allocate utilities among themselves and others or as a third party among others. The utilities to be allocated are rewards, rather than rewards and punishments or punishments alone (Hogan and Emler, 1981, p. 131). The subjects are expected to base the allocation on a priori well-defined behavior and effort of the recipients (commonly tasks that reflect the world of commerce; Van Avermaet et al., 1978, p. 430) and most important, allocation is done in situations in which before allocation no conflict existed. The stimulus situations offered to subjects in these experiments generally involved two persons who performed a task. That situation is neither just nor unjust, because no allocation has occurred yet. The following behavior of the subjects thus can hardly be regarded as a reaction to distress but only as behavior by which distress (or guilt) is evaded. Besides that, usually only a few dollars are at stake, or sometimes the subjects only play that they are allocating important resources, making the arousal of distress even more unlikely. Consequently, these experiments not only leave the central assumption of justice theories untested, but distress even seems to play a minor role in these experiments, and consequently it is likely that subjects are motivated to restore or maintain justice.

As a summary of the above discussion, situations in which behavior is directed by a justice motive may be characterized as follows. In a conflict of
interest, one party perceives the status quo as unjust. The felt distress leads to a justice motive that—if brought forward in the interaction—serves to constrain the behavior of the other party (reactive justice motive) or to constrain the behavior of the individual himself (proactive justice motive). These justice motives must be distinguished from justice arguments that are used as legitimization of the own position. These arguments, for instance, may serve to encourage the other party to stay within the negotiation situation. These justice motives must also be distinguished from strategic use of just divisions. These divisions serve other interests than a concern with justice, and these other interests form a simpler explanation for the behavior.

The Relation Between Perceived Status Quo and the Justice Motive

One element of justice still needs to be discussed here: how unjust a situation must be to invoke a justice motive. Individuals react to unjust situations and they do not react to situations that are just, except maybe with a warm feeling that everything is just and fine. It is commonly assumed that a situation is perceived to be unjust—and thus is a stimulus that can invoke distress and a justice motive—if the situation deviates from a preestablished norm to a certain extent. In other words: (i) a norm must exist that prescribes the just situation, and (ii) some threshold must be exceeded before a justice motive is invoked. The norms that define a situation as just for an individual can be of a very diverse nature, but these norms share the feature that they are subjective and imprecise. Which situation is perceived to be unjust may vary from individual to individual. These norms are called personal norms.

Strict adherence to his personal norms by an individual would warrant a reaction in too many situations. Probably because of the strain that would put on individuals, small deviations from just distributions are apparently very well acceptable for most individuals in most situations: One is usually satisfied with an approximate justness and perceives only the obvious deviation as unjust (Eckhoff, 1974, p. 94). For civil law disputes, this means that no claim will be put forward if the harm is minor or the perceived relationship between the harm and the defendant is very weak. If the plaintiff perceives the situation as extremely unjust, however, he is likely to go to court without further delay and then there is no room for negotiations.

PERSONAL AND LEGAL NORMS

From the above discussion it can be inferred that a negotiating party reacts to both the injustice of the status quo and to the expected judicial de-
cision. The first is called the application of personal norms to the situation; the second, the application of legal norms to the situation. As noted above, both (sets of) norms are subjective.

In a particular dispute, the personal norm of an individual and the perceived legal norm may or may not differ. It is a fair hypothesis that the body of law, as it is historically evolved and as we know it today reflects concerns with justice shared by most individuals in our society. Because not all norms are shared by all individuals, a difference can occur between the normative value given by law to a situation and the normative value given by an individual to the same situation. Moreover, laws are designed for cases in general, so an individual who is in general agreement with the law, may apply a deviating norm in a particular dispute, especially if he is one of the parties. In such a dispute, the legal norms, as perceived by a party, and his personal norms need not to be identical.

To make things more complicated, the legal norm has no objective value but is only relevant for the plaintiff in the manner in which he or his attorney expects a judge, if they go to court, to apply that legal norm to the dispute. In that sense, the legal norm and the evaluation of how that norm is violated is as much subjective as is the perception of the violation of the personal norm.

In many cases the personal norms and the perceived legal norms are identical. Many debt collection cases fall under that heading; the defendant bought something and the plaintiff—usually a business man—not only feels the defendant should pay but also expects the judge to share that feeling.

Now, suppose that this plaintiff is negotiating and has to decide to continue negotiations or to go to court. His estimation of his chances in court will depend on his perception of the legal norm. If his personal norm and legal norm are much alike, it will be hard to discern in research whether the decision to continue or stop negotiations depends on the legal norm or the personal norm. It becomes more interesting if the legal norm and the personal norm differ.

I propose the hypothesis that a justice motive will emerge in a civil law dispute only for the party who experiences a substantial difference between the legal norm and the personal norm. Suppose some unjust harm has been inflicted upon me. I start negotiations with the inflictor, and I am convinced that any judge will favor my position if I start a lawsuit. Why then should I be distressed if I am, in my own perception, the powerful party in the negotiations? Apparently, two things are needed to arouse a justice motive: The situation must be perceived as unjust and the individual must expect that the injustice cannot be redeemed easily in the near future. In other words, only the individual who has little power in a situation and has little control over the interaction is likely to experience injustice. If a plaintiff expects to win in court, he has that control and no justice motive will ensue.
An Example

As noted above, the power of a party in civil law negotiations stems from the expected judicial decision. If justice is irrelevant in a specific case, the best measure for the perceived power of a party is his resistance point, i.e., the most undesirable settlement that party is prepared to accept in negotiations. Assuming that the perceived extra costs of a lawsuit are constant across subjects for the same case, there must be a considerable correlation between the expected judicial decision and the resistance points of the subjects who evaluate the same case.

In a study (Van Koppen, 1986) eight cases were presented to subjects (part-time students at Erasmus University Faculty of Law; \(N = 140\)), of whom half took the role of attorney to the defendant and the other half took the role of attorney to the plaintiff. The resistance points of the subjects were measured with the answer to the question: “What is the most undesirable settlement you would advise your client to accept?” The expected judicial decision was measured by the estimated chance of winning the dispute if the case was pressed to a court decision. As hypothesized, the expected chance of winning in court and the resistance points correlated considerably for both the plaintiffs and the defendants: in seven out of eight cases, the correlations between the chance of winning and the resistance point were somewhere between 0.5 and 0.7. One case was an exception to this finding: In that case I found a correlation of 0.4 for one party and 0 for the other party. The case, as presented to the subjects but translated from Dutch, was as follows:

*Meegens vs. Knol (Sailing Boat).* Bas Meegens was born on November 1, 1964, so November 1985 is a turning point in his life, because he comes of age according to Dutch law. He is a clerk and has been living apart from his parents since the summer of 1983.

For years he has dreamed of an adventurous sailing trip. In the spring of 1985 he bought an old boat for 3,000 guilders.\(^2\) The vendor, Mr. Knol, a retired boatman, received 1,000 guilders in cash and agreed to payment of the remainder in four monthly installments.

Un fortunately, Bas' sailing trip ended in a small disaster. Due to his lack of experience, he collided with a river vessel; his boat sank and was not worth salvaging. Bas fortunately was unhurt, but he was not able to sell his boat after the trip—as he planned to do—in order to pay the remaining debt to Mr. Knol.

Bas asked his father for help. His father (who did not know anything of the purchase made by his son) threatened to sue Mr. Knol, in perfect accordance with the applicable section of the Dutch Civil Code, to have the contract repudiated because his son is a minor.

For the subjects who played attorney for Meegens Senior, there was a correlation between the resistance point and the chance of winning \((r = 0.4)\), as

\(^2\)At the time of the study worth about US $1,000.
was for both parties in the other seven cases. But for the attorneys to Knol the correlation was next to zero. That means that there was virtually no influence of the perceived chance of winning on the resistance point for the subjects. The lack of correlation was caused by the lack of variance in the resistance points of Knol's attorneys: Almost all of these subjects wanted all the 3,000 guilders from Meegens, regardless how high they estimated their chance of winning. Apparently a factor, which can be identified as a justice motive, has such an overwhelming influence on the decision to continue negotiations or to go to court in this case, that the expected outcome of a lawsuit and the relative power of the parties are not considered any more if the defendants fix their resistance points.

In the example, the legal norm is simple and clear, and probably was the same for most subjects: The contract can be repudiated and will be repudiated by most judges because one contracting party was a minor. The consequence will be that Knol has to repay the 1,000 guilders down payment and remains owner of the boat, which is now at the bottom of the river. But the personal norm of almost all subjects who played Knol's attorney was that Bas Meegens should pay the full 3,000 guilders.

One can imagine how the negotiations will go in this case. Meegens Senior obviously is the one party with the strongest alternative to negotiations and thus has the power in the negotiations. If they do not settle, Meegens will sue Knol. And Knol probably is so angry about all this injustice, that he will not settle at all.

What happens for Knol is that the justice motive, the violation of his personal norm, overrules any financial concerns in his decision to continue negotiations or to go to court, even if he knows that his chances in court are very limited. This is what may happen if the personal norm and the legal norm direct to two opposite solutions for the conflict.

JUSTICE AND POWER

The general precondition necessary for individuals to experience a situation as unjust is that the (expected) outcome for at least one party is regarded as far less than that party deserves. In fact, only in that situation justice is needed and only in that situation a justice motive may direct behavior of the parties. Here, a distinction should be made between a proactive justice motive and a reactive justice motive. If the party who fears to receive too little for himself would have enough control over the interaction, a sim-

1Note that, contrary to most civil law disputes, the future plaintiff in this case is the party for whom the status quo is relatively advantageous. According to Dutch law, however, Meegens has to sue Knol to have the contract repudiated.
ple shift in behavior can prevent an unjust situation to occur. The perceived lack of control apparently is an essential precondition to the invocation of the reactive justice motive (Mikula, 1984; Lerner, 1980; Reis, 1984). The control a party has in a civil law dispute is directly related to the perceived relative power. Thus, if a party expects either the negotiations or a judicial decision to redeem the unjust situations, the situation will not be perceived as unjust but maybe only as (temporarily) undesirable. Undesirable acts of the other party during negotiations will cause a powerful party simply to leave the negotiations, and turn to the court alternative. The relative dependent party, who fears an outcome that is extremely unfavorable to him, therefore, is the party who is most likely to invoke a justice motive in a civil law dispute. This party usually has few agreeable options to choose from: He expects the negotiations to yield an undesirable outcome and perceives the alternative to yield an undesirable outcome as well. The dependent party may appeal to the other party (using, for instance, a justice principle as an argument) or may go to court and hope for the best.

If a proactive justice motive arises at all in a civil law dispute, it is in the powerful party. I consider a justice motive for the power-holder less likely to arise than for the powerless: for instance, it did not for the attorneys to Meegens in the example above. Moreover, the powerful party is powerful because he knows the law on his side and if the powerful party perceives the status quo as unjust, a simple shift in behavior usually can redeem the unjustness. In addition, individuals usually have fewer problems with overreward than with underreward (Walster et al., 1978).

CONCLUSIONS

It must be recognized that the relative power of the parties is a concept that explains much of negotiation behavior in many disputes. As long as the negotiations seem to produce a settlement that is better than any alternative, a party continues to negotiate. But for some—or maybe many—parties, justice is the important factor in determining negotiation behavior. Based on the above discussion, a justice motive plays a role in determining behavior under the following conditions: (i) A situation exists or appears to arise that the party perceives as deviating considerably from a preset standard or personal norm; (ii) there is a difference between the personal norm and the perceived legal norm, such that the party involved expects a relatively unfavorable judicial decision if the dispute goes to court; (iii) the party perceives a relative lack of control over the interaction during negotiations. Because an experience of lack of control invokes a justice motive, the justice motive will more likely incur upon the dependent party than upon the powerful party in negotiations.
The experience of injustice by a party is based on the expectation that he may not receive what he deserves, either through a lawsuit or in negotiations. That will occur only if the personal and (subjective) legal norm differ. That is possible because justice principles are very abstract and, if applied to a specific dispute, are imprecise, inherently vague, and have a wide scope of application. The same holds true for many legal rules, if applied to a specific case. Legal rules that are just in most cases can become unjust in some cases for some individuals, as happened for most subjects in the example I gave.

It is evident from the above discussion that justice behavior cannot be studied properly by an assessment of the results of behavior only. The perception by each individual, both of the relevant norms and of the salient characteristics of the situation, are essential to an understanding of justice behavior, especially in a microlevel interaction as civil law negotiations. In civil law negotiations, the most salient characteristics are set by the expectations the parties have about what a judge might do if they go to court. These expectations may change during negotiations, but at each point in time the expectations determine who is in power and who has only justice to turn to.

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