



Focal Points in Negotiation

Edited by

Rudolf Schuessler · Jan-Willem van der Rijt

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ABBREVIATIONS

ANC	African National Congress
APRA	Arusha Peace and Reconciliation Agreement
BATNA	Best Alternative to Negotiated Agreement
CD	UN Conference on Disarmament
CFC	Chlorofluorocarbons
CFE	Treaty on Conventional Armed Forces in Europe
CFSP	Common Foreign and Security Policy
CNDD-FDD	National Council for the Defense of Democracy
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
DOS	Democratic Opposition in Serbia
DPS	Democratic Party of Socialists (Demokratska Partija Socijalista)
DSS	Democratic Serbian Party
EC	Executive Council of the Conference on Disarmament
EU	European Union
FDD	Forces for the Defense of Democracy
FLNKS	Kanak Socialist National Libertarian Front
FRODEBU	Front for Democracy in Burundi
FRY	Federal Republic of Yugoslavia
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
IAEA	International Atomic Energy Agency
ICBM	Intercontinental Ballistic Missile
ICJ	International Court of Justice

ICTJ	International Center for Transitional Justice
INF	Intermediate-Range Nuclear Forces Treaty
LPCG	Liberal Party of Montenegro
LSCG	Liberal Alliance of Montenegro
MAD	Mutually Assured Destruction
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NP	National Party
NPR	Nuclear Posture Review
NPT	Non-Proliferation Treaty
NS	People's Party
NWFZ	Nuclear-Weapon-Free Zone
OSCE	Organization for Security and Co-operation in Europe
OSI	On-Site Inspections
RPCR	Rally for Caledonia in the Republic
SCG	State Union of Serbia and Montenegro
SDP	Social Democratic Party
SNP	Socialist People's Party
SNS	Serbian People's Party
SPLM/A	Sudan People's Liberation Movement/Army
START	Strategic Arms Reduction Treaty
SU	Soviet Union
TRC	Truth and Reconciliation Commission
UAV	Unmanned Aerial Vehicle
UN	United Nations
UNCLOS	UN Conference on the Law of the Sea
UPRONA	Union for National Progress
US	United States
USSR	Union of Soviet Socialist Republics
VC	Venice Commission
WMD	Weapon of Mass Destruction
WW II	World War II
ZOPA	Zone of Possible Agreement

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Introduction: The Significance of Conspicuity

Rudolf Schuessler and Jan-Willem van der Rijt

1 CONSPICUITY

At the 2014 Wales Summit, NATO members reaffirmed their commitment to work toward an expansion of their military spending to 2% of their gross domestic product (GDP); in the negotiations for the 2007–2013 financial framework for the EU, six member states demanded that contributions to the EU budget should be capped at 1% of a member's gross national income (GNI)¹; and in the 1985 Helsinki Protocol on the Reduction of Sulphur Emissions (the major cause of acid rain), a significant number of European countries agreed to reduce their SO₂ emissions by 30%.

If you are like most people, you will not find the percentages of 1, 2 and 30 surprising. In fact, you probably would have been much more surprised if the percentages had been 1.0036723%, 1.97421% and 28.765213%, or

¹See Duer and Mateo (2007).

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another such number. Somehow, the roundness of 1%, 2% and 30% seem to make the figures more plausible and attractive—one could even claim more *normal*—than these (and other) random numbers in their vicinity. What reason could someone have to propose aiming for an increase in military spending to 1.97421% of GDP, and why would other parties to the negotiation agree to such an unusual number? Clearly, 2% is a more ‘natural’ number. Even so, the question arises *why* 2% is a better choice than 1.97421%. It seems highly unlikely that there was an underlying calculation that established that the optimal defense spending target required for NATO to achieve its goals was *exactly* 2%. Certain considerations surely substantiated that the military spending target should be in the area of 2% (1% would probably be insufficient and 3% would impose too much of an economic burden on the member states), but it seems quite likely that 1.97421% or 2.022178%, or any number close to 2% would have been suitable as well. There is no particular reason why 2% military spending is optimal or “better” in terms of balancing the various interests of adequate funding for defense and reasonable economic burden than any of the numbers close to it. If you are asked to provide *reasons* why 2% as a number was agreed upon, you will find the question very difficult to answer.

And yet, this attraction to round numbers is extremely widespread. As the chapters in this volume testify, both in the outcome of the negotiations (the treaties and agreements that were ultimately signed) and in the proposals made during the negotiation process, simple or round numbers featured prominently, even though there does not seem to be anything about such numbers that makes them inherently superior, other than that they are conspicuous. The same holds for non-numerical things that stand out. Peace or armistice agreements often end up drawing borders along rivers or mountain ranges, for instance.² Indeed, the case can be made that such solutions which, as regards actual use in negotiations, seem natural or palpable (albeit for inexplicable reasons) are far more effectual than many of the sophisticated mathematical solutions predicted, for instance, by disciplines of rational choice, decision and/or game theory.

This volume is about the role of these ‘obvious’ or ‘natural’ solutions to practical problems, solutions that seem to have little else in their favor other than that they happen to stand out, or that they are *focal points* as they are officially called. Thomas Schelling (1960) introduced the term ‘focal points’ to refer to particularly conspicuous objects, numbers or propositions, whose conspicuity is expected to be recognized by all parties involved.

²On the role of focal points in the settlement of territorial issues, see Huth et al. (2013).

Simple round numbers, natural borders (rivers, seas or mountain ranges), straight lines (e.g. lines of latitude, such as the current border between North and South Korea), and geometrical symmetries commonly play a significant role in negotiations and treaties. According to Schelling, they do so too often to disregard this tendency.

This leads to a number of pressing questions. First of all, this phenomenon raises scientific and philosophical questions. How can we account for the fact that people use focal points so often?³ Is it a coincidence that we do so, is it a matter of evolutionary psychology or sociology, or can it be explained as deliberate, rational behavior?⁴ The significance of focal points is not a purely theoretical matter. As already mentioned, it is an empirical fact that focal points are frequently used in negotiations and other contexts. Therefore, they are phenomena that give rise to practical concerns as well. For instance, can a negotiator, who has a thorough understanding of focal points, use this knowledge to gain a strategic advantage and skew the results of the negotiations in her favor? Can a mediator, whose primary concern is for the negotiations to succeed, apply insights from focal point theory to bring deadlocked negotiations back on track? Or can focal points perhaps even be used to facilitate outcomes that are fairer or more even-handed to some degree, thus securing honest compromises? Such questions warrant investigation, especially as they have long been neglected by scholars who study the art and science of negotiation. Even though the phenomenon was described over half a century ago, focal points and their use still remain enigmatic in many respects.

2 FOCAL POINTS IN THE PRACTICAL CONTEXT OF NEGOTIATION

Since the 1960s, when the systematic investigation of strategic coordination commenced, the use of focal points has primarily been studied from the perspective of game theory.⁵ Game theory examines the strategic behavior of

³This volume focuses on the context of negotiations, but it should be noted that this is by no means the only subject matter where focal points play a role; they are no less prevalent, for instance, in strategic interactions in economic contexts or in the social sphere.

⁴For attempts to explain coordination on focal points as rational choice, see Bacharach (2006), Janssen (2001), and Sugden (1995).

⁵For a discussion of the few uses of focal point coordination in negotiation studies, see Druckman and Wall (2017).

economically rational agents in idealized model worlds, often relying heavily on sophisticated mathematical tools. The large body of game-theoretical research on focal points offers both opportunities and challenges for our inquiry into the use and usefulness of focal points in negotiations. Opportunities result from the fact that the game-theoretical literature on focal points offers an elaborate conceptual framework that we can glean from. Challenges arise from the (often considerable) abstractions game theorists' neat idealized models rely on to derive their results, and the subsequent chasm that opens up between these models and the untidy complexities of real-world negotiations.

This problem even affects the notion or definition of 'focal point' itself. As the authors of one of the chapters in this volume note, in the field of real-world negotiations 'there seems much consistency in the spirit and little in the letter of a definition of focal [...] points' (Chapter 4 by Brown and Zartman). Beyond the distinct attribute of 'standing out' and consequently, the ability to attract the attention of the parties involved, there is no consensus on what precisely constitutes a focal point in the practice of negotiations and, in fact, in politics. By contrast, in the model world of game theory, focal points are specifically tuned toward playing a clear-cut role in the solution of their idealized settings. That is, focal points in game theory are defined as the features of a game that are not only uniquely conspicuous, but that are also commonly known to be just that. Common knowledge in this case refers to knowledge that is shared by all; moreover, all involved are well aware that this knowledge is shared by all.⁶ In strategic practice, by contrast, a given situation frequently entails more than one single conspicuous feature, and 'knowledge' is much too strong of a concept to adequately capture agents' often uncertain, and sometimes inaccurate, assumptions about their opponents' beliefs.

Because one of the key defining features of focal points (as defined in game theory) clearly does not hold in the practical context of negotiations, it is necessary to determine how differences arise and how these differences are relevant. To this end, it should be mentioned that focal points in game

⁶This is a fairly informal definition of common knowledge. For further technical details of how common knowledge is operationalized in game theory, see Fagin et al. (1995) and Vanderschraaf and Sillari (2013).

theory are usually analyzed in the context of a very specific type of game: coordination games. In coordination games, two or more agents share an interest in coordinating their actions, but must do so without communicating. In fact, it is the absence of the possibility to communicate that makes coordination games interesting objects of study: if communication were possible, the agents could simply exchange messages and agree on a plan of action. Because coordination games are defined in such a way that the parties' interests fully coincide, the ability to communicate would make the entire problem of coordination obsolete.

Since communication is assumed to be impossible, each party (A) in a coordination game finds itself in the same bind, namely trying to predict what the other party or parties (B, C, ...) will do based on the fact that they, too, are trying to correctly predict what that party itself (A) will do, and thus to match each party's action. Under such premises, a uniquely conspicuous choice—of which all involved know that all others involved are aware of its conspicuity (focal point)—may steer the agents toward a solution to their coordination problem. As in a cabinet of mirrors without loss of optical resolution, there is an infinite alternation of mutual perspicuity. In such a situation, all players will be aware that one point, item or feature of the situation that stands out from the others for one reason or other will be recognized as such by all players. Unless there are two points that equally stand out, all involved will know that the most conspicuous one is recognized by all as the one that stands out the most. Since this point or item is the one recognized by all as standing out, it draws *everyone's* attention.⁷ It can thus almost literally be described as a focal point: everyone's attention is 'focused' on it—just as in optics where a focal point is defined as the point where *all* rays meet. This also means that focal points are by definition unique. Coordination is only deemed successful when *all* parties involved are drawn to the same solution.⁸

In the real world, the convenient game theoretic assumptions of complete and common knowledge usually do not hold, of course; the context of negotiation is a very clear example of this. In negotiations, parties typically only have limited knowledge about the other party's inherent interests and what it might be willing to accept, and their knowledge of the specifics

⁷For a number of intuitive examples of this process, see Schelling (1960: Ch. 3).

⁸For more on focal points in the context of coordination, see Sect. 3 in Chapter 2 of this volume.

of the situation they are in may sometimes be less than perfect. Moreover, although there is a cooperative aspect to negotiations in that when carried out in good faith, both parties seek to arrive at a solution that is acceptable to both, they often have contrary interests, too. Each party seeks to secure the best deal it can get for itself. Not only do parties to negotiations not have perfect knowledge about the other party's inherent interests, one party may actively try to keep the other in the dark on certain issues (e.g. one party might not want the other to know exactly how much it would be willing to compromise in order to secure a deal).

Another difference to standard coordination theory is that negotiators typically communicate with each other. Though not everything that is being said during negotiations will be believed (and in some cases, very little may actually be believed), negotiators can talk to one another, make overtures and offer reasons for the fairness or unfairness of the various proposals being made. Consequently, parties are not fully at the mercy of their estimation about which solution(s) might stand out to their counterparts as is the case in standard coordination settings: they can relatively candidly point out to the other parties that certain solutions are more worthy of consideration than others by deliberately drawing attention to them. Hence, the setting of negotiations differs in various crucial aspects from that of standard coordination, i.e. focal points do not function in precisely the same way in negotiation contexts as they do in coordination games. Indeed, at first glance, it would seem that the communicative nature of negotiations would make focal points obsolete. That, however, is not the case. As their widespread and visible use shows, conspicuous proposals and solutions play an important strategic role in negotiations.

This raises the question why this is the case. What role do focal points actually play in negotiations, if their purpose is not to serve as a substitute for communication as is the case in coordination contexts? One of the possible answers is that communication itself may be used to *produce* conspicuity in a field of competing proposals or solutions (cf. Chapter 3 by Schuessler). In cases in which multiple solutions that present themselves as attractive in various ways are possible, the fact that one agent highlights a particular solution may render it not only uniquely conspicuous for all other agents, but they may also be aware that the given solution is conspicuous. If there is no notable—or at least only a limited—divergence of interests among

the agents, all parties may gravitate toward the suggested solution, even if further communication is not possible (cf. Schelling 1960: 59).⁹

Note, however, that the same course might be adopted even when there is a considerable divergence of interests, as is the case in most negotiations. If a proposal can, for whatever reason, be turned into an attractor of *expectations* suggesting that it *will* become the final solution, it may be rational for the negotiating parties to actively start pursuing this solution as the final outcome of the negotiations. As soon as the parties to the negotiations realize that the other parties (to some degree) believe that certain parties will push for a specific proposal, while all parties are mutually aware of the existence of this belief in the others, it may be rational to back this belief, as it offers a possibility to prevent or escape from deadlock. The simple fact that one of the possible options is highlighted as a potential solution may thus also imply that it will become the final outcome of the negotiation process. This is in particular the case when the parties, especially those with blocking power, can be convinced to arrive at an agreement that is *good enough* in light of their own goals rather than entirely optimal.¹⁰ If the parties become convinced that a given solution is likely to be acceptable to all parties, they may start to believe that reaching an acceptable agreement is preferable to risking complete failure of the negotiations by insisting on excessive demands. Under such premises, conspicuity, and not least communicatively enhanced conspicuity, may in fact facilitate a proposal in becoming an attractor of expectations among the negotiating parties.

Empirical observations, however, show that a number of conspicuous options often vie for our attention, and that several competing possible attractors of expectations exist. For instance, in the context of arms reduction (see Chapter 5 by Troitskiy), one party may believe that the obviously fair solution is a reduction of the arsenals proportionate to the current size of the parties' arsenals, whereas the other party may assert that ending up with an equally large arsenal is the obviously fair solution, thereby achieving strategic parity. What the 'obvious thing to do' is may depend on the party's point of view and background. This does not mean that the notion of conspicuity becomes irrelevant or useless—far from it. More often than

⁹This, in fact, amounts to an explanation why pure coordination problems are easily resolved as soon as minimal communication becomes possible.

¹⁰The strategy of aiming to secure an outcome that is good enough is known as 'satisficing'.

not, what stands out to one party also stands out to the others. Practically all involved will realize that a proportionate reduction and ending up with an equally large arsenal are both in a certain sense ‘fair’. Both of these solutions stand out compared to many others, and it is no coincidence that these two solutions played a significant role from the very beginning, for instance, in the negotiations between NATO and the Warsaw Treaty Organization on the reduction of conventional forces deployed in Europe (CFE) in the 1970s and 80s. Even if competing conspicuous proposals do not promise success in the same way that a singular focal point in coordination contexts does by providing a straightforward solution, they clearly have a significant influence on the process of negotiations, as several chapters in this volume confirm.

Before we leave any further discussions on how conspicuous proposals and solutions can be turned into attractors of expectations to the remainder of this volume, a terminological issue must be clarified. We previously mentioned that focal points are by definition unique. Only when *all* parties’ attention is directed at a given solution does it represent a focal point in coordination games. We also pointed out, however, that in the real-world setting of negotiations, different solutions frequently stand out for different reasons and consequently vie for attention. It may even be the case that one group of participants is focused on one solution that stands out and another group on a different solution that stands out. This is especially likely to be the case when one of the two solutions is more beneficial for one group while the other solution’s payoff is higher for the other. In such a situation, it may make sense to speak of focal points in the plural. There does not seem to be any agreement in the literature on the precise use of the term focal point in this regard: some authors speak of focal points in the plural, for others, a focal point is necessarily unique. To avoid confusion, we will use the following terminology in this volume whenever possible. The attribute of standing out and thus of being able to attract attention is known as *salience*. We reserve the term ‘focal point’ for proposals and solutions that are uniquely (or outstandingly) conspicuous and are generally expected to be perceived as such by *all* parties involved. Though such a rigid differentiation of terms does not reflect the approach to focal points in the literature, which tends to treat focality as being synonymous with salience (see, e.g., Lewis 1969), it is particularly useful for clarifying the description of solution-finding processes in negotiations. Specifically, it makes it easier to clearly describe the processes whereby a strong attractor of expectations emerges within a larger set of salient solutions and proposals. As several of

the chapters in this volume demonstrate, focal points do not always exist at the start of a negotiation process, but emerge throughout that process; oftentimes, they may even be deliberately created or manipulated. This only serves to highlight, yet again, how crucial it is for negotiators and mediators to have in-depth understanding of the functioning of salience and focal points.¹¹

3 OUTLINE OF THE VOLUME

Not only does the context of negotiation offer a practical field of research where the significance of salience and focality is evident, it is also a field that demonstrates that the ways focal points function may be much richer and more varied than an exclusive preoccupation with the context of coordination may initially suggest. At the same time, our understanding of focality and salience in real-life practical contexts is still very limited, as most research that has been carried out to date has either taken place in the highly stylized context of mathematical modelling or in the controlled setting of laboratory experiments. It is this lacuna that this volume seeks to help fill.¹² Offering a variety of analyses of real-world negotiations that deal with matters of international political significance such as nuclear disarmament, territorial conflict, and reconciliation in the face of gross injustice and

¹¹Note that, strictly speaking, this definition retains the group dependency of focal points described above, as it depends on the scope of ‘all involved’ whether something is considered to be a focal point or merely salient. Thus, Siniša Vuković points out in his chapter, for instance, that both sides in the negotiations on Montenegro’s referendum on independence consisted of coalitions of parties. Each of these coalitions (unionist and pro-independents) entered into the negotiations with pre-formulated objectives. As Vuković argues, the goals each coalition had set for itself have all the hallmarks of a focal point, but the objectives of the two opposing coalitions obviously did not coincide. As determining a coalition’s aims only requires the agreement of the other coalition members, the scope of ‘all involved’ only entails the members of the intended coalition. Once the two coalitions (pro-union and pro-independence) had to arrive at an agreement, the relevant group changed, as did the focal point they finally agreed on. In more generic terms: a focal point for group X does not have to be a focal point for group $(X + Y)$. Nor does the focal point for group $(X + Y)$ have to either be X ’s focal point or Y ’s focal point.

¹²For this reason, neither theoretical nor experimental game theory are of immediate concern to the approach taken in this volume, and though certain specific game-theoretical results are sometimes mentioned in the chapters of this volume, no chapter explicitly takes a formal game-theoretical approach. Indeed, we have deliberately endeavoured to ensure that the volume is accessible to readers who have no formal or mathematical training. The few game-theoretical terms that occur in this book are explicated in the Appendix.

atrocities, by authors who study negotiations from the viewpoint of different academic specializations, it represents a truly interdisciplinary approach toward enhancing our practical understanding of focal points.

Chapter 2 by Jan-Willem van der Rijt provides an overview of the development of focal point theory since the notion was introduced by Schelling in *The Strategy of Conflict* (1960). It first discusses Schelling's introduction of the notion of focal points in the context of his bargaining-based analysis of the Cold War's strategic aspects. It then addresses the role focal points and salience play in the aforementioned coordination games and the controversy over the rationality of focal point coordination, canvassing the contrasting positions of Gauthier and Gilbert. Lastly, the chapter explores how focality and salience affect the way people reason, paying special attention to the team reasoning argument by Bacharach and the experimental work by Sugden. To some degree, this chapter provides the starting point for the remainder of the volume, elucidating where our theoretical knowledge of focal points presently stands. The subsequent chapters offer new insights derived from differing practical cases and issues.

In Chapter 3, Rudolf Schuessler analyses the implications for our understanding of the notion of focality that result from the alluded difference in contexts of negotiation and coordination. The ability to communicate in negotiations is the most important difference between these two contexts. Schuessler argues that this does not imply that focality and salience are obsolete in the context of negotiation. He identifies three crucial problems for the application of focal point analysis to negotiations—divergent perceptions of agents, ambiguous references to terms, and volatile or low expectations about the chances of successfully concluding the negotiations—and illustrates the impact of these problems by analyzing various paradigmatic focal points, such as natural landmarks and contours of terrain (e.g. mountain ridges, rivers), simple or round numbers, axes of symmetry, geometrical or geographical centers.

In 'Focal Points and Salient Solutions in International Politics' (Chapter 4), Jonas Brown and I. William Zartman examine the ways in which negotiators can tweak and apply the concept of focal points. Discussing a wealth of practical examples, they highlight two primary applications of focal points in negotiations: (1) their role in framing and reframing the issue(s) and thereby in shaping the negotiations, and (2) their role in facilitating concession and compensation. They depict the practical importance of focal points by demonstrating their utility in streamlining multi-party, multi-issue negotiations. They conclude that both negotiators and

mediators stand to benefit from in-depth knowledge of the ways focal functions and how focal points can be used to facilitate or manipulate the successful outcome of negotiations.

In Chapter 5, Mikhail Troitskiy investigates one particularly well-known type of international negotiation: arms control. Troitskiy seeks to establish the imprint of focal points on arms control and to determine the extent to which they have facilitated arms control negotiations. He argues that traces of focal points can be found in the numerical solutions that feature in such negotiations (examples include the number of 1000 deployed warheads to be retained by nuclear superpowers in the negotiations between Russia and the USA, but also the ever-present pull of the number of 0 [total disarmament]), but that the importance of numerical focal points should not be overstated. What he refers to as ‘focal principles’ play a more significant role. Focal (and salient) principles are principles for the reduction of nuclear armaments that are rooted in fundamental conceptions of justice and efficiency, such as a proportionate reduction of weapons or threat capability (allowing the side that currently has an advantage to maintain this advantage at a lower maintenance cost) or achieving parity (ensuring that both parties are equally capable of deterring each other). Troitskiy demonstrates that parties often disagree on which salient principle should guide the negotiations, but that if an agreement can be reached on a focal principle, agreement on the number of weapons to be maintained often follows smoothly, and that treaties that are buttressed by an agreed focal principle tend to be more durable.

Chapter 6 ‘The Comprehensive Nuclear Test Ban Treaty Negotiations and the Split-the-Difference Principle’ by Mordechai Melamud and Rudolf Schuessler examines an example of a highly protracted and initially successful international negotiation process; the negotiations that ultimately led to the (subsequently not ratified) Comprehensive Nuclear Test Ban Treaty (CTBT), concluded in 1996. This treaty bans all testing of nuclear weapons. Melamud and Schuessler focus on one specific aspect of these negotiations, namely On-Site Inspections (OSI). For the treaty to be operational, it must be possible to verify whether the parties to the treaty are abiding by it, especially if there is suspicion that they may not be. No country is keen to have its military installations inspected by outsiders, i.e. states are generally reluctant to submit to such inspections. For this reason, the treaty includes provisions on when a country must allow such inspections. Negotiations on this aspect of the treaty were particularly intense. As Melamud and Schuessler show, the positions of the parties involved were initially far

apart: some believed that inspections ought to take place when $1/3$ of the signing members called for inspections, while others held that at least $3/4$ ought to be required. Melamud and Schuessler provide a detailed analysis of the process that resulted in the CTBT. Their analysis shows that focality and salience played a role at multiple levels. Many of the positions initially put forth by the parties to the negotiations were salient. As the negotiations progressed, two of these positions gained particular prominence, running the risk of stalemate: a simple majority ($50\% + 1$) and two-thirds majority. In the end, the number agreed upon was the midpoint between these two solutions. Faced with the prospect of stalemate, the parties decided to ‘split the difference’, an approach that in itself can be considered a focal point solution that acknowledges the moral plausibility of both of the proposed solutions. Melamud and Schuessler zoom in on this approach of splitting the difference and explore the conditions that affect its prospect of breaking a stalemate.

Valerie Rosoux and Daniel Druckman investigate how focal points and turning points in negotiations affect and relate to one another in ‘Negotiating Peace Agreements: The Value of Focal and Turning Points’ (Chapter 7). They survey four different negotiations: the negotiations in 2000 between the German government and international organizations over compensation for victims of the Nazis; negotiations in South Africa on the creation of the Truth and Reconciliation Commission (1986–2003); the Arusha Peace and Reconciliation Agreement ending the civil war in Burundi in 2000; and the Noumea Accord between France and New Caledonia in 1998 to set a timetable for the gradual transfer of responsibilities from France to New Caledonia. They do not necessarily find a causal relationship between focal points and turning points, but indicate that the presence of more specific focal points tends to lead to more sustainable agreements, particularly when these are accompanied by turning points. Furthermore, they also point out that crucial focal points were often not self-evident to the parties directly involved at the beginning of the negotiations, but their discovery depended on the involvement of respected third parties.

In ‘EU mediation in Montenegro: Satisficing, Formulation and Manipulation in International Mediation’ (Chapter 8), Siniša Vuković investigates the negotiation process that ultimately led to Montenegro’s independence from Serbia in 2006. He shows that many of the voting thresholds proposed by the two camps (unionists and pro-independents) during the negotiations on the independence referendum were salient or focal. Arguing that focal point solutions are often suboptimal for both parties, he demonstrates that

they offer important opportunities to mediators. In particular, when the mediators enjoy a certain status to provide political cover for the parties involved (in the Montenegrin case, this role was played by the European Union), focal points can induce the parties toward adopting a satisficing rather than a maximizing strategy, which is conducive to reaching an agreement both parties can endorse. Vuković shows that this is the case even when the mediators are neither unbiased nor indifferent to the outcome of the negotiations. The Montenegrin case highlights the importance of having in-depth knowledge of salience and focality as an essential part of the mediator's toolkit.

The concluding chapter draws together the new insights delivered by the individual chapters to glean a number of important lessons on the role(s) of focal points in past negotiations and how they may be applied in future negotiations, thus indicating promising avenues of future research. The vast array of ways in which focal points can affect negotiations is unquestionably one of the most striking results. Focality and salience can be used to gain a strategic advantage during the negotiation process, either in terms of triggering a dynamic that favors one's own cause, gradually generating increasing support for one's envisioned outcome, or to prevent any such dynamics from getting off the ground if they are deemed detrimental to one's interests. Focal points do not simply serve such tactical purposes. They can also assume the important role of effectively communicating the negotiations' outcome to the wider public, influence the position parties adopt in negotiations toward a less confrontational stance¹³ and even serve distinctly moral purposes, contributing to the emergence of a fair solution in situations characterized by reasonable moral disagreement, allowing the parties to incorporate their respective moral beliefs. The potential uses of focal points are manifold, and the possibilities for fruitful future research are similarly bountiful.

This volume provides ample evidence of the multifaceted nature of focal points and their widespread prevalence in negotiations. It serves a dual purpose: on the one hand, its academic aim is to enhance our knowledge of human collective decision making by elucidating the ways focal points enable human beings to resolve a variety of problems. On the other hand, the volume seeks to be of direct practical use, enabling practitioners—be

¹³Cf. the aforementioned shift from a maximizing to a satisficing strategy.

they mediators, professional negotiators, businesspersons, or politicians—to use salience and focality to their benefit.

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The Quest for a Rational Explanation: An Overview of the Development of Focal Point Theory

Jan-Willem van der Rijt

I INTRODUCTION

Thomas Schelling introduced the notion of ‘focal points’ over half a century ago (Schelling 1960). Research into the nature and usage of focal points has since provided ample evidence that people indeed use focal points to solve a variety of problems. Exactly how focal points work and affect human decision making is, however, still a matter of debate. Paramount in this controversy is the question whether it is *rational* for people to use them. One of the most striking features of focal points is that they enable fairly ordinarily gifted human beings to do significantly better in solving certain types of problems than game theory predicts purely rational decision makers would. To some, this may be a welcome finding indicating that there is more to truly human decision making than cold, pure, calculating reason after

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all. To staunch believers in the power of reason, however, this conclusion may appear both a challenge and an insult.

Schelling himself was quite comfortable with the possibility that focal points defy a purely rational explanation, but, perhaps predictably, others were (and are) less inclined to accept this implication at face value and have sought to find explanations that purport to show that focal points can be explained as rational behavior after all. Indeed, a large part of the development of the theory of focal points since Schelling can be described as the (ongoing) search for a rational explanation of the workings of focal points. This chapter provides an overview of some of the major steps in the development of focal point theory. Section 2 introduces the idea of focal points in the practical context of Schelling's analysis of the Cold War, which he believed should be approached as a tacit bargaining problem. Section 3 turns to the more general analysis of coordination and discusses Gauthier's influential rational explanation of focal point coordination, which highlights the way focal points provide coordinators with an opportunity to reconceptualize the problem they face. This is followed by Gilbert's powerful critique of this explanation. Section 4 turns to more recent work by Bacharach and Sugden. The section addresses the role focal points play in the context of team reasoning and describes a number of important empirical findings. Section 5 takes stock.

2 THOMAS SCHELLING, FOCAL POINTS AND THE COLD WAR

2.1 *The Cold War: Nuclear Weapons, Bargaining and Communication*

Schelling introduced the idea that people make use of focal points to resolve various practical problems in his famed book *The Strategy of Conflict* (Schelling 1960). Though military and foreign policy strategy is by no means the only field he applied the notion to, there is some benefit in starting with this practical context when introducing the idea of focal points before turning to the more technical field of coordination in the next section.¹ Not only does the Cold War provide a clear illustration of

¹As Schelling did not markedly distinguish between focality and salience, I shall also not adhere here to the technical distinction between focality and salience mentioned in the introduction.

the importance of focal point coordination—indeed, if Schelling’s analysis of Cold War maneuvering is correct, it would be but a small exaggeration to claim that the human ability for focal point coordination saved the world from descending into nuclear holocaust in the twentieth century—but the Cold War, with its threat of mutually assured destruction (often abbreviated to the acronym MAD), also had a number of features that are particularly suited to bring across the special nature of focal points.

The Cold War can be characterized as a struggle over global influence between two blocks of countries: the democratic ‘West’ and the communist ‘East’. Though game theory is certainly not irrelevant to properly understand the way the two most prominent players in the Cold War—the USA and the USSR—behaved, Schelling was famously displeased with the way standard game theory of his day tended to model the situation the USA and USSR found themselves in. These game theoretic analyses favored modelling the Cold War as a zero-sum game: both sides sought to increase their global influence as much as possible and any gain for one was to be regarded as an equal loss for the other. Such an analysis pitched the two world powers as pure opponents with diametrically opposite interests. Schelling, however, believed that this way of viewing the conflict between the democratic West and the communist East overlooked the fact that their mutual possession of large nuclear arsenals had radically changed the nature of the game played between them.² Once both sides had acquired the ability to utterly obliterate the other many times over, a meaningful military total victory of one side over the other was no longer a realistic possibility. To seek total victory would push the other side into a position where they would have nothing to lose and would use their nuclear capability to inflict as many losses on the other side as they could. This would be so devastating that only an ideologically obsessed fanatic could still value the outcome as worthwhile.

Nuclear arsenals are in some sense paradoxical. Though they are terrifyingly powerful weapons, as soon as the other side has them, too, nuclear weapons are in all but the most extreme situations unusable. To strike at the other side with nuclear weapons is tantamount to suicide if it ensures that it

² Things may have been different during the early phase of the Cold War where the nuclear arsenals of each were perceived as vulnerable to a surprise ‘first strike’ attack. As this gave each side a very strong incentive to engage in such an attack at the slightest provocation, it created an inherent instability that troubled many strategic thinkers of the day. For Schelling’s views on this situation, see e.g. Schelling (1960: Part IV) and Ayson (2004: Ch. 2).

will retaliate in kind. The primary value of nuclear weapons thus lies in the ability they provide to threaten their use, not in their actual use. Even as a threat, however, the credibility of their use is almost always doubted, for it is effectively the threat of self-destruction, and what kind of encroachment would make such a threat credible?

The capacity for MAD changed the Cold War from a traditional zero-sum-style game to one that was more akin to bluff-poker or *Chicken*—be it with terrifyingly high stakes. If real victory is off the table, the gains that can realistically be achieved are those your opponent is willing to accept. Push him too far, and Armageddon follows. This, however, means that there is an undeniable element of mutual *accommodation* in the way the Cold War was executed. As much as both sides despised each other, they were probably genuinely, albeit reluctantly, committed to some level of self-restraint in the pursuit of their strategic aims. Proxy-wars like the Korean War, the Vietnam War and later the Afghan-Soviet War, as well as a host of other overt and covert conflicts all over the world, could be won or lost as long as each side was willing to recognize certain limits, accepting limited defeat when things did not go their way and not pushing their momentum too far when they went in their favor. Viewed in this way, the Cold War was not primarily a zero-sum game, but a game of bargaining, and, according to Schelling, should be analyzed as such.

The purely military aspect of the Cold War is not the only relevant one when it comes to the theory of focal points. The issue of communication between the two sides was just as important. Not only did both sides distrust each other to the point of placing little faith in anything that was formally agreed to (and both sides knew this of each other), they also perceived the world in very different ways. The two blocks held widely divergent ideologies and saw the other side as thoroughly indoctrinated in deeply dangerous and misguided ways of thought. To the communists, westerners were blinded by their bourgeois values to the point that they could not be trusted to reason properly. To the West, those living under communist rule appeared wholly indoctrinated by Marxist propaganda and therefore incapable of free thought. In such a situation, words become meaningless and both sides put more faith in divining the other side's intentions from their actions than from anything they might be saying.

Such a situation may initially seem to imply that there is no way left to communicate, as any direct communication will not be believed, but as pointed out by Schelling, this was not the case. If we know that our adversaries base their beliefs about our intentions on our actions, we can use

our actions to *signal* our intentions to them. This had important strategic implications. Keeping your enemy in the dark about your intentions and concealing your actions to surprise them is typical and sound military strategy in a zero-sum type situation, but in a situation of (tacit) bargaining, the opposite is often true. Though we want to make gains through our maneuvering, we also want to make clear that we are not trying to push them too far. We want to make clear *in a believable way* that our strategic goals are limited. Thus, it is important in many cases to explicitly make sure that our actions are visible to our opponent and that they send the right signal. Our signals—our observed actions—should be as unambiguous as possible to ensure our opponent does not become agitated and sets off an unfortunate chain of events.

It is here that focal points play a major role, according to Schelling. With reference to Gestalt-psychology, Schelling points out that it seems to be part of human nature to look for and recognize patterns (Schelling 1960: 104; cf. also Ayson 2004: Ch. 6). Hence, if we ensure that we behave in accordance with observable patterns, we may expect our opponent to recognize and understand that pattern and to thus deduce the limits of our intentions. In effect, we do not tell our opponent what we are up to (which he likely would not believe, anyway), we show him. If he does not, however, perceive a pattern (or worse, if we display a pattern that appears to be aimed at his total destruction), he will revert to his baseline distrust of us and feel exceedingly threatened by our actions, with all the risks this entails.

The crucial and curious thing about focal points, according to Schelling's analysis, is that they are particularly suited to allow signals (and by extension patterns) to come across. To demonstrate how this works, let us turn to an illustration based on examples given by Schelling. This example can (with some generosity) also be interpreted as a highly stylized version of some of the Cold War conflicts.³ Assume two nuclear superpowers have their eye on a stretch of land as illustrated in Fig. 1. The land is known to be rich in subterranean resources, but no one precisely knows which resource may be found where, nor do the two powers know exactly how valuable a particular resource is to the other. The land is perfectly flat, except for a

³The settlement that effectively ended the Korean War is often mentioned as a practical example that shares many features with this example (though there is also some reason to doubt that the Korean War is really the most suitable example of Schelling's analysis of settlement through focal points [cf. Ayson 2004: 92]).

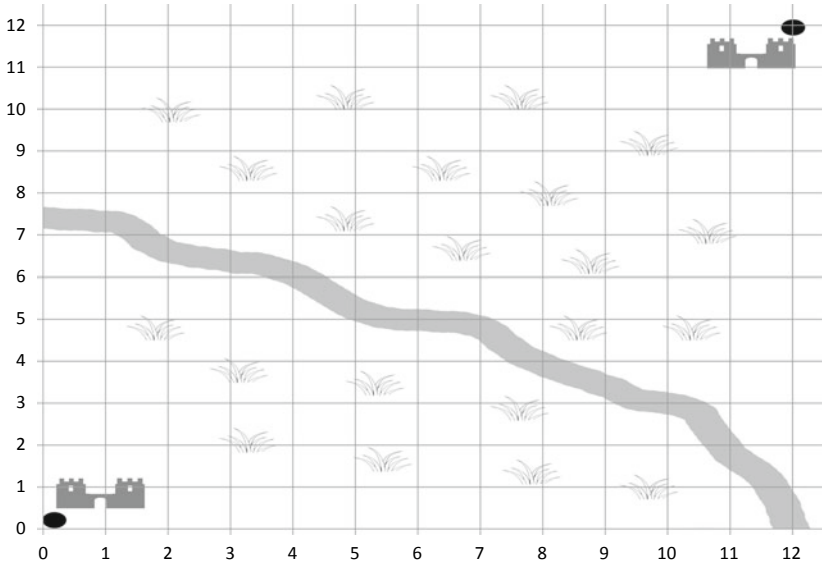


Fig. 1 Battlefield crossed by a river

small, easily crossable stream running from $(0,7)$ to $(12,0)$. The two powers have their bases in $(0,0)$ and $(12,12)$, respectively. Both want to annex as much of the land as possible, but clearly, neither wants to start a nuclear war and consequently be annihilated. Both know that if the other party feels excessively threatened, they may start a nuclear war nonetheless. Two things are guaranteed to make the other party feel excessively threatened: the annihilation of their army or being pushed off the map. Hence, neither party wants to do that to the other, though both fear that the other may have this intention. To secure part of this valuable land, the powers have to send in their armies. These armies need to be given precise orders, and, for convenience, we will assume that these orders are irrevocable once the armies have taken to the field. What are the orders each country will give its army?

To secure a piece of the land, it is crucial to make the other party believe that one is prepared to defend it rather than retreat. To avoid nuclear retaliation, however, it is also crucial to make the other side believe that one will not advance indefinitely. Thus, both in terms of advance and retreat, one wants to send the signal ‘up to here and no further’ in such a way

that the opponent will believe it. One wants to signal strength by being willing to take a stand and to fight to secure as much land as possible, but also show reasonableness by not seeming insatiable. Note, however, that if both armies decide to take a stand over the same stretch of land, they will fight until one of them retreats or is annihilated. The latter possibility would, however, result in nuclear retaliation. Hence, retreat seems a safer option. If one party retreats, however, another problem arises. Obviously, a party does not want to signal that it will retreat as soon as it is pressured. That would result in the opponent keeping up the pressure and eventually taking over the whole area. How, though, can one ensure that the enemy understands that the next time one takes a stand, one is being serious and will not back away again?

According to Schelling's theory, the orders the armies would receive would be something like the following. *Proceed as far as possible. If you encounter the enemy before you cross the stream, fight to the death where you encounter the enemy. If the enemy retreats, advance again. If you encounter the enemy after crossing the stream, allow them to push you back to the stream.* The resulting division of the land—the bargaining outcome—would thus be determined by the stream. From a purely theoretical perspective, this is somewhat puzzling as the stream itself does not have any real meaning or value. Being so easily crossable, it is just an arbitrary line on the map. Moreover, had the stream taken a different course (e.g. from (6,12) to (12,0)), the outcome of the bargain would have been different as well. If Schelling's theory is correct, the bargaining outcome is thus determined by features that have nothing to do with material benefit, tactical advantage or relative military strength; indeed, it is determined by features that are entirely arbitrary from a (game) theoretical point of view.

But why does Schelling believe that the stream would be the defining border? In a sense, this is because he believed it is the only point that allows for credible communication. The stream is the only feature that stands out. To prevent nuclear conflict, both sides need to find a point where they can credibly maintain: 'this is where we will make our final stand.' If one fails to do this, the other party will continue attacking. Because the stream happens to be the only line on the map that differs noticeably from all others, it is the only point of which one can credibly state: we will not retreat from this point. For every other point on the map, the enemy will believe 'if you retreated from the previous position, you have no greater reason to make your stand here' as all points are the same, and hence they will continue attacking, pushing you back further and further. The stream,

however, offers the opportunity to make the message clear “you know we are going to make a stand somewhere, and it is *here*.” Why at that point? Because it is the only point for which the aforementioned ‘as all points are the same’ clause does not hold. Though the river (by assumption) in itself does not have any value, it does stand out. Similarly, by being willing to be pushed back to the river, an army can also show that it is not bent on the other side’s total destruction. Thus, by simply standing out, the stream offers the possibility to credibly communicate one’s willingness to accept a bargaining solution, and it is unique in providing this opportunity.⁴

2.2 *The Arbitrary Nature of Focal Points and Salience*

So, what precisely is a focal point? The idea of a ‘focal point’ is more often introduced by example (such as the just mentioned river) than by definition. In fact, providing a general description of the notion ‘focal point’ turns out to be quite tricky. At one level, one could say that a focal point is simply ‘that which draws attention’. This property of drawing attention or standing out is often referred to as ‘salience’.

Though this characterization is not untrue, it must be emphasized that ‘that which draws attention’—that which is salient—is highly dependent on context. A focal point solution is precisely that: a solution to a specific problem. Hence, the nature of the problem also influences what stands out and draws attention. In the example above, each side tries to resolve the problem ‘how can I make clear to the other side that I intend to take my piece of the pie, but not the entire pie?’. Given this specific problem, they look for points on the map that provide clues to enable such communication about their mutual intentions, taking account as much as they can of what beliefs and expectations the other side might have of them. Each side thus more or less consciously looks for something that stands out not just to themselves, but is also expected to draw the other side’s attention.

If the problem to be resolved is a different one, or if the party one is interacting with is different (e.g. one has a shared history or shared culture), then what counts as likely to stand out to both may also differ. What I think you might think, given that you are trying to solve the same problem as I

⁴If both sides apply this reasoning, they may of course also simply give their armies the order to proceed to the river and no further. Note also that in this example, the stream is the only feature that stands out. In situations with multiple outstanding features (i.e. multiple potential focal points), the story quickly becomes more complicated.

am based on what you think that I might be thinking, given ... etc. depends in part on whatever else it is I happen to know about you and what I know you know about me.⁵ Saliency is an inter-subjective, and not necessarily an objective, matter.

As mentioned above with respect to the river, from a purely theoretical perspective, there seems to be something inherently arbitrary about focal point solutions. On the other hand, this does not appear to be entirely random behavior, either. Given the presence of a focal point, using it to solve the problem one is facing seems a natural (and often advisable) thing to do. This predicament naturally gives rise to the question that has fueled much of the subsequent development of focal point theory: can focal point solutions be rationally accounted for or not? Do human beings simply avail themselves of focality and saliency more or less instinctively, as the result of some quirky, perhaps evolutionary but not rationally explainable, psychological tendencies that are part of human nature (some of Schelling's own remarks seem to indicate he leaned toward this perspective), or is there more that can be said about them than that? To further explore this issue, we shall now turn to the perhaps less remarkable, but in everyday life more prevalent, matter of coordination.

3 COORDINATION AND THE (IR)RATIONALITY OF FOCAL POINTS

3.1 *Coordination Problems*

Cold war strategy is probably the most striking, but certainly not the only context, in which focal points played an important role, and Schelling already demonstrated that they constitute significant factor in resolving coordination problems more generally (see e.g. Schelling 1960: Ch. 3). To get an idea of what exactly coordination problems are, let us look at the following example. This example also highlights the shortcomings of how game theory typically models (or modelled) coordination problems,

⁵To foreshadow the coordination problems discussed in the next section: two high school students who got separated after their Latin class in which Ovid was discussed, and who need to meet without the possibility of explicit communication (one of their smart phones is out of battery) may well decide to head for the mulberry tree in the school arboretum, whereas heading there would be completely senseless if one of the students from the Latin class seeks to get together with another student who opted to forgo the opportunity of receiving a classical education.

demonstrating that such problems are often unsolvable unless one relies on focal points. Suppose a cruel, sadistic billionaire wants to play a nasty trick on two unsuspecting poor people, who do not know each other. The billionaire is versed in ordinary game theory and, snickering, makes the following proposal. The two individuals are to write down a natural number on a piece of paper. They may not communicate with each other in any way, but if they succeed in writing down the same number, they will each win a large amount of money X .⁶ The two individuals are very much in need of money, so they really want to get it right.

Why is our evil billionaire snickering? Well, she has applied game-theoretical reasoning before making her malicious offer and has concluded that there is no way these two could succeed in writing down the same number. Both face an option set of infinite size and since there is no way for them to know what number the other person will choose, the likelihood of them writing down the same number is zero. Hence, the expected pay-out is nil, too. The cruel billionaire thus believes that she has given the poor fools false hope, considers herself perfectly safe, and gleefully anticipates the disappointment on their faces when they fail to write down the same number. She collects the two pieces of paper from the poverty stricken wretches and opens the first one. It reads: '1'. Hardly containing her sadistic pleasure, she opens the second, and it reads... '1'. The billionaire cannot believe her eyes and, flabbergasted, pays the now no longer so poor contestants their prize.

How could this happen? How could these two individuals write down the same number? Is this just a freak coincidence, did the billionaire make a mistake in her game-theoretic reasoning, or did something else take place here?

If we take focality and salience into account, then there is something striking about the two individuals' choice. The question that baffles the billionaire is 'how did they manage to write down the same number out of infinite equally good possibilities?'. The focal point theorist, on the other hand, will ask: 'Why did they write down the number '1'?', and her first preliminary answer will be: because it is a focal point. Among the natural numbers, '1' is in an important sense special; namely it stands out. Why?

⁶These are the two main features of coordination problems we are concerned with here: both players are better off if they successfully coordinate their actions, but they cannot communicate with each other.

Because the set of natural numbers is bounded from below, but not from above: ‘1’ is the *only* natural number that has only one adjacent number.

This example illustrates that focal points can provide us with an answer how real people manage to resolve (many types of) coordination problems where standard game theory cannot. This answer is, however, very superficial. ‘Why did they choose ‘1’?’ Answer: ‘Because it is a focal point.’ The real question is, however, why do or should people choose focal points in the first place? ‘1’ may indeed stand out, but that does not mean that there is anything relevantly superior about the number ‘1’ in this context. Why would standing out make an option choice worthy?

One interesting thing about coordination problems that contain focal points is that most people are apparently able to outperform purely rational creatures when it comes to solving them (assuming we take ordinary game-theoretical players to be the gold standard of rationality), and that they do so with considerable ease. Recall that game theory estimated the chances of success of the game above to be zero. Experimental research shows, however, that people who face coordination problems do significantly better than that (e.g. Mehta et al. 1994), and that they achieve this by playing focal point strategies.⁷ Empirical observation alone is not an explanation, however.

How, then, can we explain that playing a focal point strategy is rational? If we allow for a few additional assumptions, it often is quite easy to provide such an explanation. Assume, for instance, that you and I have to coordinate our actions in a game such as the one above. We both want to cooperate, and we both know of each other that we are trying to coordinate our actions. Assume also that we know (for instance, from psychological literature or from the experimental literature just mentioned) that human beings normally play focal point strategies in such situations. Given that you are a human being, I have reason to assume that you will play the focal point strategy. Similarly, you will know that I have reason to expect you to play the focal point strategy, which in turn means you have reason to expect that I will play the focal point strategy as well. This gives you reason to play the focal point strategy. Consequently, we both have reason to play the focal point strategy. In the given situation, focal point strategies are

⁷Though, of course, they may themselves not be aware of the fact that that is what they are doing.

self-fulfilling (cf. Bicchieri 1993: 69–71) and it appears that playing a focal point strategy is rational for both of us.⁸

When we ask if focal points strategies are rational, there is, however, something unsatisfying about this line of argument. Yes, it shows that it can be individually rational to play a focal point strategy under certain circumstances, but the entire line of argument just outlined hinges on the fact that we treat the fact that human beings tend to play focal point strategies in such situations as a given. *If* we assume that—and we assume that it is common knowledge among the individuals who try to coordinate⁹—*then* it is rational to play such strategies as well. What interests authors who question the rationality of focal point strategies, however, is not so much this particular question, but the question whether it can be rationally accounted for that human beings display such tendency in the first place.

3.2 *David Gauthier's Explanation of Focal Point Coordination as Rational*

An early and influential example of a theory that seeks to explain focal point behavior as being rational is David Gauthier's (1975). In a simplified form, Gauthier's argument is that coordination by focal points can be seen as rational when the persons involved reason along the following lines. Let us assume we find ourselves confronted by a coordination problem that resembles the situation mentioned above created by the cruel billionaire. If we approach the problem using standard game theory, we quickly realize that we are doomed to fail (cf. Fig. 2). Faced with an infinite number of equilibria, the chances of success are negligible, as game theory tells us. In other words, viewed from that perspective, the billionaire's game is literally not worth playing. What would a rational being do in such a situation? Well, he would not play the game. A rational being would, according to Gauthier's analysis, decide to look for another game to play that is more worth his while. He would try to explore whether there is any way to look at this situation that would allow him and his co-player to improve the odds of winning. Taking a step back, Gauthier argues, he could realize that there actually is a way of increasing the odds. As already mentioned, the set of

⁸This type of reasoning also plays an important role in the explanation of the occurrence and rationality of conventions (cf. Lewis 1969).

⁹For a detailed analysis of how stringent the knowledge/belief conditions need to be for such arguments to work, see Bicchieri (1993).

		Player 2					
		1	2	3	...	...	...
Player 1	1	(X,X)	(0,0)	(0,0)	...	...	...
	2	(0,0)	(X,X)	(0,0)	...	...	...
	3	(0,0)	(0,0)	(X,X)	...	...	...

Fig. 2 Coordination game over natural numbers

natural numbers has a focal point: ‘1’. We can represent the situation in the way the billionaire did (and how she wanted her intended victims to view it), but we do not have to. There are alternative ways of looking at the problem before us. Taking into account the focal point ‘1’, we can also represent the game as a choice between two (rather than infinite) strategies: play the focal point strategy (F) or not play the focal point strategy ($\neg F$; see Fig. 3). In this game, there is only one equilibrium and it gets us exactly what we want: to both play the focal point strategy and to win. In effect, Gauthier’s solution tells us to take a step back from the original representation of the game and explore whether other representations of the game exist. We thus have a two-step problem: first, choose which representation we prefer to use to determine our choice, and secondly to choose the best strategy within that particular game. Doing so will give us a very clear optimal strategy, one that is easily determinable through backward induction. If we choose the standard representation of the game, we are doomed and the cruel billionaire will achieve her goal, for we have no way of coordinating our choices if we think of the game that way. If we choose another way of looking at the problem, however, we have a clear answer and we can pull one over on the billionaire. Clearly, the latter strategy is our best option (and most deserving for the billionaire). The second game is worth playing, while the first is not. This means that choosing to play the second game is the rational thing to do.

		Player 2	
		F	$\neg F$
Player 1	F	(X,X)	(0,0)
	$\neg F$	(0,0)	(0,0)

Fig. 3 Focal point representation of coordination game

3.3 *Margaret Gilbert's Argument that Focal Point Coordination Is Not Rational*

Where Gauthier argues that people may have sound reasons to use focal points to resolve coordination problems as it allows them to increase the odds of success and thus increase their expected payoff, there are other authors who believe that focal point coordination cannot be explained as purely rational behavior. One example of this latter group is Margaret Gilbert (1989).¹⁰ Gilbert does not deny that the tendency to use focality or salience to solve coordination problems is oftentimes beneficial and that it allows human beings to do better than game theory predicts, but claims that this should be taken as evidence that something other than mere reason is at work here. Moreover, she also agrees that *if* it is known that the person you are to coordinate with tends to use focal points to resolve such problems—or even if she is known to expect that you do so—it is *then* usually rational to respond accordingly. As mentioned above, however, for focal point coordination to be explained by reason alone this will not suffice, because it would require finding a rational explanation for such tendency in the first place. Both players in a coordination game can by reason alone come to the conclusion that if the other party chooses the salient strategy, then so should they, but, so Gilbert argues, there is no way—by reason alone—to eliminate the ‘if’; there simply is no way of moving from a conditional to a non-conditional reason for action; the fact that both players face the same conditional reasons for action in itself does not allow reason to generate an unconditional reason for one (or both) of them.

Gilbert underscores her point with a counterexample in which one party is known to be what she dubs ‘salience-shy’ (Gilbert 1989: 66). By this she means that the person has a psychological tendency to avoid things that stand out. Admittedly, this tendency may seem a bit quirky, but that does not matter for the theoretical point she wants to make. Let us, therefore, assume, for the moment, that two persons need to coordinate by choosing the same out of four options, one of which—for whatever reason—is recognized and known to be recognized as salient by both. If the party is aware that it must coordinate with a known salience avoider, then it will clearly have reason to avoid using the salient strategy as well. And if the salience-shy person knows that the other party is aware that she is salience-shy, her

¹⁰ Other authors who believe that rationality alone cannot account for focal point coordination include Lewis (1969) and Bicchieri (1993).

reason to avoid the salient strategy is reinforced, for she may rightfully assume that the other party will have deduced that she will not play the salient strategy and that playing it would hence not offer any benefit.

From this, Gilbert concludes that salience itself cannot generate reason for acting. If a certain option's salience can under certain conditions provide reason *against* choosing the salient option, then evidently it is the circumstances that determine if and when salience provides reason for action, not salience itself. Though salience-shyness may seem a bit odd from a psychological perspective, there does not seem to be anything less *rational* about it than a preference for salience.

Gilbert argues against Gauthier's argument in a similar vein. Gauthier suggests that focal points allow persons to 'reconceive the situation' into a more easily solvable problem. If both players reconceive the problem in the same way, they would be better off playing the focal point strategy. Note, however, that this puts us back in the 'if'-reasoning position we were in earlier. *If* your opposite number reconceives the situation in a certain way, then you would be wise to do the same and act accordingly (and the same holds vice versa for her), but that does not give you any reason to assume she will actually do just that. Hence, there is no reason, according to Gilbert, to believe that the other person *will* reconceive the situation in that way, and it is consequently not rational to act as if she will.

3.4 *Making Use of Salience and Reconceptualizing the Problem*

Gilbert's example of the salience-shy person is certainly intriguing, but one can question what precisely it demonstrates. Much here depends on what we actually mean by 'focal point coordination'. In a straightforward explanation, focal point coordination can be taken to mean that both parties ought to play the strategy that would directly result in coordination on the solution that stands out. Focal point coordination then is coordination *on* the focal point. If this is how we interpret focal point coordination, then Gilbert's example seems a genuine counterexample, and her conclusion that salience in itself does not provide a reason for action appears well-founded, which would put Gauthier's argument in question.

However, we can also interpret the use of focality or salience slightly more liberally. In this reading, when we ask whether it is rational to use focality or salience when resolving coordination problems, we do not need to be committed to actually play the strategy that leads to a salient or focal outcome. All we need to show is that people who try to coordinate their

actions may have reason to include the information that an option is salient or focal in their deliberations about what to do. When taking ‘making use of focality/salience to solve coordination problems’ in this way, Gilbert’s example appears less conclusive. The players in her example would still do well to take the salience of one of the options into account. Assume that the players each face four options, must match their choices to achieve coordination (Fig. 4), and that one of the strategies is salient. If they were to disregard its salience and randomly chose one of the four available options, their chance of success would be $4/16$; if they take salience and the known salience-shyness of the other party into account and thus deliberately avoid the salient option, their chance of success increases to $3/9$. Admittedly, this by no means amounts to a guarantee of success, and if they do succeed to coordinate by using this strategy, the coordination will not be on the point that stands out. Yet it is surely rational to favor a strategy that offers $1/3$ chance of success over one that only offers $1/4$, and if that advantage can only be achieved by taking note of the salience of one of the four options, it seems odd to claim that it would not be rational to take its salience into account when deciding what to do in such a situation.

It must be acknowledged that the majority of examples of focal point coordination used in the literature tend to be examples in which the presumed optimal strategy is to play the salient or focal strategy (stop at the river when driving back your nuclear armed enemy; choose ‘1’ among the natural numbers, etc.) which gives credence to the first, more restricted reading of ‘focal point coordination’. On the other hand, the real thrust of Gauthier’s analysis seems to be that we can make use of focality and salience to increase our odds of success by reconceptualizing the coordination problem we face, and that we therefore have valid reason to avail ourselves of them. That most examples used are those where the optimal solution is (often deliberately) identical to the salient or focal strategy may

		Player 2			
		1	2	3	4
Player 1	1	(1,1)	(0,0)	(0,0)	(0,0)
	2	(0,0)	(1,1)	(0,0)	(0,0)
	3	(0,0)	(0,0)	(1,1)	(0,0)
	4	(0,0)	(0,0)	(0,0)	(1,1)

Fig. 4 Coordination game with four strategies

have been—given what we know about human psychology—understandable, but is perhaps also infelicitous from a broader perspective. Salience and focality may not in themselves give direct reason in the straightforward sense of ‘when faced with a coordination problem, you always have reason to choose a salient or focal strategy’, but it may well still be rational to make use of focality and salience when confronted with a coordination problem in the sense that salience provides information that allows us to successfully solve (or increase our chances of solving) the problem we face and that it would therefore be irrational to disregard it. ‘Making use of salience/focality’ to resolve coordination problems need not simply be a matter of directly indicating the correct strategy, but may instead refer to the way the game ought to be played more generally.

This still does not fully solve the question of the rationality of making use of salience, however. One obvious issue is that there may be many ways in which one could reconceive a situation one finds oneself in. If all of these were known, then it would seem that, in theory at least, we could simply re-describe it as a much larger game, where various reconceptualizations are included as possible moves in the game. Quite often, however, they will not all be known, and it will certainly not standardly be known which reconceptualizations the other party is considering (cf. Gilbert’s argument that there is no purely rational ground to assume *that* your opponent will reconceptualize the problem).¹¹ Thus, the question becomes: when do we have reason to assume that the other party in a coordination game will think of the same possible reconceptualizations we are considering? To explore this aspect of focal point coordination in more detail, we now turn to the analyses of Bacharach and Sugden on framing and team reasoning.

4 FRAMING, TEAM REASONING AND EMPIRICAL FINDINGS

Gauthier’s solution to coordination problems is based on the fact that oftentimes, there is more than one way to look at a problem. This idea can be generalized and has been called the ‘framing’ of a situation. This section explores the analyses of two major figures who link focal point coordination to this notion: Michael Bacharach and Robert Sugden.

¹¹ Cf. the Cold War uncertainty resulting from the ideologically opposed world views mentioned in Sect. 2.

4.1 *Michael Bacharach: Focal Points as a Trigger for Team Reasoning*

Bacharach (2006) is a staunch proponent of the view that ultimately, human agents' ability to successfully navigate coordination problems should be explained as a form of rational behavior. In his view, the fact that normal human beings are so much better than standard game theory predicts at solving coordination problems is too striking an issue for it to be a merely fortunate case of irrationality. To explain focal point coordination, Bacharach emphasizes a dimension of choice situations that game theory often neglects. This is the fact that, strictly speaking, decision makers do not necessarily view situations in the same way as modelers or theoreticians view them. Specifically, decision makers may not describe the option set in the same ways as theoreticians would describe them. This has important consequences, as decision makers can only choose an option from the option set *as they perceive it*. Hence, when this differs from the way the theorist has modelled the situation, the theorist's predictions will be off. We do not need to deny that there is an objective reality underlying people's choice situations, but it is a well-established fact of psychology that our brains selectively filter the input we receive from our senses. Hence, decision makers will always be limited to their perception of a problem when they navigate their way through them. The way of perceiving a situation one finds oneself in (and the choices one has in it) is what Bacharach refers to as a frame.¹² Thus, when we seek to model rational decision making, we need to model it by taking into account the agents' frames, for it is within these frames that they must make their decisions.

There are different reasons why it would be unwise to disregard the role played by frames. First of all, different persons will likely have different frames, as we all have different psychologies and experiences that determine how we perceive a given situation. Encountering a stray dog in a Bucharest alley, one person may see a harmless scruffy specimen of man's best friend, whilst another sees a scabby bag of fleas with a vicious set of fangs which he may soon find clamped around his ankle. Both views may be perfectly reasonable, and the first person does not act any more or less rational when

¹² It is worth stressing that there is no way to do away with framing: it is a fact of human psychology that we always experience reality through a lens—that is how our brains work (and have to work in order for us to be able to process the mass of information our senses provide).

she continues to walk down the alley than the second person does when he turns around to take another street. The difference in frames is not limited to different persons, however. An individual is not limited to a single frame, either. We can experience a given choice situation very differently depending on the perspective we adopt. This seems very similar to Gauthier's point, but there is an important difference between Bacharach's analysis of coordination problems and Gauthier's. Where Gauthier's account suggests that people can deliberately choose to adopt a certain point of view and thereby manipulate their chances of success, Bacharach denies this is possible (Bacharach 2006: 167). For Bacharach, we do not choose how we experience the world, even if there are different ways in which we can experience it. Which way we happen to experience a situation—which frame we use—is, according to Bacharach, determined by our psychology. Our minds are geared in such a way that we can use different frames to cope with different problems, but which frame our brains selects is more of an automatic response that is triggered by certain aspects of our circumstances that happen to attract our attention than it is a conscious or deliberate choice.

It is in this triggering mechanism that Bacharach finds an explanation for our remarkable ability to efficiently resolve coordination problems by means of focal points. Bacharach advocates understanding focal points as triggers for certain frames. Thus, if a given aspect of a situation stands out, our minds are highly aware of these aspects and select a frame based on these outstanding aspects (they are, in a way, the first thing our minds focus on). This occurs completely automatically and is beyond our control, but nonetheless influences our position toward the problems we encounter.

How does all of this allow us to explain focal point coordination as rational? Bacharach's analysis focuses on a few specific types of coordination problems, the most illustrative for our purposes being so-called Hi-Lo games. Hi-Lo games are games where two (or more) persons have to coordinate their actions to receive a benefit. For simplicity, let us assume that these benefits are the same for both sides. If they do not coordinate, they receive nothing. There is, however, one additional catch: not all successful coordination delivers the same payoff. If they both play the Hi strategy, they each receive a high payoff, but if they each play the Lo strategy, they receive a low (albeit still positive) payoff (cf. Fig. 5). Normal persons have absolutely no problem solving such coordination problems and fairly reliably play Hi. Game theory, however, is unable to distinguish between the two strategies Hi-Hi and Lo-Lo, as they are both Nash equilibria.

		Player 2	
		Hi	Lo
Player 1	Hi	(2,2)	(0,0)
	Lo	(0,0)	(1,1)

Fig. 5 Hi-Lo game

Bacharach claims that there is something conspicuous about Hi-Lo games that affects the way we approach such problems. The Hi-Hi equilibrium is obviously superior over Lo-Lo for both players. In fact, this is so obvious in such games that our brains immediately notice we have a common interest with our co-player when faced with such a situation. This, combined with the no less obvious fact that we are dependent on our co-player (and she on us) leads us to adopt a fundamentally different position to this problem according to Bacharach than game theory would have us adopt. Where standard game theory assumes each person to view this problem (as he would every problem) as a situation in which he must try to maximize his individual payoff, this is actually not how we try to resolve such problems. Instead, so Bacharach purports, the obvious common interest and mutual dependency leads us to adopt a “we-frame”. Rather than trying to solve the problem ‘How can *I* maximize *my* pay-off?’, we tend to focus on the question ‘How can *we* maximize *our* payoff?’. The answer to this question is, of course, very easy: *we* maximize our payoff by playing Hi-Hi. Having determined that, it is also clear to each player what he must do to achieve that goal: play Hi.

This ‘we-perspective’ is what Bacharach calls team reasoning. That is, each individual considers himself to be a member of a team, and tries to solve the problem by first determining what is best for the team, and then determining what his part in this optimal team strategy is. Team reasoning is a form of collective reasoning, but it is worth highlighting that such team reasoning is carried out by each individual separately.

How does this allow us to explain focal point strategies as rational? First, the focal point in a Hi-Lo game is Hi-Hi. This outcome is clearly the best for both players, which highlights the interdependency of both players and the fact that they share a common interest. This leads our brains to turn to the team or ‘we-frame’. Hence, we will attempt to solve this problem within that particular frame. There is a unique rational solution within that

frame, namely Hi-Hi, i.e. the focal point solution. Hence, in such cases, it is rational to play the focal point strategy.¹³

4.2 *Robert Sugden: The Repudiation of a Unifying Theory of Focal Points and the Importance of Empirical Research*

Robert Sugden is one of the most prolific contemporary writers on focal points. Like Bacharach, Sugden played (and continues to play) a leading role in the development of the analysis of team reasoning and the role of framing (see e.g. Sugden 2000, 2003). Unlike Bacharach, however, Sugden is not particularly interested in showing that team reasoning is a valid mode of reasoning and in determining if and when individuals ought to engage in it. Instead, Sugden focuses more on the question whether it adequately describes a mode of reasoning that people actually use, whether they ought to or not (see Bacharach 2006: xxii). When it comes to focal points and salience, Sugden's interest is primarily focused on the development of a descriptively adequate analysis of the way(s) they are used by real world people. As a result, Sugden limits the pretensions of decision theory and emphasizes the importance of empirical research.

Like Schelling, Sugden is highly skeptical of the felicity of approaching game theory (and economics more generally) as a fully a priori science (e.g. Sugden 1991, 1995, 2001, 2008) as well as of the search for a single unifying theory that can account for focal points on purely rational grounds. This is not to say that Sugden simply rejects the developments focal point theorists have made since the days of Schelling. Quite the opposite, in fact. One of the main results of Sugden's research is that a number of the theories focal point scholars have proposed appear to capture something real about focal point coordination. What he questions, rather, is that these theories can or should be unified in one encompassing and comprehensive theory. If salience is a tool that people use to solve a variety of problems in different contexts, then there may also be a variety of ways in which people use this tool; focal points do not need to come with an 'only use as follows' manual.

¹³ It is worth noting that Hi-Lo games probably constitute the perfect scenario for team reasoning to occur. The lack of any payoff in case of failure to coordinate and the clear optimality of one of the coordination equilibria over the other both serve to make the players' interdependence and their shared interest particularly salient. In games where there are factors that would make the individual interest of one or more of the players particularly salient, it is unlikely that salience would lead to the adoption of the 'we-frame'.

According to Sugden and Zamarrón (2006), a first theory of focal points emerges in Schelling's original analyses of focal points, though Schelling is not too explicit about it. This theory, as Sugden and Zamarrón claim, can be described as a pragmatic one. One characteristic of the pragmatic theory of focal point coordination is that persons treat the coordination problems they face *as though* they were solvable. Assuming that there is a solution to the problem, they look for what can be described as a clue. They in effect treat the coordination problem as though it were a riddle: a challenging puzzle with a built-in solution awaiting discovery. This may seem strange; what reason could they have to assume this to be the case? Would it not be a dubious case of wishful thinking to assume that all problems we face must be solvable? Perhaps, but in the particular case of coordination problems, Sugden and Zamarrón highlight a notable argument to the contrary: people's remarkable ability to solve them. If they can solve such problems so effectively, then these problems must clearly have been solvable to begin with—or so the pragmatic theory holds.

As Sugden and Zamarrón note, from the perspective of standard game theory, which focuses on a priori principles to resolve problems through deductive reasoning, this appears problematically circular, but the pragmatist theory does not define rationality in the same way as standard game theory does. To the pragmatist, whatever makes for (the greatest likelihood of) success counts as rational. Thus, if pretending that coordination problems are like puzzles with built-in clues enables persons to successfully coordinate, then pretending this to be the case is rational, and if these clues require associative thought or metaphors, then that is acceptable, too. Whatever works, works.

The pragmatist theory challenges standard game theory at a fundamental level: it rejects the premise that rationality should be thought of in terms of purely deductive reasoning. This does not mean that it outright rejects deductive game-theoretical reasoning, for in cases in which such reasoning generates the best chances of success, pragmatists are fine with it. Yet the pragmatist theory also asks: in cases where deductive reasoning does not generate the best results, why would it be rational to stubbornly persist in it?

Apart from the radical alternative presented by pragmatism, Sugden and his collaborators have engaged in extensive testing of two competing theories of focal points that constitute less fundamental divergences from standard game theory, as they both accept the view that rationality should be

seen in terms of deductive instrumental reason. These are known as cognitive hierarchy theory and the theory of team reasoning. As the central ideas behind team reasoning have been discussed in the previous section, I will focus mainly on cognitive hierarchy theory here.

Cognitive hierarchy theory is strongly influenced by Lewis's analysis of conventions (Lewis 1969)¹⁴ and can be considered a formalization of the idea mentioned earlier that people can deduce what they have to do to coordinate with others *if* they have sufficient reason to believe that the person they must coordinate with will behave in a certain way. For purely formal theories, that turned out to be a very big *if* (cf. Sect. 3.3) as there may be no way to move from conditional to unconditional reasons, but it turns out that the introduction of fairly mild empirical assumptions often suffices to dissolve these difficulties. Specifically, cognitive hierarchy theory postulates that different persons are capable of different depths of reasoning. Thus, some persons do not think very deeply when confronted with a coordination problem and simply pick whatever option they happen to fancy at that very moment. When people are asked to write down a date (any date), for instance, they may favor a date that has personal meaning to them, such as their birthday, their child's birthday, or, if they happen to have patriotic leanings, the day their country celebrates its national independence. Other people will engage in strategic reasoning and consciously attempt to coordinate their actions with their counterparts. The premise that people are assumed to believe their counterpart is reasoning at a lower level of depth than they are is central to cognitive hierarchy theory. Hence, if we call the level of the simple pickers (who effectively disregard their counterparts) Level 0, then Level 1 players attempt to match their choices to those they believe Level 0 players will make. Level 2 players attempt to match their choices to those of Level 1 players, etc.

When Level 1 players believe that certain choices are more likely than others to be made by Level 0 players, the behavior of Level 1 players becomes predictable. Thus, suppose that the players are all US citizens and that the Level 1 player believes that among her compatriots, 4 July is more likely to be picked by Level 0 players than any other date. If tasked to write down the same date as her co-player(s), she will also choose 4 July, for that is the date with the highest likelihood of success. Moreover, a Level 2 player will also choose 4 July, because she believes that that is what a Level

¹⁴Another important step in the development of this theory is Camerer et al. (2004).

1 player will do, as well as being the best response in cases where she is dealing with a Level 0 player. In cognitive hierarchy theory, what Level 0 players are assumed to do in the end determines what everybody else does.

As picking whatever attracts their fancy equates to picking whatever is salient to them, this behavior of Level 0 players allows cognitive hierarchy theory to explain focal point coordination. All that is required to make cognitive hierarchy theory work is for higher level players to have some knowledge or belief about what is salient to Level 0 players, and everyone else will follow suit.¹⁵

Cognitive hierarchy theory is similar to team reasoning in that they both take rationality to be a matter of instrumental reason, but it differs from team reasoning in that it does not rely on a reconceptualization of the unit of agency. All players (at least of Level 1 and upwards) act purely based on single-person best-response reasoning: when coordinating with a lower level player in a coordination problem, the best thing a higher level player can do is to match the lower level player. Cognitive hierarchy theory does not rely on the players conceiving themselves as a team or a ‘we’; it assumes that players will try to answer the question in terms of what is best for them to do, taking their beliefs about what others do as a given.

There are thus different explanations of people’s remarkable tendency to successfully coordinate by using available focal points. In his critique of standard game theory, Sugden is adamant that the way people experience their situation and the options they have (what he calls the ‘labelling of options’ (Sugden 1995; cf. also Mehta et al. 1994) must be taken into account to adequately describe the way people behave in decision problems, but by itself that does not enable us to decide which of the various explanations is most accurate. Do people actually engage in team reasoning, cognitive hierarchical reasoning, or is their behavior purely pragmatic?

For pragmatic theory, a first challenge is to explain how people learn what works and does not work. An account that explains how people may come to recognize salience in different situations must be developed. Knowing what to look for when solving coordination problems is something people

¹⁵The cognitive hierarchy model can be made more complex, for instance, by allowing different higher level players to have different beliefs about what lower level players are likely to do. Even in such cases, however, relatively mild empirical assumptions often lead to convergence of behavior among the higher level players.

have to learn through experience. A simplified model of this learning process and the way that it can lead to the emergence of focal points within a population is presented in Alberti et al. (2012).

Though learning is not wholly irrelevant for the cognitive hierarchical and the team reasoning theories, either, the deductive nature of their notion of reasoning makes it less fundamental to these approaches. Theoretical work has shown that both these modes of reasoning are internally consistent; that fact in itself, however, only implies that people may reason in that particular way; it does not tell us whether they actually do. To determine which of these competing ways of reasoning people actually use, Sugden and his collaborators developed a number of ingenious empirical tests (Bardsley et al. 2010). The results of these tests indicate that people actually engage in both these types of reasoning. Thus, both theories of focal point coordination are supported by empirical facts. People sometimes engage in team reasoning, and other times in a mode of reasoning that better corresponds to cognitive hierarchy theory. Precisely what makes them choose which mode of reasoning still remains a largely open question, but the tests do indicate that subtle differences in context can be sufficient to make people switch from one mode of reasoning to another.

Sugden's empirical work vindicates many of Schelling's original conjectures. In particular, it offers support for the view that a single unifying, a priori, theory of focal points may not be available. It also shows, however, that theorizing about focal points has not been fruitless, either. Empirical evidence corroborates different explanations of focal point coordination. Thus, it seems that focality and salience affect the behavior of persons in different ways and/or at different levels. Perhaps the most important finding, however, is the sensitivity of these issues to the given context.¹⁶ Apparently, people adapt their way of using focality and salience to suit their needs as these are dictated by the problem they face—and they are remarkably good at doing so.

¹⁶When testing the way focal points feature in tacit and explicit bargaining situations, for instance, Sugden and his collaborators found that salience plays a notable role in both contexts (Isoni et al. 2013, resp. 2014), but that it affects the outcomes in differing ways.

5 CONCLUSION

This chapter has provided an overview of some of the major steps in the development of focal point theory. First, its practical importance was illustrated by the role focal points played in Schelling's analysis of the Cold War, which emphasized the usefulness of focal points in establishing an alternative way to communicate intentions when direct communication is not possible (or not believable) by signaling and establishing patterns, thereby enabling actors to engage in tacit bargaining. Second, it discussed coordination problems and the way focal points allow individuals to successfully resolve such problems, frequently allowing them to beat the odds that game-theoretic rationality predicts. Focal points allow players to reconceptualize the game, often in ways that improve their odds of successful coordination. Lastly, the role focal points play in team reasoning was discussed, as were a number of empirical findings. In the team reasoning approach, focal points not only affect the way players conceive of the options available to them in the game, but can also affect the way they try to resolve them, i.e. the way they reason.

What are we to make of all of this? Is the use of focal points rationally explainable or not? It continues to be a challenge to provide a clear, unequivocal answer to this. Focal points seem to (potentially) affect decision making in different ways. Moreover, 'making use of focality/salience' can be interpreted in multiple ways. It can (and most often is) taken to refer to the question whether focality or salience is directly reason-giving—should you play a focal point strategy just because it stands out? There are good reasons to doubt this is categorically the case (cf. Gilbert). However, this does not exclude the ways in which salience and focality can be made use of, and it seems to miss the main thrust of the idea that focal points can be used to reconceptualize problems.

When reconceptualizations of the decision problem are taken into account, the question of rationality cannot be answered without first investigating what is and what is not within a person's choice; what does and what does not fall within the scope of rationality. This is very clear in the disagreement between Bacharach and Gauthier. Much of the convincingness of Gauthier's analysis hinges on his claim that persons can *choose* to adopt a different perspective on a given decision problem when that increases their chances of successful coordination. Bacharach denied this. Which of the two is correct? Those who lean toward Bacharach's point of view will argue that people can only adopt frames that are accessible to them, and

not every possible frame will be accessible to everyone. To a significant degree, frames are personal. Moreover, it does seem to be true that our brains automatically select such frames. Someone who leans toward Gauthier's position could reply, however, that although this may hold for our initial appreciation of the situations we encounter, we are not fully helpless in this regard, either. We may not be able to adopt any frame whatsoever, but when we realize that we are faced with a serious predicament, we are not necessarily stuck with only one. Once we become aware that our initial appreciation of the situation leaves us with only unpalatable options, we can consciously try to adopt different perspectives. If approaching it as a problem of individual payoff maximization leaves us without any hope of success why not see how we would fare in other perspectives, such as that of the collaborative 'we'? When that gives us better odds (or strictly speaking, better expected payoffs), how would it then not be rational to favor this approach to analyzing the predicament over the alternatives? Total freedom to frame a problem we may perhaps not have—we can only adopt the perspectives that happen to come to our minds—but to suggest that we are always bound to one and only one perspective when confronted with a problem seems overly restrictive, too. Human beings are generally capable of deliberately engaging in what has been called 'perspective taking'.

This, however, leads us back to Gilbert's objection that one would need to know what frames (in Bacharach's terminology) the person one is trying to coordinate with is considering, and that question does not seem answerable in a straightforward way by instrumental reason alone.¹⁷ Making reasonable predictions about how other people approach problems requires reliance on psychological information about, among other things, the way the human brain works and selects and processes information, as well as other things that may be known about them. As Sugden argues, seeking a unifying, fully a priori theory of focal points may be tantamount to chasing a chimera, but empirical research may be able to provide the required additional knowledge. Salience does seem to play a notable role in the way

¹⁷For a small class of problems, this may not be problematic, however. Recall the example of the cruel billionaire. As the poor people in this game are doomed to fail if they play the game in its original representation, *any* other viable representation seems (at least weakly) preferable. Even if the opposite party fails to reconceptualize the game in the same way as they do, they have nothing to lose. Hence, if you find yourself in such a situation and the only two frames that come to mind are the original representation and Gauthier's focal point representation, play the game in its focal point representation. This will only apply to a small class of cases, however; more often than not, the nothing-to-lose clause will not be fulfilled.

people resolve a variety of problems and in order to predict whether the person one is engaging with is, for instance, more likely to rely on team reasoning than on individual reasoning, neglecting salience would appear to be a mistake. Hence, though the use of focal points may perhaps not be completely explainable by standard game-theoretical reason alone, it may well prove distinctly irrational to disregard the salience of specific features of the decision problem one faces.

Given the purpose of this volume, I will conclude with a tentative application of the possible relevance of salience and team reasoning to negotiations. For team reasoning to occur, the players must—needless to say—conceive of themselves as a team. If Bacharach is correct, the likelihood of this occurring is partly determined by the features of the given situation—common interest and interdependence—which can (if the circumstances are favorable) be highlighted by focal points, but as Bacharach also noted, when features that defy team reasoning acquire salience, then salience may work against the idea of a ‘we’.

Let us take the example of two warring parties who are trying to settle on a peace agreement. In such a situation, the notion of a ‘we’ applying to the two countries is highly implausible. The enemy is the paradigm example of a ‘they’. Moreover, the hardships of war often make any such suggestion psychologically offensive. The very suggestion of a ‘we’ that covers both you and the barbarians who recently bombed your house into the ground may be a bit much to swallow. ‘We’ may well realize that we have to come to some kind of settlement with ‘them’, but ‘they’ will remain very different from ‘us’ for a long time to come. If the leaders of the two countries, nonetheless, realize that team reasoning is most likely to have the most beneficial results, they may deliberately try to create a situation that is conducive to team reasoning. It is here that the use of negotiators may come into play.

Perhaps the relevant team is not one that consists of the two countries, but one that consists of the two countries’ negotiators. Not only can countries deliberately select professional negotiators that were not directly affected by the horrors of the war, but such negotiators know very well that they share a common interest and an obvious interdependence with their counterparts from the opposing country: securing a deal. To build a reputation as a negotiator, one must be able to successfully conclude negotiations and this can only be achieved if the other negotiators are also willing to seal a deal. Not every possible deal is conducive to the enhancement of one’s reputation as a negotiator (a bad deal may be worse than no deal), but if

all of one's negotiations fail, one's career prospects as a negotiator appear limited. Each negotiator has an evident interest in only looking for deals she is confident she can safely return home with, but if she can be brought to engage in team reasoning, she will also be actively looking for solutions that her counterpart can sell at home too.

From this perspective, the use of professional negotiators to settle disputes could be seen as way to create situations in which the features that facilitate team reasoning are particularly salient, whilst attempting to eliminate (or minimize) the salience of features that might prevent team reasoning from occurring if the parties they represent tried to work out a settlement directly. Focal points and salience may well play a role *within* negotiations, highlighting potential bargaining solutions, but they may also have played a role in the very reason negotiators were appointed in the first place.

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Focality and Salience in Negotiations: Structuring a Conceptual Space

Rudolf Schuessler

What is the role of focality and salience in negotiations? Outcomes and proposals are focal (and referred to as focal points) if they *uniquely* stand out among a set of options due to some conspicuous property that is recognized by all participants. Moreover, all participants know that all other participants recognize the conspicuity of the outcomes or proposals in question. To put it more bluntly, offers or outcomes are focal points if they express simple, prominent and often formulaic positions that uniquely catch the imagination of negotiators or their principals. Salient points, according to the usage of the term in this book, share most properties with focal points (see below), but they need not be unique, or at least not clearly so. That is, the term salience allows for a plurality of competing conspicuous proposals or outcomes within a given context. Since we regard uniqueness as a degenerate case of plurality, focal points form a subset of salient points in our terminology. This distinctive usage of focality and salience is, however, not established in academic literature, where both terms are often

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used interchangeably. Nevertheless, focal and merely salient points have quite different strategic implications in problems of coordination and in negotiations. It therefore helps to distinguish between them.

When broadly defined, salient points play an essential role in negotiations. UN Security Council Resolution 242's formula 'land for peace' is a salient solution, for example, as are the many elementary numbers in international negotiations, such as the 1% GDP contribution promoted by a group of countries in negotiations on the EU's 2007–2013 financial framework. Given the occurrence of such examples, it must seem surprising that the strategic use of focal and salient points in negotiations has not been more closely investigated.

Schelling (1960) initiated research on focal points and coordination problems. He finds that focal points allow for a convergence of expectations among agents who cannot communicate with each other. Uniqueness and thus focality play a crucial role in this context, because such convergence is not induced by several equally salient points. Schelling also mentions the possible use of focal points in negotiations, such as in the peace negotiations following the Korean War. Later—and most notably with Lewis's work (1969)—research on focal points took a game-theoretical turn. The result was a considerable expansion of theoretical knowledge on equilibrium choice in coordination games, albeit to the detriment of the study of real-life negotiations. The key properties of coordination games render it difficult to understand how focal points might influence negotiations, above all because players are unable to communicate with each other in coordination games. In such games, the players' interests coincide and solutions are therefore easily found once the players *can* communicate. Their only problem is choosing one of several equally good game-theoretical equilibria; focal points are only required for this task if information cannot be exchanged between the parties. Needless to say, parties in negotiation can usually communicate. Hence, focal points should actually not be relevant to them. Yet why then are solutions and proposals in negotiations often focal or at least salient?

Schelling's explanation of the role of 'tacit bargaining' in negotiations points us toward an answer (for more, see below). The negotiating parties' interests need to be coordinated to prevent failure. Communication can guide them toward an agreement, but may also distract, deceive, and perpetuate disagreement. Communication thus does not guarantee coordination in negotiation, and silent reflection on the possible dynamics of opponents' expectations (referred to as 'tacit bargaining') may replace it in

facilitating agreement. Rational reflection on an opponent's expectations needs to account for the fact that the opponent reacts to our own expectations as she herself perceives them. Focal points can influence this process and are thus relevant for negotiators. However, the same is also true for multiple salient points, which need to be accounted for once we shift our interest from coordination games to negotiations.

There is a second dimension in which standard accounts of focal coordination fail to fit the requisites of negotiation analysis. In game theory, focal points are defined in such a way as to help players choose equilibria in coordination games that are only played once (so-called 'one-shot games'). By contrast, negotiations typically form a process that is extended over time and in which sequential strategic decisions are taken. Coordination in such processes neither presupposes the special forms of focality that are characteristic of game-theoretical formalizations, nor should it be expected that all aspects of game-theoretical focality are present in actual negotiations. Hence, the conceptual space of focality, as described in Schelling's and Lewis's work, must be reconsidered if we wish to make room for weaker forms of focality, that is, mere salience. This endeavor can in fact be expanded to include other practices in which coordination is key and communication is possible, such as mediation, arbitration, and other approaches to conflict resolution. However, the present chapter will only deal with negotiations in order to not become exceedingly long.

Section 1 introduces the standard concept of focal points based on the work of Schelling and Lewis. Section 2 explains in more detail why the ability to communicate does not preclude a role for focal points in negotiations. Section 3 develops a less restrictive understanding of focality to provide the necessary conceptual tools for negotiation analysis. It identifies three crucial problems for the application of focal point analysis to negotiations, namely divergent perceptions of agents, ambiguous references to terms (such as 'focal point'), and volatile or low expectations about the success of coordination. The first issue is addressed by distinguishing between strong focal points (such as those described by Schelling and Lewis) and weaker pre-focal points, which are more accepting of different perceptions of focality. Section 4 deals with unclear references and the vagueness of terms. This problem can be mitigated by primarily looking at paradigmatic focal points, that is, points whose focality in a field of study is undisputed. Section 5 discusses low expectations of success and the problem that focal solutions are often only deemed second-best for the negotiating parties.

Section 6 resumes the discussion of strategic uses of focal points and identifies some contexts in which they appear propitious. Section 7 summarizes the chapter.

1 THE STANDARD VIEW ON FOCAL POINTS

The concept of a *focal point* was introduced in Schelling (1960) and refined in Lewis's (1969) analysis of *salience*. Salience is used by Lewis as synonymous for the property of being focal, but, as outlined, we will distinguish between these properties and treat Lewis as a theorist of focality.

Recent research on focal points¹ usually refers to these 'classical' works. It is therefore sensible to begin a conceptual analysis of focal points by building on Schelling's and Lewis's basic characterizations.

Schelling (1960: 57) describes focal points as follows:

People can often concert their intentions or expectations with others if each knows that the other is trying to do the same. Most situations – perhaps every situation for people who are practiced at this kind of game – provide some clue for coordinating behavior, some focal point for each person's expectation of what the other expects him to expect to be expected to do.

A prime characteristic ... of the clues or coordinators of focal points, is some kind of prominence and conspicuousness.

Lewis's (1969: 35) characterization of salient equilibria (i.e. focal points) is similar to Schelling's:

It turns out that sophisticated subjects in an experimental setting can often do very well – much better than chance – at solving novel coordination problems without communication. They try for a coordination equilibrium that is somehow salient: one that stands out from the rest by its uniqueness in some conspicuous respect. It does not have to be uniquely good; indeed, it could be uniquely bad. It merely has to be unique in some way the subjects will notice, expect each other to notice, and so on.

The uniqueness property of focal points is much more emphasized by Lewis than Schelling. It needs to be present in Schelling's cases to allow for coordination despite the impossibility of communication. Under this premise, a

¹I will mostly drop references to salience in the following and only refer to it when writing about Lewis.

shared view of focal points' basic properties can be gleaned from Schelling and Lewis. Accordingly, a focal outcome is:

- uniquely conspicuous, salient, prominent, 'stands out', etc.
- in the minds of all parties involved,
- and all involved perceive this unique conspicuity (i.e. it is common knowledge).

Let us call this the Schelling-Lewis conception of focal points. The assumption of common knowledge specifies that agent A expects agent B to perceive the conspicuity of a focal point, B expects A to expect B to perceive it, A expects B to expect A to expect B to perceive it, and so on ad infinitum. That is, conspicuity is perceived by all with respect to cross-wise expectations at arbitrary level n ($n \in \mathbb{N}^+$). Different suggestions exist about how common knowledge ought to best be defined, but such issues need not preoccupy us here.²

Most studies on focal points are found in non-pure (e.g. experimental, evolutionary) branches of game theory and accept the standard definition of focal points, albeit with minor deviations at times.³ In this line of research, coordination on focal points is often the outcome of evolutionary processes, or focal points serve as footholds for the emergence of social conventions (such as the side of the road drivers should use). An underlying assumption is that the agents involved cannot or do not communicate with respect to a coordination task. This assumption, which was already discussed in the work of Schelling and Lewis, indicates that coordination only requires support from focal points if the agents cannot effectively communicate with one another. They can otherwise simply select an equilibrium in a coordination game through communication and agreement, because according to the definition of the game, the interests of the parties do not seriously diverge. In more technical terms, coordination games are characterized by multiple (Nash-) equilibria, each of which is better for all players than any non-equilibrium outcome. In pure coordination games, the payoffs of all equilibria are equal.⁴ Due to this symmetry, pure coordination games

² See Heal (1978) and Vanderschraaf and Sillari (2013).

³ See, e.g., Gilbert (1989: 5), Bicchieri (1993: 65), Mehta et al. (1994: 658), Skyrms (1998), Verbeek (2002: 48), and Bacharach (2006).

⁴ For this approach to coordination games, see Sugden (1995, 2011).

became the standard models of reference for a formal analysis of the evolution of conventions. Conventions, such as the side of the street we drive on, can be defined as socially conditioned behavioral regularities. In line with Lewis, Robert Sugden asserts that focal points can guide—and in fact often do guide—the decentralized formation of conventions.⁵

It was mainly Schelling, however, who emphasized the role of focal points in tacit bargaining. Tacit bargaining can be defined as a mental process of shaping expectations about the offers or refusals a party will make in a bargaining situation, taking into account all parties' presumable expectations. In this context, focal points can coordinate all parties' expectations and thus induce a convergence of expectations without having to rely on communication between the agents. A typical example is tacit collusion in price setting between the parties of an oligopoly. Each of the firms expects the others to be interested in high prices. By setting a high price, a firm can convey to others that it will not engage in price competition unless provoked by others. The others can be expected to understand this and will set their prices accordingly, even if they do not formally agree on a cartel.

Although the study of focal points and coordination games has evolved along these lines for several decades, something about this approach remains unsatisfactory. Given the direction of Schelling's initial kickoff, the study of focal coordination has only covered a fairly narrow share of its possible fields of application. One field that has been conspicuously disregarded is negotiations. It is well-known that many offers or solutions in negotiations are focal or at least salient points. For instance, the attempt of several European countries to set a 1% national GDP contribution limit to the EU budget used a salient point (a conspicuous number), which in a plausible ZOPA (zone of possible agreement) arguably was even unique and focal, to rally supporters in EU budget negotiations. Further examples can be found in the chapters of this book. Focal and salient points seem to have a significant impact on negotiations, but this impact can neither be fully explained by their role in tacit coordination nor in tacit bargaining. Negotiations are not tacit, and focality or salience must retain some value, even in environments where communication is not only possible but key in influencing negotiations. Tacit coordination and tacit bargaining are in

⁵ Sugden (1986, 2011). The fact recognized by Sugden that mere salience can also influence the evolution of conventions (but not solve coordination problems between rational agents) need not preoccupy us here.

virtue of being tacit ill-suited to provide a comprehensive explanation of this phenomenon. Game-theoretical studies on the emergence of conventions hardly fare better in this respect, because they do not account for the effects of communication. We will therefore briefly reflect on these differences, as well as on the common grounds between standard coordination problems and negotiations before we further investigate the role of focality and salience in negotiations.⁶

2 FOCALITY AND SALIENCE IN NEGOTIATIONS: THE ROLE OF COMMUNICATION

Negotiations do not fit the mold of pure coordination games. They are neither tacit nor do the parties' interests coincide. Negotiations are about concessions or about achieving an objective without making overly large concessions. Hence, all parties will strive toward outcomes that are most favorable in their eyes, but not necessarily in the eyes of the other parties involved. This is certainly true for self-interested negotiations, but also carries over to negotiations in which fairness or common interests play a role. Parties usually try to satisfy *their* notion of fairness or common interests and are reluctant to yield to the alternative notions of others.⁷ The adage of striving for a win-win solution for all parties tempers this observation somewhat, but does not invalidate it. There may be the occasional symmetric and thus ostensibly 'fair' win-win solution, in which all parties' gains are roughly the same, but win-win solutions are usually compatible with asymmetric gains. Negotiations are therefore typically characterized by an antagonism of interests. Nevertheless, arriving at an agreement is usually more favorable for all parties than not. The disagreement outcome or BATNA (Best Alternative to Negotiated Agreement) is inferior to any negotiated agreement, although the parties may disagree on the actual agreement to be reached. In other words, they face problems coordinating an agreement that is Pareto superior to the BATNA. This sketch of shared and antagonistic interests in negotiations reveals that the concerns about coordination in games and

⁶When I speak about negotiations, I do not include bargaining theory in the game-theoretical sense. Focal points in this field have been studied, see Cooper et al. (1990, 1992), Isoni et al. (2013), Roth (1985) or Taylor and Fiske (1978), but have not been integrated into the debate on bargaining solutions.

⁷For the often conflicting diversity of notions of justice, see, e.g., Elster (1992).

negotiations partially overlap. Coordination, that is, agreement in a negotiation, is more favorable than coordination failure. However, the situation is certainly not one of a *pure* coordination game. Asymmetrical interests bear some resemblance to so-called impure coordination games, such as the ‘battle of sexes’ or others.⁸ Insofar, impure coordination games could serve as models for negotiations, were it not for other features of negotiations that defy straightforward representations in simple game structures. Two features are particularly prominent in this respect: the possibility of communication and the process character of negotiations.

The former will take center stage in this section and the latter will be addressed in the rest of the chapter.

Why does communication not immediately resolve the coordination problems in finding negotiated agreements? One plausible answer is that the conflict of interests, which is characteristic of negotiations, inhibits agreement. Yet this is not the entire story. We must also take into account that the harmonization of expectations may not be the exclusive goal of communication in negotiations. Communication is a multi-purpose tool—not only in negotiations but in most real-life contexts.⁹ It is used to inform, but also to deceive, to jam, to cajole, to express emotions, and so on. Negotiators tend to know this, and they will thus not accept others’ communicative acts at face value. They may, for instance, consider the communicative acts of others as bluff and assign them minor weight when forming their expectations. Communication may even exacerbate the parties’ conflict of interest due to inept messaging or by violating the feelings of others. In short, it is not generally true that communication facilitates agreement and that the only thing standing in the way are differing interests. For this reason, credibility in communication also plays a major role in negotiations.¹⁰ If A makes a proposal and B can reasonably expect A to believe that B will not even consider accepting the proposal, B can disregard the proposal because A will most likely have used it as a feint. In contrast, credible proposals can stimulate a convergence of expectations on an agreement. Parties might settle on a credible proposal, and what presently matters

⁸The—politically somewhat incorrect—original game description involves a man and woman who have to decide incommunicado whether to meet at the opera house or the football stadium. She prefers the opera, he prefers the stadium, but both consider it worse to not spend the evening together; see Luce and Raiffa (1957: 90).

⁹See, e.g., Hargie (2006).

¹⁰See Kouzes and Posner (2011) and Zartman and Berman (1982: 27).

most is not the objective credibility of an outcome, but the parties' subjective assessment of credibility. Their reasoning is driven by the perception of the other side's credibility, and focal or salient points may contribute to the subjective credibility of proposals. To be credible, a proposal must be an acceptable end point for the convergence of mutual behavioral expectations, and the probability of convergence rises *ceteris paribus* if a proposal is focal as defined by Schelling and Lewis. To a minor extent, even mere salience, i.e. conspicuity that stands in competition with other conspicuities, may facilitate the convergence of expectations, in particular if the deadlock between different conspicuous proposals or solutions can be broken (see below).

Let us look at an example with respect to these issues. In the EU budget negotiations, the proposal of a group of countries becomes more credible as a possible outcome of the negotiation process if it is likely to attract a higher number of other countries. The proposal of a group of countries to limit EU contributions of all countries to 1% of their GDP seems to be the salient formula uniting the group of EU countries advocating budgetary restraint. Given that the ZOPA was probably between 0.9 and 1.23% (the maximum stipulated in EU treaties) of national GDP, the number 1 even appears uniquely focal. Even the opponents of budgetary restraint realized that the 1% proposal could be a rallying point for those seeking to control spending because of its salience or focality. It is thus a credible proposal in the eyes of the opponents, something the proponents of the 1% solution were aware of, rendering their proposal even more credible. In other words, the expectable perception of a proposal as credible increases the proposal's credibility as a feasible solution. Taken in itself, this reflexive strengthening of credibility may lead to a convergence of expectations on a given outcome. The more room there is for this reinforcement process to unfold, the more clout or skill the opponents will need to prevent this outcome from materializing.

Other considerations may, of course, intervene, so that *ceteris paribus*, and the convergence power of focal points is diminished by other forces. Nevertheless, focal and even salient points can serve as 'attractors' for negotiators' expectations. In virtue of being able to attract negotiators' expectations, they form centers of gravity for the outcomes of negotiations, at least if no other forces intervene or, more importantly, as long as countervailing forces remain too weak to block movement toward the focal or salient point. This is the main reason why focal and salient points can guide tacit bargaining, which is just another name for the process of looking for convergent expectations. Tacit bargaining is Schelling's main gateway to

the role of focal points in bargaining contexts and we should therefore inspect it a bit more closely. Tacit bargaining relies on a script in the minds of negotiators specifying what they expect the other side to settle on. The term ‘script’ is used here in its literary sense as a kind of screenplay in the minds of negotiators of how the negotiations might unfold. Such scripts may contain different scenarios and thus be far more complex than mere recipes for choosing an equilibrium, and focal or salient points can play a role at all levels of such scripts. This broader approach to tacit bargaining is already found in Schelling (1960). Early in his book he writes¹¹:

The subject includes both explicit bargaining and the tacit kind in which adversaries watch and interpret each other’s behavior, each aware that his own actions are being interpreted and anticipated, each acting with a view to the expectations that he creates.

Later, Schelling refers to the “intrinsic magnetism of particular outcomes”, which guides the convergence of “infinitely reflexive expectations”.¹² Schelling seems to treat tacit bargaining as synonymous with agents’ internal expectation formation in bargaining contexts. In other parts of his book, however, most importantly in the chapter on coordination problems, Schelling characterizes tacit bargaining as “bargaining in which communication is incomplete or impossible”.¹³ Game-theoretical investigations build on this second characterization.¹⁴ Schelling’s notion of tacit bargaining remains ambiguous, and this ambiguity undermines his attempts to mediate between explicit and tacit bargaining. For Schelling, tacit bargaining becomes explicit to the extent that communication in negotiations or conflicts becomes more complete and less faulty.¹⁵ Yet the problem is not the availability and security of communication. Negotiators need to ponder alternative processes of convergence for expectations, even though they may be able to communicate with optimal quality and quantity. Explicit and tacit bargaining remain intertwined, regardless of the level of communication between agents.

¹¹ Schelling (1960: 21). See also Ayson (2004).

¹² Schelling (1960: 70).

¹³ Schelling (1960: 53).

¹⁴ See, e.g., Isoni et al. (2013).

¹⁵ Schelling (1960: 73).

Hence, negotiations differ from pure coordination contexts because they entail interactions of tacit and communicative bargaining. Many people believe—interpreting game-theoretical research all too narrowly—that focal points can only serve strategic purposes when communication is impossible. This is false. Focal points can play a significant role where tacit bargaining plays a substantial role, and tacit bargaining, when broadly defined, is significant for all kinds of negotiations, because a broad definition of tacit bargaining is equated with the action-reaction scenarios in the minds of negotiators, which guide their expectations of the negotiation process. Such scripts will usually not be fully revealed in the communication between the parties, and will not be fully conditioned by the parties' communicative exchanges.

Moreover, competing salient points may play a significant role for the unfolding of scenario scripts in the minds of negotiators. Whereas focal points constitute unique attractors of expectations, salient points may create several competing basins of attraction. Realizing this is often relevant for the strategic considerations of agents.

3 MORE ON FOCALITY AND SALIENCE IN NEGOTIATIONS

Communication does not only influence tacit bargaining but also motivates the perception or even creation of focality or salience. Let us approach this claim through an example. Agent A suggests solution s^* to B with the explicit communication that it considers s^* to be a 'natural' solution (e.g. if A and B are two countries negotiating a mutual border, s^* might be a river or mountain range). This can induce B to believe that A considers s^* to be a focal point, because the term 'natural' can be understood as signaling that A expects B to realize the unique naturalness of s^* , and so on, up the entire interlinked hierarchy of mutual expectations described by Schelling and Lewis. Note that B only believes this *after* A reveals that it considers s^* to be a natural solution. Consequently, s^* is not a focal point in the Schelling-Lewis sense, because not all sides immediately recognize it as focal. What we see here instead is that focality (the property of a focal point) can be created during a negotiation process—it can be endogenous to a negotiation. It follows that the possibility to generate focal points through acts of communication can be relevant in negotiations, even beyond the role that Schelling-Lewis focal points play in tacit bargaining. This has been

realized in the literature on institutions and by constructivist approaches in political science, where reference is made to ‘constructed focal points’.¹⁶

However, several problems emerge at this stage of reflection on the importance of focal points for real negotiations. The first is implicit in the outlined case: A’s suggestion is not a Schelling-Lewis (SL) focal point, and we therefore need a broader notion of focality to explain what is taking place between A and B. It is plausible to bring salience to bear on this question. If salient points are focal points in the plural, that is, SL focal points that only lack the property of uniqueness, the interaction between A and B can be easily explained. Let us assume there are several salient outcomes A and B could aim at. The fact that A calls one of them ‘natural’ generates the expectation in B that A considers this outcome s^* as being in some way privileged and more conspicuous than others. Hence, B realizes that s^* is a focal point for A, and s^* therefore also becomes a focal point for B, at least if concurring cycles of higher order expectations are elicited by A’s act of communication. Indeed, A may expect B to follow this line of reasoning and to thus recognize s^* as being unique. B can expect this further step of A and up we climb, the whole ladder of common knowledge (or mutual expectations) ad infinitum. Thereby, A’s act of communication has turned a merely salient point into an SL focal point.

This is, however, not yet all we can observe. The standard SL approach entails very strong requirements. A focal point must in fact be conspicuous for *all* parties, and must be recognized as such by *all*. In general, the assumption of common knowledge with its infinite convergence of expectations is very restrictive. Which real agent is able to form an infinite hierarchy of expectations? It could, of course, be claimed that these requirements can be toned down through an *as-if* interpretation. The agents only need to behave as though their perceptions and expectations correspond to the specified conditions.¹⁷ The requirements of game theory are thus satisfied. The conditions in question continue, however, to stand in the way of a broad analysis of focality’s role in negotiations. We have just discussed the interaction between players A and B based on plausible expectations instead of complete information about all sides’ beliefs. This should be possible in

¹⁶See Garrett and Weingast (1993: 176), Keohane and Martin (1995: 45), and Martin and Simmons (1998).

¹⁷On economic as-if methodology (aka instrumentalism), see Mäki (2009).

practice even though it does not amount to common knowledge in the technical sense.

Moreover, the premise that at least the salience of an outcome within a given context should be recognized by all ought to be relaxed as well. This is important for understanding how principles and formulas can become focal points in negotiations. Most diplomats or negotiators will be able to recognize when a principle or formula is crisp and well formulated. However, that does not necessarily turn it into a salient formula in a specific context. What is lacking is the expectation that others also consider the principle or formula as attractive and apt within the given context. Take *ubuntu*, the South African principle of shared humanity (see Chapter 7 by Rosoux and Druckman). It is a philosophical concept like many others. Negotiators may recognize its attractiveness, given they consider *ubuntu* at all, but that does not imply that just anyone must recognize its salience for the post-Apartheid reconciliation process in South Africa. Hence, we should assume that *ubuntu* was not salient at the beginning of the respective negotiations. Nobody could then expect that all others would consider *ubuntu* to be a conspicuous principle in the negotiations. However, communication changed this state of affairs. Once negotiators resorted to *ubuntu* in their dealings with others, those others realized that *ubuntu* was conspicuous to some stakeholders in the process. When an increasing number of parties involved accepted *ubuntu* as a guiding principle, it became clear that it was salient, that is, recognized as being conspicuous by all. Since no competing principle emerged, *ubuntu* actually became focal through the above described process of communicative formation of SL focal points. Hence, crisp and well-formulated principles and formulas can become focal points in negotiating processes, despite not even being mutually recognized as salient in the beginning. This opens many promising lanes for the strategic use of conspicuity in real-world negotiations.

It follows that negotiations often contain *two* (or more) sequential coordination problems. The first problem requires coordination of perceptions, in particular concerning which features of a negotiation process are crucial to arrive at a solution. The second problem, which builds on the first, concerns the coordination of actions on the basis of shared perceptions. Communication allows for sequencing and for dealing with such interlinked coordination tasks, which would not be possible in the mute coordination problems of game theory. A solution can, of course, only be reached if the underlying communicative process succeeds, while differing assumptions on the perceptions of others or simply spoiling might derail the process at

any stage. This is not to refute that focal points *can* and in more than a few cases *do*, in fact, play a role in real negotiations, but it demonstrates how difficult it apparently is to specify in *which* cases they do and *how* they play this role. To address these issues, I will analytically distinguish between three problems *P1–P3*, which are not, however, mutually independent:

- P1*: perceptions of salience and the respective mutual expectations differ between agents,
- P2*: a shared task may be vaguely defined, require specification, and it might be unclear what the word ‘point’ in ‘focal point’ refers to in a given context,
- P3*: an agent’s expectation of success to reach a focal solution may be low and the respective expectations may vary between agents.

These three problems arise in many negotiations and coordination tasks, but they are absent in the crystalline world of (standard) game theory. In this starkly idealized world, the expectations of rational agents are perfectly attuned to each other, every agent is well aware that he/she needs to coordinate on a cell in a matrix (which is the focal point), and if all agents are aware that all others are rational as well, the success of a given solution is guaranteed (otherwise it is not a solution). We will now investigate what happens when the problems addressed are taken seriously instead of being idealized away in the process of modeling.

4 MUTUAL EXPECTATIONS AND PERCEPTIONS OF SALIENCE

Let us start with the first listed problem, interpersonal differences in the perception of salience combined with resulting differences in expectations. We have already approached this problem, but not yet dealt with the adjustments in the SL conceptual apparatus it calls for. What seems obvious is that the premises of SL-focality must be loosened. In many real-life cases, only weaker clues (points, solutions, suggestions, etc.) may be available, which do not suffice to constitute full SL-focality. For this reason, a weaker notion of focality needs to be introduced, which I will call pre-focal:

Pre-focal point: a point which a subgroup¹⁸ in a set of agents S^*

- (a) consider conspicuous
- (b) expect to be recognized as being conspicuous by others
- (c) expect to be expected by others as being conspicuous for some, at least after signaling.

In contrast to SL-focality, pre-focality does not assume uniqueness and recognition by all observers on any reflective level of expectation formation. As regards pre-focal points, only some members of S^* must assume that a few, possibly unknown, other members recognize the point as being conspicuous. In principle, the ‘subgroup’ in (a), (b), and (c), and the ‘others’ in (b) and (c) need not refer to the same set of agents.¹⁹ Note that pre-focal points need also not be salient in the strict sense in which this term is employed here. A salient point is recognized by all to be recognized as conspicuous by all. Pre-focal points are only recognized by some to be conspicuous for some (salient points are a subclass of pre-focal points, in which ‘some’ extends to a whole community of reference).

Most game-theoretical results on the rationality of coordination will not hold for mere salience and even less for mere pre-focality. However, as outlined, pre-focal points may become relevant for negotiation processes by developing into SL-focal points which, in turn, foster coordination. Let us call a negotiation strategy that aims to achieve such a transformation a *focal (or salient)-by-communication strategy*, because an agent communicates an

¹⁸ Although a single agent can introduce a hitherto unknown pre-focal point into a negotiation, it requires at least several agents (hence the reference to a subgroup) to initiate the process of expectation formation which finally renders the point SL-focal. The assumed features of a pre-focal point are designed to refer to a set of agents in whose field of attention a point is.

¹⁹ A fully formal treatment of such differences will presumably become very complicated—in any case, more so than the present considerations, which may strike some readers as complicated enough. Consider characterizing focality by the number k (of n) players who perceive a point as being conspicuous (for standard focal points $k = n$). A further complexity can be added by repeating this differentiation on all levels of mutual expectation. Hence, k_1 players may expect m_1 players to perceive a point F^* as conspicuous, k_2 players may expect m_2 (for $m_1 \neq m_2$) players to perceive F^* as being conspicuous, and so on, for all differing m_i . The same differentiation can be repeated at a higher level: s_1 players may expect t_1 players to expect v_1 players to regard F^* as conspicuous (at this point, a question of sequential consistency arises for the players). For $t_i \neq t_j$ or $v_i \neq v_j$, the assumption must be further ramified. Of course, this process continues on all finite levels of nested expectations. If this is not rampant enough, one can further differentiate between the players, their power and relevance, or the rounds of a game (a point might be k focal in round i , and b focal in round $i + 1$).

issue or a proposed solution in a way that renders it (in her expectation) focal or at least salient for others in order to induce a convergence of expectations.²⁰

Usually, a focal-by-communication strategy will involve salience as an intermediate step. That is, mutually recognized conspicuity will be expected by participants in the process before uniqueness of conspicuity is realized. This assumption may be represented by the sequence:

pre-focality → salience → SL focality.

The two first steps of the process will merge if it commences, as often will be the case, with an already salient proposal.

This is not to say that a simple announcement by a single agent will inevitably turn a pre-focal or salient point into an SL-focal one. Other agents involved may be reluctant to accept the announcement at face value. Hence, in the case of the natural border s^* , an independent second agent might be necessary to confirm the naturalness of s^* . The higher the number of agents who acknowledge s^* as a natural border, the more likely it will be deemed an SL-focal point to all other agents involved. The path, on which these expectation dynamics converge given a cumulation of affirmative voices, needs to be empirically investigated and cannot be determined a priori. The same holds for the influence of dissenting voices. An agent's dissent does not necessarily terminate the process of a pre-focal point developing into an SL-focal point in the eyes of $n-1$ others, for instance, if the dissenting voice is interpreted as being insincere and guided by a strategic agenda. That is, others may believe that the dissenting agent recognizes the focality of s^* but does not admit to it for strategic reasons. A rising number of dissenters is likely to undermine this assumption.

The potential interlocking complexity of such considerations becomes apparent if we consider cases of real 'natural' borders. The first question is, of course, whether natural borders exist at all or whether they are mere rhetorical constructions. Take the case of the Rhine as a natural border between France and Germany.²¹ If people are asked to name a natural border between the two countries, they will most likely mention the River

²⁰The same is the case when an agent only wants to ensure that all parties involved recognize an issue or a solution option as being focal. Those who prefer a more general characterization may also speak of a focal-by-signaling strategy.

²¹See Febvre (1997) and Meerts (2015, Chap. 6). Focal points in the context of territorial decisions are discussed in Huth et al. (2013).

Rhine. But the Rhine for most of its course is not, and for most of the countries' history has never represented the border between France and Germany. The idea that it is a natural border goes back to Julius Caesar's distinction between Gaulish and Germanic tribes, with the former settling on the left bank of the Rhine and the latter on the river's right bank. In fact, things were much more complicated at the time (and Caesar knew it), with large swathes of Gaulish/Celtic populations settling on the right bank of the river and entire Germanic tribes living on the left. Nevertheless, the Rhine emerged, not without protracted conflict, as a convenient military border for the Roman empire, while neither France nor Germany as nation states were historically anywhere in the offing. It took a long sequence of contingent historical events to identify France with Roman Gaul and the non-Romanized 'free Germania' ('*Germania libera*'), along with some Roman occupied territory right of the Rhine, with Germany. To sum up, the Rhine as a natural border between France and Germany is a thoroughly contingent product, but it was a suitable aim for French expansionism in the early modern era and later for anti-Napoleonic containment in the Napoleonic Wars. In any case, now that the Rhine has been established as a natural border in the minds of many (let us hope that the issue of natural borders between France and Germany never again becomes politically relevant!), the Rhine is not likely to lose this status just because of a sobering historical analysis of its origins as a natural border.

The Rhine case shows that many 'natural borders' are the product of political and historical processes. Insofar, it exemplifies the important distinction between *universal* or *context-dependent conspicuity*. The former relies on forms of conspicuity that are universally recognized by human beings (or even by all higher animals) on biological or psychological grounds. Take the task of meeting a stranger in pitch darkness on a stretch of road whose endpoints are in no way distinguished by specific features. You are taken to the meeting point of your choice. Where to meet? Obviously, at the midpoint of the road's two ends. This is a form of conspicuity and, in fact, a universal SL-focal point that does not depend on the individual's culture, education, etc. If an individual's culture or education specifies a different meeting point, she will not choose it unless she can confidently expect the other agent to also be a member of her culture or a person with the same educational background. Some symmetries in mathematics and in visual space engender universal focal points, and empirical psychology may uncover others that are 'hardwired' in human beings. On the other hand, many types of conspicuity are context-dependent, that is, they

depend on shared culture, history, socialization, conventions, information processes, and so on. Some authors might even suggest that all focal points are context-dependent, following the trend to call the entire world a social construction. Yet it is important and useful to distinguish biological facts from social conventions. Once this has occurred, it may still be true that universal focal points are only relevant for coordinating human action in particular contexts, but that does not render them relative to social processes or conventions as focal points. Midpoints remain focal, even if there is no use for them except in given contexts.

Context-dependent conspicuity may render it worthwhile to communicate one's assumption that a point is SL focal for the entire group—or simply to publicly assert its conspicuity. In this case, we believe that everybody with a certain background recognizes the SL focality of a proposal, but we cannot be sure that everybody at the table shares the required background. Asserting the conspicuity of the respective proposal will mainly serve the purpose of testing or substantiating that others, in fact, share the agent's background.

As indicated, a second group of cases in which focality is usually tested or produced through communication are *formulaic solutions* in negotiations (e.g. 'land for peace'). If a good crisp formula for a solution is found and introduced in a negotiation process, it is often expected and acknowledged as appealing by several parties. Appeal renders the formula pre-focal. Successive positive responses to a formula confirm its pre-focality and may ultimately render it SL-focal or at least salient for all parties (respective thresholds are a matter for experimental research). It is not necessary for all parties to agree on using the formula to achieve salience or SL-focality. It suffices if all parties recognize its salience or focality to be mutually expected. Note that the use of principles or formulas in negotiations will more likely begin at the (not yet salient) pre-focal stage, while the use of conspicuous numbers or geographic features will rather start with salient objects. This is because numbers and visual objects will more likely be recognized as relevantly conspicuous within a given context by all observers, whereas the suitability of principles and formulas in a context often needs to be established before they can exert a 'gravitational pull'.

The metaphorical 'gravitational' pull of salient or focal solutions is typical for their potential impact on negotiations. The pull can be resisted, but it is perceived by some or all players—and can be amplified to reach participants who initially did not perceive it. Good solution principles or formulas exert an ever growing 'gravitational pull' the more they are used, and this requires

a rising number of stakeholders or negotiating parties to recognize their focality or at least salience. Hence, good principles or formulas are usually mere pre-focal points at the outset of a negotiation process (otherwise, finding them would not be an art), but the best ones quickly develop into SL-focal points once they are introduced.²²

5 PROBLEMS OF SPECIFICATION

We now turn to the second issue addressed above, namely the problem that it is often insufficiently clear in practice on what precisely to coordinate. Agents are often aware that they need to coordinate or to agree, but this does not imply that they know which aims to pursue. In game theory, by contrast, the notion of a coordination problem is explicitly specified, and the players are aware of the outcomes they can choose between. Possible solutions are also common knowledge. Finally, SL-focal points are unique in their conspicuity, and there is therefore no doubt that agents will coordinate on these if they are to coordinate at all. Real strategic problems are often messier—much messier. One example in which the messiness of reality is palpable has already been discussed—the uniqueness of focal points. In practice, we often encounter several competing salient points rather than a unique focal point in a context that needs to be negotiated. In such cases, the players do not know which objective to focus on. Different kinds of salience might appeal to different players, and without communication, none of the players would know which to prefer. This is even true when an agent is able to rank the different salient objectives. Unfortunately, the agent will often not be 100% confident that the other agents assume the same ranking of saliences. Tacit coordination on the most salient among several salient features is then still possible, but includes some risk of failure due to misperceptions of other agents' views. As soon as players begin communicating, the issue of multiple saliences assumes a different shape. Saliences might be strengthened by communication, and even salient points of lesser appeal may develop into dominant focal points. As already outlined, the same is true of pre-focal points that are not even salient. Note that the concept of a pre-focal point does *not* by definition imply that a unique pre-focal point will exist with respect to any solvable coordination task.

²²The (possible) focal role of law is not discussed here, because it requires more juridical knowledge than presently presupposed, see McAdams and Nadler (2008).

A negotiable coordination task may be characterized by several pre-focal points, some of whose aspects may even be salient.

However, the sequence of pre-focal points becoming salient, and salient points turning into focal ones, does not exhaust the problems faced with regard to specification. Proposals and solutions are part of problems that need to be negotiated. These problems may be shared between the agents in a generic sense, but this does not imply that the agents actually hold the same interpretation of the problems (take Chamberlain and Hitler negotiating the fate of Czechoslovakia in 1938). Moreover, even if the agents share the same formulation of a problem, they may disagree as to what constitutes a solution, how it can be reached, how it ought to be approached, and what steps ought to be taken. This renders it difficult to apply the conceptual apparatus of coordination theory. Building on game theory, we might call any outcome a ‘point’ if it at least satisfies the above outlined characterizations of pre-focality. Yet what does the notion of a ‘point’ signify before coming across a concise description of a problem in which it might serve as an outcome? The entire language of coordination problems seems to only make sense once an explicit shared view of a strategic problem has been established. However, by then, the agents will have noticed many saliences among the issues they are considering, and wonder whether they should serve as guidance to develop a framework for their strategic interaction. That is, the salience of a discussed issue might become relevant even before a framework is established in which pre-focal, salient or focal ‘points’ can be fully identified. This tends to blur the uses of these concepts.

In fact, discussions with political scientists and negotiation experts have revealed a considerable divergence in the intuitive use of terms such as ‘focal point’, ‘focality’, and ‘saliency’. Some experts, for instance, intuitively regard Bashar Al-Assad as a focal point with respect to the ‘problem of achieving peace in Syria’ (as of 2019). Assad seems to be a focal point because he is a uniquely conspicuous agent at the heart of the ‘Syria problem’, while everybody can be expected to know this, and everybody expects everybody else to know that this is known. But is Assad really a focal point? The problem at hand is not resolved if all parties involved are able to coordinate on Assad. If at all, not ‘Assad’ but only the removal of Assad (‘Assad out’) or acceptance of him remaining in power (‘Assad in’) can be a step toward peace in Syria, and it would only be one step in a long sequence of political decisions. Since we thus have two salient options for possible coordination, ‘Assad’ cannot be a focal point in the ‘Syria problem’ despite his outstanding conspicuity as a leader. Moreover, neither of the two options

‘Assad in/Assad out’ seems to be more salient than the other. Salience is therefore seemingly useless for finding a solution. Recognizing the salience of ‘Assad in’ and ‘Assad out’ does not help negotiators arrive at an adequately explicit description of the problem of achieving peace in Syria for focal coordination to succeed.

It would nevertheless be rash to discard strategies of focal coordination as hardly feasible in political practice. As the papers in this volume document time and again, many negotiations end with salient solutions and apparently not fortuitously. How can this observation be explained? One explanation may be that focal coordination (using the transition from salient to focal) works sufficiently well in a particular category of cases, which may be called ‘paradigmatic cases’ or ‘core cases’, and less so the further removed or ‘lateral’ an application is to this core set of cases. In lateral cases, it is often unclear or controversial whether something is a salient point or not. There is no definition of salient points that allows us to neatly distinguish between paradigmatic and lateral cases. We can only list examples for paradigmatic cases (that is, why they are called paradigmatic). This situation is familiar from many predicates of natural language. For instance, core cases for the predicate ‘red’ exist, but it is difficult, if not impossible, to provide a precise description of ‘red’ that only captures the objects commonly considered to be red, and none of the more controversial others. Let us therefore deal with core cases of salient points or salient solutions in negotiations based on a list:

- numbers and proportions: simple numbers or fractions of numbers in cases of contributions, shares, voting thresholds, etc.
- borders: straight borders following geographical lines, river borders, borders following mountain ridges, etc.
- centers: centers of density, junctions, equi-distance to important places, etc.

This list is not comprehensive, but it nevertheless covers the majority of examples for salient points in the literature on strategic problems in politics and economics. The listed examples are often universally salient points, not least because it seems more difficult to identify context-dependent salience beyond dispute, in particular if it has to be gleaned from research that was conducted by scholars who did not specifically look for salient points. However, as indicated above, natural borders are often not universally salient

but products of historical processes. In any case, simple proportions, natural borders, and spatial centers are what may be called *paradigmatic salient points* in the sphere of politics and economics. They offer us the building blocks with which we can start theorizing about the role of salience in political or economic negotiations.

As indicated, principles and formulas do not belong to the stock of paradigmatic salient points in negotiations, unless they have become general negotiating tools based on long usage and precedent. Some political principles, like ‘the sovereignty of states’ or ‘self-determination of peoples’ have acquired such a status, but many are not generally conspicuous until used in a specific context. Such less prominent principles or formulas are at best pre-focal and not yet salient for all. It does not follow that they thereby become less relevant for the study of negotiation strategy, but the processes by which these principles or formulas facilitate agreement are more complex and more difficult to delineate than in the case of paradigmatic salience. This is also true for issue salience. Outside the domain of paradigmatic salience, it is often difficult to determine whether a prominent feature of a political issue or a negotiating position is salient or not. At first glance, an issue that emerges as salient in a negotiation process might appear to have been salient all along, but on reflection, this assumption may be controversial. Take again the example of Assad and the problem of achieving peace in Syria. ‘Assad out’, the removal of Assad from power, is certainly a salient issue in political debates about the peace process in Syria. If the many opposition groups who want to gain power in Syria seek minimal consensus among their lot, ‘Assad out’ appears to be the natural common denominator all can agree on, and all are aware of this and know that all others know, too. One could say that ‘Assad out’ is the common center of gravity for Syrian opposition groups. Insofar, it might be regarded as a pre-focal point for Syrian peace negotiations and as an SL-focal point for the Syrian opposition. However, ‘Assad out’ is also a precondition for belonging to the Syrian opposition. It is a defining belief for the opposition in contrast to pro-Assad forces or bystanders. There is therefore no focal magic involved in the fact that ‘Assad out’ offers a rallying point for the Syrian opposition. The Syrian opposition does not need to coordinate on ‘Assad out’, they share this assumption anyway, perhaps without recognizing its conspicuity. But does this imply that ‘Assad out’ is not a focal point for the Syrian opposition? Formally, it satisfies the criteria for SL-focality, if ‘conspicuity’ is understood as ‘conspicuous if attended to’, and in many cases, such an understanding seems acceptable. On the other hand, all basic

shared beliefs possess this property, and it might be a stretch of terminology to declare all basic shared beliefs to be focal points.

No matter which side you take on this issue, the concept of salient or focal points in political practice will be blurry around the edges. In the jungle of scenarios for very complex and multilateral tasks such as finding a stable peace agreement for Syria, particular uses of salient issues will often be open to contrary interpretations by political analysts. What for some is an attempt at coordination through the diffusion of a focal solution, others may regard as a diversionary tactic in the service of parochial ends. In fact, such interpretative issues can often only be sorted out in retrospect, after a solution has been reached. It then sometimes becomes clear that an apparent act of diversion significantly contributed to a solution which none of the parties had placed their bets on. In my opinion, such ambiguities should not detract from the analysis of salient or focal solutions, but given the inchoate state of theoretical reflection on coordination in real-world negotiations, it is probably best to concentrate most on paradigmatic salient points for the time being. This has obvious implications for the problems and tasks that can be resolved or accomplished through the use of salience. First and foremost, problems will appear tractable for which appealing numbers, demarcation lines, or the formation of a center might offer a solution. Insofar, paradigmatic cases of salient points determine the set of problems for which they might figure as solutions, but this is not a vicious circle. It might just help to highlight a set of problems that is particularly tractable by means of salience.

6 EXPECTATIONS OF SUCCESS

Finally, let us look at the third problem mentioned above. In negotiations, attempts to reach a focal solution may not be optimal for the parties. Agreement on a focal solution may not be the best outcome players can expect, and they may consequently have reasons to not strive for it. This insight stands in notable contrast to players' expectations in coordination games. In simple games of coordination, the best outcome one can expect without using focal points is random success. For the games in question, randomization is always less profitable than focal coordination. This renders it uniquely rational for players to aim for a focal point in simple coordination games. Admittedly, David Lewis reasonably cautioned that focal (respectively salient) points need not be payoff-optimal, but this warning is often not translated into game structures, and if it is, players' losses relative to

better outcomes cannot be avoided without significant risk of failure.²³ On the whole, focal points represent the best option for players in coordination games.²⁴

In negotiations, agents often have good reason to expect that they might achieve better results by skillfully applying clever negotiation tactics than by pursuing a focal solution. The latter is usually neither individually nor collectively optimal. Take the example of the orange and the peel, which is often used to explain the concept of a win-win-solution. Players A and B face the task of dividing an orange between them. A is only interested in the pulp of the orange, while player B is exclusively interested in the peel. The win-win-solution is for B to get all of the orange peel and A to get the rest of the orange, with both players thus fulfilling their interests 100%. The punchline of this story implicitly relies on the ‘fair’ but suboptimal solution of giving half of the orange to A and the other half to B. Note that this solution is also focal because the midpoint between two extremes is a universal focal point. The message of ‘win-win’ is therefore, among other things, that clever negotiators, who share information about their true interests, might achieve much better results than uncreative players who fail to reason beyond the simplest rules of focal coordination.

There are many reasons to recommend such cleverness. Technically speaking, focal solutions are often suboptimal by falling inside the Pareto frontier of a feasible set of solutions. That is, some players could profit from an alternative solution without giving less to other players. Yet this is not as trivially amended as many aficionados of ‘win-win’ solutions might think. Game theory assumes that rational players will easily find a compromise with respect to the interests of those who would gain from Pareto improvements, but in practice, this is often only a pious aspiration, especially under time constraints. In real negotiations, different players profit from alternative paths to the Pareto frontier, and competition between the players, including disagreement about the right path toward an optimum, will often impede improvement. Consider once more the orange and peel example. Let us assume a slightly more complicated scenario than originally envisaged. A is predominantly interested in the pulp, but also values the peel, while B primarily wants the peel as well as a bit of the pulp. Both players can work out an optimal ‘win-win’ solution by quantifying their

²³ Lewis (1969: 35).

²⁴ On the question of the rationality of focal coordination, see Chapter 1 in this book.

respective interests, but both have an incentive to be insincere if the other side reveals her true interests. In this case, the insincere player can ‘doctor’ his stated interests to exploit his opponent. Optimization thus turns out to be time consuming and risky. Under time pressure and perhaps a growing distrust between the players, the focal half-half solution suddenly appears to not be so bad after all. That is, the focal solution in many cases emerges as a realistic second-best or fallback option.

Negotiators will usually realize the fallback character of focal solutions. They will initiate negotiations with high aspirations and only reduce these if they face stiff opposition. Thus, maximal demands must often be discarded as the agent’s estimate of the ‘zone of possible agreement’ (ZOPA) becomes more realistic.²⁵ The agent may then advocate a second-best, focal outcome to achieve an agreement. Strategically, the timing of this shift is important. Clinging to one’s first-best aspirations while others shift to a second-best solution may sometimes be advantageous for the persistent player. In this case, the scenario takes the shape of a waiting game or contest of wills (often also called ‘war of attrition’ in game theory).²⁶ There is no optimal time for shifting aspirations in such games. This might be a serious impediment for focal solutions, and, in fact, generally for all second-best strategies in negotiations. In such cases, value is often ‘burned’ because players cling to their initial plans, with the negotiation process only beginning to converge toward a second-best solution after a costly period of deadlock. There is no easy way out of this impasse, because both sides need to agree that they will not try to wear the other side down. This is often difficult to achieve, in particular if each side believes that it can win by holding out longer than the other side. Focal or salient ‘second-best’ strategies in negotiations are therefore fraught with uncertainty, in marked contrast to the obvious advantages of focal choices in coordination games. Aiming at salient solutions is not a silver bullet of negotiation strategy. Its viability and chances of success in specific contexts need to be empirically validated. The proper context, including the right timing in a negotiation process, is crucial for the success of strategies of focality or salience.

²⁵ On the ‘zone of possible agreement’ (or bargaining zone), see Lewicki et al. (2009, Sect. 1).

²⁶ For the ‘war of attrition’ game, see Bulow and Klemperer (1999).

7 STRATEGIC OPTIONS

Uncertainties concerning the success of aiming at focality or salience also arise from the diversity of strategic uses to which such aims can be put. Some strategic uses have already been addressed in Sect. 3, and a few more will be discussed now. In addition, some suggestions with reference to contexts will be made, in which focality or salience become important.

The typical ‘burning of value’ that characterizes contests of wills can be mitigated by facilitating *provisional solutions*.²⁷ It is perhaps not fortuitous that salient outcomes often arise as intermediate solutions, offering a foothold for further negotiations that produce more differentiated agreements with additional gains for all (see the chapters on application in this book). Agents need not fully surrender the realization of higher aspirations if they give in to a salient solution that is explicitly provisional, and they may actually accept it precisely for this reason. The strategy of targeting a salient point should therefore systematically (not barring exceptions) be combined with attempts to structure a negotiation process in discernible steps of agreement. All sides are, of course, aware of the fact that provisional agreements may eventually become final if the agents fail long enough to improve them.

Provisional solutions are usually employed to avoid falling back to an adverse conflict solution or disagreement outcome. Salient outcomes have advantages in this respect, because they are centers for the convergence of expectations. The mutual reinforcement of expectations in question undermines the expectation that an agent might settle for less than for a salient solution. By suggesting a salient solution, agent A may signal that she expects her opponent B to realize that A expects a convergence of expectations on this solution. Hence, A has reason to believe that B will not settle for less, in particular if there is no other solution on which to center successful convergence of expectations below the salient point (that is, if there is no further salient solution between the one being discussed and the disagreement solution). Insofar, salient points constitute credible fallback options that nourish the expectation that there are no further half-way stops between them and the disagreement solution. In principle, such a strategy can work with endogenous salient points, which are created in a negotiation process or with universal or paradigmatic salient points, which have

²⁷ See, e.g., the provisional solution in the international acid rain negotiations discussed in Albin (2001: 66).

more independent grounding. Paradigmatic salience has the advantage to be more readily recognized by other players than a merely salient issue, which may be converted into an attractor of expectations in a negotiation process—but this advantage is only relative.

We need to, of course, take into account that the existence of multiple salient solutions can be instrumentalized to thwart the realization of specific focal outcomes. This is another possibility for their strategic use. An agent can employ salient proposals to thwart an opponent's moves as part of a complex negotiation strategy. This would amount to a *countervailing* or *preemptive* strategy based on the fact that equally salient points impede each other as attractors of mutual expectations. In the absence of opposition, agents can easily focus expectations by signaling a preferred salient outcome. Signaling can turn this outcome into a 'first among equals', that is, *the* focal point in a formerly homogenous set of options. On the other hand, counter-strategies can derail this process by splitting or blurring the expectations of the agents involved as to which salient outcome will emerge as victorious. In particular, clever opposition can undermine the expectation that the most conspicuous, and therefore truly focal point among salient options, will be realized. Thereby, salient options, which most players consider inferior but which are better for an agent who artfully advertises them, can become attractors of expectations. However, if such moves fail to succeed, a stand-off between salient solutions might nourish the expectation that none of them will be realized.

Let us look at another plausible context that warrants empirical study. Salient solutions are usually simple, easily communicable and—by definition—conspicuous. We should therefore expect that they become particularly important in contexts in which support by a *stakeholding public* is crucial for a negotiation process or its result. The properties of simplicity, communicability, and conspicuity can then be used to whip up public support for a negotiation proposal or solution. Take the above discussed 1% proposal in EU budget negotiations. It is easily communicable to publics in EU countries, which would be overburdened with following intricate economic arguments as to which contribution is optimal. If the public at home believes that a 1% contribution is enough, negotiators can reasonably claim that they are bound by public opinion or, at least, that they cannot stray far from it. Salient proposals can thus be transformed into positions to which negotiators can credibly claim to be strongly committed. But there are also countervailing considerations. Settling on salient points seems easy. Negotiators whose rewards depend on public appreciation might therefore want

to display their excellence and can do so by achieving a better than salient result. This will often lead to ‘ x -plus-epsilon’ solutions. That is, a salient x is improved by a quite limited but rhetorically inflated increment epsilon to demonstrate that a negotiator has staunchly fought for her standpoint. This should not be regarded as a break with a strategy of salience, because the underlying baseline (the x) remains salient and will often be used to whip up public support. It is rather a specific use of focality.

Finally, salient solutions can also be expected to play a significant role in negotiations between experts (e.g. diplomats), which are characterized by *low public attention, low pressure on the specificity of the results, but also by considerable time pressure*. If experts need not open the can of worms called complexity, they will often refrain from doing so and settle for a simple salient solution, especially when time is pressing. Examples of this can be found in negotiations between imperial diplomats or bureaucrats on colonial borders. The preferences of affected ethnic groups did not matter much to the decision makers. Coming to terms with each other and displaying oneself as a decent participant in the concert of colonial (often enough identical with European) powers was often more important than gaining one or two square miles of desert space. Straight borders were therefore not only convenient, but also a sign of a certain degree of disinterest and willingness to avoid conflict with another major power. The latter point might suggest that the drawing of colonial borders was not done with a jingoist public in view, and reasons of simplicity and signaling between insiders may have sufficed to produce effects that are still traceable on the maps of Africa or the Middle East today.

8 CONCLUSION

Focality and salience matter in real negotiations and conflict resolution. For a full appreciation of this insight, the rigid and overly demanding concepts of game theory need to be loosened. Game theory offers highly idealized and stylized abbreviations of strategic problems. Game-theoretical notions of focal points, coordination games, and common knowledge are formulated to explain the success of coordination efforts in idealized contexts, in which no communication is possible. As Schelling (1960) has shown, there are some real-world problems to which such models may serve as idealizations. However, there is a much vaster field of problems where the use of salience and focal points can help bring about a coordinative solution, but which only show scant resemblance to coordination games proper. This is

in particular the case for problems in which agents can communicate. As shown, communication between agents does *not* automatically render the properties of focality or salience moot with respect to serving as an ‘attractor’ of expectations, a fact that is corroborated by the actual emergence of focal or salient solutions in contexts in which communication is crucial. The significance of this claim can best be understood if the rigid game-theoretical notions of a focal point and coordination problem are eased to make room for phenomena that are observable in real life. Under this premise, a wealth of strategic uses of issue or feature salience in processes of negotiations, with the aim of creating attractors of expectations, can be identified.

Nevertheless, three problems with the strategic use of focality or salience in negotiations demonstrate how difficult it will be to develop universal guidelines in this respect. Perceptions of salience may differ between agents; coordination tasks are often only vaguely understood; and in many cases, focal or salient solutions are only second-best for agents. These three problems can be solved or mitigated in the process of negotiations if the parties collaborate, but their solution might also be spoiled by interested parties. This is nothing out of the ordinary for tools of strategy, but it documents that focality or salience should not be considered a silver bullet for the success of negotiations. Only case studies and an adequate distinction of contexts can clarify under which conditions it is propitious to aim at salient solutions.

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Focal Points and Salient Solutions

Jonas Brown and I. William Zartman

In his groundbreaking book *The Strategy of Conflict*, Nobel Prize-winning economist Thomas Schelling (1960: 67) noted “the remarkable frequency with which long negotiations over complicated quantitative formulas or ad hoc shares in some costs or benefits converge ultimately on something as crudely simple as equal shares, shares proportionate to some common magnitude (gross national product, population, foreign-exchange deficit, and so forth), or shares agreed on in some previous but logically irrelevant negotiation.” This observation that even complex negotiations tend toward certain simple, conspicuous solutions—termed by Schelling “focal points”—suggests that negotiators stand to benefit from a thorough understanding of Schelling’s insight. Therefore, the purpose of this chapter is to outline Schelling’s loose argument and examine ways in which negotiators might tighten and usefully apply focal points and the related concept of focal principles to their craft. Two primary practical applications of focal

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points are highlighted in this chapter: (1) their role in framing and reframing the issue(s) for the construction form of negotiation; and (2) their role in facilitating concession and compensation, the other forms of negotiation. The utility of focal points in streamlining multi-party, multi-issue negotiations is also examined.

There seems much consistency in the spirit and little in the letter of a definition of focal (salient) points, as Schuessler's chapter shows. In an attempt to simplify and so add to the confusion, the core element in recognizing a focal point is as "something that sticks out alone." Why it sticks out can vary widely and is partially dependent on the context. However certain characteristics combine to make it so. First, it is *unique*—there is only one.¹ It can be unique because it existed before, as a precedent or simply as status quo. That said, there may be other points "less focal" that compete with the one that stands out most. Second it is *simplified*. It can be rounded figure, where there is nothing after the decimal point and no details before. Or it can be mountains or rivers that clearly divide the topography. Third is its moral force of *fairness*, in that it does not heavily favor one side and provides an "envy-free" outcome, an embodiment of justice defined as equality (Schelling 1960: 73). Fourth is its *optimal* quality: it cannot be improved on, in its own terms.² As a result of these characteristics, focal points are primarily of use in the detailed phase of negotiations, when decisions are stalemated, capitulation would be face-losing, and some kind of neutral point is needed to close agreement. These characteristics reinforce each other, although as shall be seen they also may open as well as close further ambiguities and complexities. Related to focal points is the looser concept of focal principles. Unlike focal points, focal principles have a substantive meaning; like focal point they stand out because of their integrity and clarity. They tend to be simply few-word phrases that capture a guiding idea in the search for solutions. As such, they generally characterize the formula phase of negotiations and often embody the formula itself. In contrast to focal points, we use the terms salience and salient points for conspicuous outcomes that are not unique (except when commenting on Schelling). Hence, there can be several competing salient points in the same context.

¹ What happens when there is two or more will be discussed below.

² Schelling also suggests public opinion as a defining characteristic, but that sounds rather imprecise. If public opinion plays a role, it is in recognizing the four characteristics mentioned, here and by Schelling.

I SCHELLING'S *THE STRATEGY OF CONFLICT*: FOCAL POINTS

1.1 *Focal Points in Tacit Coordination*

Schelling sought to explain why, in games with multiple Nash equilibria, players tend to coordinate on certain solutions. He argued that “anything in a game’s environment or history that focuses the players’ attention on one equilibrium may lead them to expect it, and so rationally to play it. This *focal-point effect* opens the door for cultural and environmental factors to influence rational behavior” (Myerson 2009: 1111). “People *can* often concert their intentions or expectations with others if each knows that the other is trying to do the same. Most situations ... provide some clue for coordinating behavior, some focal point for each person’s expectation of what the other expects him to expect to be expected to do.... A prime characteristic of most of these ‘solutions’ to the problems, that is, of ... focal points, is some kind of prominence or conspicuousness” (Schelling 1960: 57).

Schelling begins his explanation of focal points by explaining tacit coordination, which occurs when parties with a common interest cannot communicate directly, yet each knows the other is trying to coordinate. The phenomenon is illustrated using games, tested by Schelling in informal experiments, in which two parties attempt to arrive at the same answer without communicating. In a particularly famous example, two parties must choose a time and place to meet in New York City. In Schelling’s informal experiments, without any discussion, a majority of respondents successfully made plans to meet up at Grand Central Station at noon. Other pairs were given a map with many territorial lines and a number of nondescript buildings but only one river and only one bridge; most chose to meet at the bridge. Between “heads” or “tails”, most coordinated on “heads”. Asked to divide up \$100 into two piles in exactly the same way as their partner, most coordinated on the solution of dividing the money 50/50.

Focal points—or points of salience—are selected through a combination of imagination and logic. The choice of focal points, Schelling (1960: 58) writes, “depends on the time and place and who the people are”. For example, given a problem that involves geometry, two laypeople may select a different focal point than would two specialists in mathematics due to the difference in the shared body of knowledge. “Uniqueness” is also a key

feature of focal points. On a map with many bridges but only one house (the opposite of the example above), the house becomes the focal point.

In tacit bargaining, communication is similarly limited or nonexistent, but the parties have divergent interests: “The problem is to develop a modus vivendi when one or both parties either cannot or will not negotiate explicitly or when neither would trust the other with respect to any agreement explicitly reached” (Schelling 1960: 53). Schelling is especially interested in the role of tacit bargaining as the means by which warring parties agree to limited war. For example, he seeks to explain how—without negotiations or overt communication—all sides in World War II reached a tacit agreement not to use poisonous gas on the battlefield. In tacit bargaining, an agreement is preferable to the status quo for both parties; however, the only possibility for an agreement is at the focal point, which is more beneficial to one party than the other: “The conflict gets reconciled—or perhaps we should say ignored—as a by-product of the dominant need for coordination” (Schelling 1960: 59). Schelling (1960: 60) conducted informal tacit bargaining experiments and found that “on the whole, the outcome suggests the same conclusion that was reached in the purely cooperative games”.

The simplest of the bargaining games altered the “heads” and “tails” problem slightly to award Party A \$3 and Party B \$2 if both coordinated on “heads,” while awarding Party B \$3 and Party A \$2 if both coordinated on “tails.” 68% of the pairs—much greater than the predicted random result of 50%—coordinated on “heads” even though it was a sub-optimal result from Party B’s perspective. Schelling (1960: 60) explains this outcome as follows: “[A]mong all the available options, some particular one usually seems to be the focal point for coordinated choice, and the party to whom it is a relatively unfavorable choice quite often takes it simply because he knows that the other will expect him to. The choices that cannot coordinate expectations are not really “available” without communication. The odd characteristic of all these games is that neither rival can gain by outsmarting the other. Each loses unless he does exactly what the other expects him to do The need for agreement overrules the potential disagreement, and each must concert with the other or lose altogether.”

1.2 *Focal Points and Explicit Bargaining*

Schelling proceeds to argue that focal points retain their power even in cases of explicit bargaining, in which they are important “for their power to

crystallize agreement” (Schelling 1960: 68). Some aspect of the tacit coordination achieved in the above experiments persists in explicit bargaining because focal points provide a way for the parties to coordinate “intuitively perceived mutual expectations” (Schelling 1960: 71). If one examines carefully the influence exerted by concepts such as public opinion, precedence or moral standards in bargaining situations, Schelling argues, one is likely to find that this influence is largely due to the role these concepts play as focal points: It is difficult if not impossible to say what solution is objectively fair, but because certain solutions offer themselves as fair according to popularly perceived social norms—for example, the common solution to “split the difference”—they possess salience (Schelling 1960: 73). As Dixit (2006: 222) writes, “[F]ocal points can help the parties avoid the mutually bad outcome of no agreement. That may be why 50:50 division is observed so often ... and similar conventions apparently override explicit rational calculation to determine the outcomes of many social interactions.”

A key point here is that a focal point possesses its own persuasiveness and thus imparts bargaining power to the party who stands to benefit most from a solution based on it: “The ‘obvious’ place to compromise frequently seems to win by some kind of default, as though there is simply no rationale for settling anywhere else” (Schelling 1960: 69). Effective analysis of negotiations, Schelling argues, requires that one remain attuned to “the ‘communication’ that is inherent in the bargaining solutions, the signals that the participants read in the inanimate details of the case. And it means that tacit and explicit bargaining are not thoroughly separate concepts but that the various gradations from tacit bargaining up through types of incompleteness or faulty or limited communication to full communication all show some dependence on the need to coordinate expectations. Hence all show some degree of dependence of the participants themselves on their common inability to keep their eyes off certain outcomes (Schelling 1960: 73).

2 FOCAL AND SALIENT POINTS IN DIPLOMACY

2.1 *Numerical Focal and Salient Points*

The most “mindless” use of focal points is to enable an agreement between two positions, each of which has some justification, by picking some mid-point between them and thereby losing any intrinsic justification. The only

reason for focality is that it breaks deadlock by being neither one position nor the other. Frequently such compromises are split-the-difference, halfway in between; at other times, they are some other round number, especially if halfway would yield a cumbersome fraction. Split-the-difference concession convergence usually occurs on numerical issues. While such issues are the epitome of detail bargaining, they are often the numerical translation of opposing formulas that have not been decided on the level of principles and so are left for resolution in their detailed expression.

A double use of salient points was found in the final 1996 bargaining over on-site inspections authorization in the Comprehensive Test Ban Treaty (CTBT) negotiations, the US held firm to an obvious salient point—simple majority vote of 26 of the Council’s member states to authorize an inspection, the minimum and therefore easiest to obtain, as an expression of its preference for an intrusive formula, while China held equally firm to another salient point: two-thirds (34 member states), identifying it as a make-or-break issue over a protective formula. Seeking to get a positive outcome to the negotiations, China finally budged and proposed three-fifths (31); finally, the difference splitting figure of “at least 30” was adopted (art. IVD46) (Johnson 2009: 135, 170). There was no general principle to justify this compromise provision but it stood out clearly as the winning focus. When the 1987 Montreal Protocol on CFCs was amended in 1990 to include compensation for developing countries, the cost was apportioned “according to the UN assessment scale,” the obvious focal point as in many other UN-related cost allocations (Barrett 1999). In the haste of nailing down the final agreement to end the Vietnam War after the Christmas bombing of Hanoi in 1972 and the presidential inauguration in 1973, a number of details were settled by splitting the difference (Zartman 1976: 391–392).

2.2 *Geometric and Natural Boundaries*

Geodesic and natural boundaries as solutions to territorial disputes represent straightforward examples of salient solutions requiring little explanation. The division of Korea at the 38th parallel following World War II, roughly splitting the peninsula in two, is perhaps the most famous border ever determined by a parallel, but there exist many others. Unfamiliar with the territory they were dividing in Africa, the colonial powers relied

on parallels and meridians as they drew up the borders of Africa; “44 percent of [African borders] are straight lines that either correspond to an astrologic measurement or are parallel to some other set of lines” (Herbst 1989: 674–675). “A large proportion of ... geometrical boundaries in a region is a strong indication of absentee boundary-making on the basis of inadequate maps.” (Jones 1971: 108). However, most of the geodesic boundaries cut across sparsely inhabited areas with little defining topography, so straight lines were an apt solution; the longest are in the Sahara. The Anglo-American Convention of 1818 drew the western section of the American-Canadian border along the 49th parallel, quite the opposite case. The 49th parallel replaces “54.40 or fight”, a line less salient because it is not a round number and—for other reasons—it only applied to the Pacific Northwest. The simplest case is when neither side is associated with either salient point. After the Korean War, an invisible line on the ground made visible by artificial fortification along the 38th parallel in 1945 was replaced by a battle line established by the force of arms. Germany was divided along the Oder and Neisse rivers.

Mountains and rivers, “the walls and moats of history,” offer an alternative salient solution to territorial disputes (Zartman 1965a: 155). Rivers account for about a quarter of the boundaries in North and West Africa (Zartman 1965b: 157). Jones (1971: 108) writes: “There are numerous reasons why rivers have been adopted as boundaries. They are conspicuous on maps of poorly explored countries, while other features, even major mountain systems, may be missing.” Interpreted figuratively, this comment is an apt characterization of all salient solutions: They are the lines that present themselves on otherwise blank maps: They stand out. Following the first Indochina War, the Vietnamese Demilitarized Zone was widely referred to as the 17th parallel but in practice followed the Ben Hai River. The 17th parallel was not visible on the ground but the Han River was: it was “more salient,” thus reinforcing the original notion.

A group of Ukrainians were arguing about what to do with the eastern part of the country. After deciding the two populations could not live together, they turned to defining the border. “Let Kiev remain there in the west; it’s not a problem in principle,” said one. “No, all the way to Kiev,” said another. “Fine, along the Dniepr [just east of Kiev]; left bank is theirs, right bank [with Kiev] is ours.” With that agreement on a salient point, that incidentally put lots of non-Russian Ukraine in the east, they turned to the means. “Either a sea of blood and corpses, or a referendum; there is no third way.” A salient point that beat content with its focality, and a

hopefully clear choice between two salient solutions solved the problem for the group (Chivers and Sneider 2014). In a similar situation in Libya, “An Islamist-dominated Congress will find it extremely difficult to reach a negotiated settlement with Jathran given his renowned animosity to the Muslim Brotherhood. Jathran’s rebels have vowed to hold the Red Wadi, in what some see as a de factor partition of Libya” (Stephen 2014).

Sometimes the focal or salient point is not a natural occurrence but something emerging from history. Like the new battle-line replacing the 38th parallel in Korea, a line where opposing sides met their stalemate consecrated by a ceasefire takes on its own salience. In Kashmir, the Line of Control stands as a potential compromise between two competing total claims (Zartman 2005: 54).

2.3 *Precedents and Salience*

In their analysis of multi-party negotiations of international environmental regimes Young and Osherenko (1993: 14) emphasize the role that precedent can play in coalescing agreement among numerous parties. “The emergence of salient solutions or focal points that have the power to shape expectations increases the probability of success in institutional bargaining. Success is often linked to the ability of those formulating proposals to draft simple formulas that are intuitively appealing or to borrow formulas or approaches from prior cases with which negotiators may already be familiar.” An example of this dynamic was the multi-party North Pacific Sealing Convention of 1911, which relied heavily on the precedent set by two recently signed bilateral (US–UK and US–Canada) agreements in organizing a sustainable sealing regime that would last into the 1980s: In exchange for cessation of pelagic sealing, Canada, a pelagic sealing state with no rookeries, had been compensated with a portion of the land-based harvest of the rookery-owning state. The application of this principle to the other major actors (Japan and Russia) in the closing stages of the 1911 negotiations helped to assure the commitment of all five actors (including Canada). The series of previous bilateral agreements provided the actors with both experience and confidence that aided in the successful conclusion of the 1911 agreement (Mirovitskaya et al. 1993: 43).

When a party finds the salient solution highlighted by precedent constraining, it may seek opportunities to discredit the precedent by drawing attention to an alternative salient solution. The Ecuador-Peru border conflict, in which Ecuador sought recognition of its sovereign access to the

Amazon River, is one such example. In 1942, both parties had signed the Rio Protocol, which formally demarcated 95% of the border according to the Status Quo Line of 1936 at a loss to Ecuador of about 5000 square miles (Simmons 1999: 10). Sections of the border that remained in dispute were to be allocated based on arbitration. However, on the basis of aerial photography taken in 1946, Ecuador asserted that the Rio Protocol had underestimated the size of the Cenapa River watershed (contributing to the loss of land for Ecuador) and in 1960 announced that the Rio Protocol was null and void. In this case, Ecuador attempted to turn aside precedent by drawing attention to the salience of a natural feature. In addition, Simmons writes, Ecuador sought to link its case to alternative precedents that would support its rejection of the Protocol and the associated arbitration process: “Following its rejection of the arbitral award and the protocol, Ecuador made a conscious effort over time to link its position to analogous cases of arbitral rejection in the region: the Argentine position on the 1977 Beagle Channel arbitrations and the Venezuelan position on the 1899 Essequibo decision regarding Guyana, for example” (Simmons 1999: 11).

3 PROBLEMS WITH FOCAL POINTS

A problem with a focal point is *weak focality* or salience (Crawford et al. 2008). It may not be as focal as all that. Rivers and mountains exhibit varying degrees of prominence and clarity. They may be small or unclear. French boundary-makers separating Mauritania from Soudan (Mali) seized upon a river as a natural line and were told its name was *wadou*, which they did not realize was the generic name for an intermittent river and therefore was the name of many gullies in the area (Zartman 1963). The Sudan-Egypt border, a geodesic line across the desert (and the Nile) amended to take traditional tribal areas in its eastern end, leaps from mountain top to mountain top in small straightline segments.

Or for all its focality, a focal point might contain some unfocalizing ambiguities. Rivers, for example, are dynamic entities that change seasonally and take altered courses year to year. Wide rivers may contain islands; which side do the islands belong to? In the United States, “river boundaries have caused more friction between states ... than have mountain boundaries or geometrical lines” (Jones 1971: 109). Even as a salient solution to a territorial dispute, a river boundary therefore often requires secondary negotiations on the precise location of the boundary within or along the river. As the following diagram (Fig. 1) shows (Jones 1971: 111), a river contains

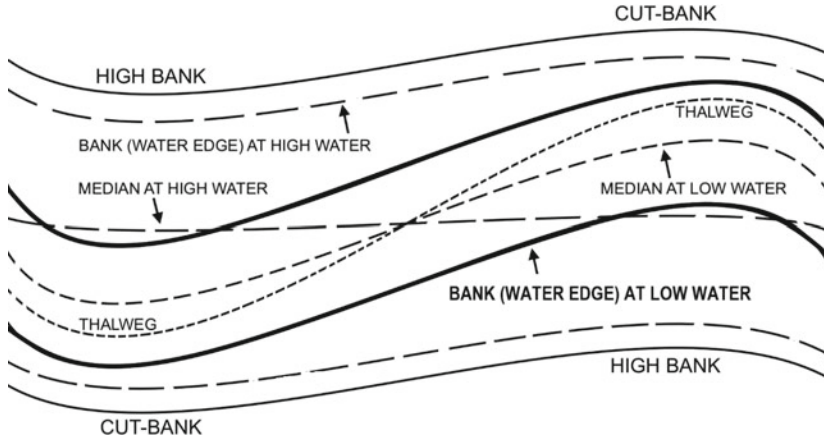


Fig. 1 Different salient solutions within a river

within it a whole new set of potential salient solutions, from the median point at high or low water to the bank edge to the thalweg. Liberian President Tubman eagerly accepted the Ivory Coast proposal that the boundary between them run along the right bank of the Cavally River, only to discover that banks are identified looking down stream and he had given over the river to his neighbor (Zartman 1963). Jones proceeds to criticize the use of river boundaries as a kind of lazy cartographic shorthand that is likely to lead to further disputes and ought to be the last resort of boundary-makers. Thus a focal point may not necessarily be a clear or lasting solution; it may not so much finalize negotiations as provide a new basis for negotiations, which may require a new salient solution. Still, the river often stands out as unique, even if not clear in detail. There is no more salient boundary for the US and Mexico than the Rio Grande, at least until the Gadsden Purchase.

Similarly, there may be several points of equal salience. There may be several rivers or mountain crests, or rivers may vie with mountains for the greater saliency. Rivers and geodesic lines competed for authority in conflicting claims among early American colonies or states before and after Independence. And multiplicity is not only found in geography. The face-off between the National Party (NP) and the African National Congress (ANC) over an important point in the negotiation of a pre-constitution agreement came when the NP, afraid of the ANC's ability to rally votes,

insisted on a 75% vote, against the ANC's proposal of 66%, two round figures. The NP moved down to 70%, which the ANC still refused, until the ANC and NP lead mediators met in the men's room and, in a moment of relief, the NP spokesman said, "Sixty-six percent," to his fellow negotiator's surprise (Zartman 1995: 162; Sisk 1995: 210). The German cry after the Franco-Prussian war was "Rheinfluss nicht Rheingrenze" ("Rhine river [valley], not Rhine border"). When the straight-line boundaries of south-east Algiers and of southwest Egypt ran into a mountain in the desert, they climbed them, then went ahead on their straight-line ways.

A particular problem arises out of the repeated use of a salient solution as a guide to process. If split-the-difference is offered as a final solution, as is usually considered to be the case, it cuts all further bargaining. But if split-the-difference is taken dynamically, its finality falls before its own principle (Cross 1978: 21). One party can offer a split-the-difference solution, but the second can then offer to split the difference between that offer and his original position, moving in his favor from the .50 point to the .75 point. Such was the risk that Morocco ran in proposing autonomy as a compromise between its original demand of total integration and the Polisario's demand for independence. Later, a well-meaning commentator offered a proposal that split the difference between autonomy and independence by suggesting joint sovereignty (Roussellier 2013).

4 FOCAL PRINCIPLES

Focal points stand out "because it's there" to be perceived, but they may also stick out because they represent a principle. Split-the-difference or 50% embody an inherent notion of fairness seen as equality; mountain crests and river are obvious as boundaries in themselves but also represent a natural separation of populations. Focal principles are not always expressed in lines or numbers but more often as short substantive statements containing an idea. However, unlike the points, principles are usually only salient (Scott 1967: 173; Zartman 2005) for their succinct expression of substance and are neither unique nor accidental; they stand out *because* they encapsulate a principle. Indeed, it is often because the principle wears out in application that a point is evoked. As such, salient points tend to be useful in the detail phase of negotiation and salient principles in the formula stage, and are often expressions of the formula itself. "Territory for security" is a salient principle; so is "national self-determination," "polluter pays," "net cost," and even "equity" or "equality."

For all their focalizing effect, salient principles are not unequivocal. To take “equality” as an example: there are many interpretations of equality. It can refer to equal (or parity) distribution in which all parties have an equal share, or equal access to or chances at a share, but also to inequality (or proportionality) in which outcomes are allocated in order to equalize by some criterion, generally either by equity (or merit), or by compensation (or need) in which they who have least get the most in order to attain equality (Zartman et al. 1996). But also, inequalities can be equalized by compensation with other items. Further, equality merely passes the decision on to the referent question: “equal or equalizing based on what?” For example, in arms control negotiations, the US and the Soviet Union agreed easily on the principle of equality but struggled to agree on whether the principle of equality should be applied to missile quantities, missile types, defense sites, or other referents (Zartman 2008). The question that loomed over the SALT negotiations was how the principle of equality should be applied to asymmetric force structures (Zartman 2008: 77). In the SALT II negotiations, justice was located in the equalization of aggregate numbers of different types of armaments. The effort to maintain equality with unequal force structures led to attempts to find a new formula based on compensatory (unequal) justice, but the power of the equality notion worked to limit the notion of inequality.

The negotiations to restrict emissions that harm the ozone layer, which resulted in the Montreal Protocol of 1987 and the London Revisions of 1990, demonstrate the range of salient points that can emerge as potentially just solutions (Zartman 2008: 73). The issue could be framed as one of equal individual rights, with each person allocated a certain legal amount of ozone-harming emissions. Another option would be equality of states, whereby all countries, whatever their current level of industrialization, would reduce their emissions by the same amount. Alternatively, countries could be asked to reduce emissions by an equal percentage of their current output. The final agreement on the ozone then called for a fixed percentage cut in CFCs for industrialized countries, a ten-year moratorium on compliance combined with financial and technical aid for developing countries, and an ultimate ban on all CFC production by a target year. It was a negotiated compromise between inequality principles of equity for industrialized countries and compensation for developing countries, working to an equality principle for all.

5 PROBLEMS WITH FOCAL PRINCIPLES

Focal points are precise and brook no argument, although it has been seen that they sometimes open up to further ambiguity. Focal principles, on the other hand, are the subject of interpretation even if their authority is fully admitted. Their focalizing effect is to pass on the debate to questions of application and interpretation. But their use also raises other problems. Many intractable conflicts feature *two salient solutions*, each supported by a focal principle. The result is a Prisoner's Dilemma, in which both parties choose noncooperation over cooperation despite the costs, posing a coordination problem where both positions represent a focal principle and each side wants its solution in its entirety. To make matters worse, the parties may adopt polarized identities that reflect this zero-sum dynamic. Two examples of competing focal solutions are the Nagorno-Karabakh and Kashmir conflicts (Zartman 2005: 53–54). In Nagorno-Karabakh, Armenia and the Karabakh Armenians view self-determination as the focal principle while Azerbaijan finds the focal solution in territorial integrity. Mediated attempts to locate a new salient solution characterized by political autonomy and Armenian withdrawal have been unsuccessful because the disputed territory “necessarily falls on one side or the other of the ‘crest of sovereignty,’ whatever the softening effects of a new status might be: there is no in between” (Hopmann and Zartman 2013: 3). Opposing parties seek to locate opposing precedents to suit their causes. In the Nagorno-Karabakh conflict, Armenia and the Karabakh Armenians cite the legal precedent for the “self-determination of peoples” (highlighting the specific recent precedent of Kosovo) while Azerbaijan emphasizes the legal precedent for the “territorial integrity of states,” both of these conflicting precedents drawn from the Helsinki Final Act. Similarly, Kashmir belongs in India by the choice of its local ruler but in Pakistan by the religion of its inhabitants; the “line of control,” as noted, provide a “split the difference” with only a salient principle to support it, even though it has provided a de facto solution for seventy years.

Another problem can arise when a *single focal solution is exhausted or delegitimized* by previous misuse or failure. When a focal principle has been found to guide a peace process and the ensuing single focal solution breaks down, the people tend to feel betrayed, convinced that the other party is simply incapable of making peace; instead of trying to apply the principle again under improved circumstances, it is rejected completely. Examples include Jonas Savimbi's rejection of elections as a means to settle the conflict

in Angola after he lost the previous elections in 1992, the decay of the Oslo process and its two-state solution for Palestine, and the failure of federation as a salient solution in Sudan after the federation failed in 1978 and finally in 1984. The Israel-Palestine case raises the important question of how to rehabilitate a failed salient solution in the absence of reasonable alternative solutions (Makovsky 2013).

6 USING FOCALITY IN NEGOTIATION

As shown, difficulties can arise in the use of focal and salient points and principles in the search for a diplomatic solution. Although it is always challenging to translate concept into practice in any instance, salience is often the starting point and the conclusion of a process of creativity. A number of strategies present themselves.

In a situation of competing salient principles, the challenge is difficult when the two parties are stuck in a stalemate, but not impossible. Three options can be considered: (1) to establish the greater salience, (2) to combine the multiple salient solutions into a single compromise solution, or (3) to reframe the problem by altering perceptions of the existing alternatives. The first removes the problem—definitional and political. The other two are customary challenges to negotiation in the absence of a new salient principle. In Aceh, “self-government” proved more salient than either independence or integration; in the Western Sahara, it is still possible that autonomy provide a principled alternative to the same both options.

Although a court ruling differs from negotiation (and often follows failed negotiations), the parties’ arguments and the court’s decision-making process demonstrated how negotiation, as a joint decision-making process, often requires choosing between—or integrating—competing salient solutions. The difference is that in negotiation the parties come together, whereas in a court case a third party arrives at the integration by itself. One case in particular, the ICJ’s June 1985 demarcation of the border between Libya and Malta, clearly indicated this dynamic. First, the court explicitly stated that potential salient solutions stemming from precedent and status quo arguments would not be acceptable: “The Court observes that no decisive role is played in the present case by considerations derived from the *history of the dispute*, or from legislative and exploratory activities in relation to the continental shelf” (ICJ 1985). The court then acknowledged the parties’ “irreconcilable” salient points. Malta sought an agreement that would divide the sea between the Libyan and Maltese coasts equally, while

Libya sought a division based on the physical geography of the sea floor, citing a natural “rift zone” in the continental shelf as the appropriate border. While agreeing on the importance of an “equitable” solution, Libya argued against the principle of equality, in part by noting its much larger coastline (192 miles long compared with 24-mile Maltese coast). Citing yet another potential salient solution, Libya argued that the division of the sea between the two nations should reflect the proportional difference in length of coastline. The court’s final decision was largely based on the latter argument, and the boundary was drawn closer to Malta than Libya.

This case shows how geographic features (continental shelf and coastline) interact with other salient solutions based on the concepts of precedence, status quo, equality, and proportionality to frame the issues that are under negotiation. To reach its final decision, the ICJ first had to decide between two salient definitions of the continental shelf: whether it was defined mathematically as a specific distance from shore and could therefore be divided or whether it was defined by its physical dimensions and was therefore indivisible. After selecting the former definition, the court then chose a basis (proportionality) for dividing the shelf between the two nations.

6.1 *Framing and Reframing: Defining the Conflict*

Effective use of focal or salient points and principles shifts the locus to the negotiation phase where the parties are engaged in identifying the problem. The search for an outcome depends on how the problem is formulated and on what analogies or precedents the definition of the bargaining issue calls to mind, elements generally associated with the first phase of negotiation—diagnosis (Schelling’s 1960: 69; Zartman 1963). In other words, one key to achieving success as a negotiator is to frame the problem in such a way that an appropriate salient principle for a solution is agreeable to both parties and defines to each party’s preferred outcome. Framing and reframing are the means by which the parties meet the challenge of successful construction of a new solution, and the framing process itself often provides an answer to the problem of reaching the newly formulated solution (Kahnemann and Tversky 1982; Stein 2019).

The two-way relationship between focal or salient principles and framing—principles suggest frames and frames suggest principles—implies that they can be used together to serve negotiators in two different ways: (1) Framing can be viewed as a campaign of persuasion designed to draw

attention to a predetermined, potential principle that is favored by the negotiator; and (2) (often from a mediator's perspective) framing can be a more indeterminate act that creates space for a collaborative reconceptualization of competitive principles. In either case, it is vital that the negotiator remain aware of how parties are framing the negotiation, how these frames imply certain focal principles, and how the negotiation might be reframed to expose new mutually agreeable outcomes. This awareness is particularly important in the pre-negotiation (diagnosis) and formulation phases.

The first situation, in which parties frame the conflict to highlight their preferred salient principles, is so commonly encountered in both positional and integrative bargaining that it needs little elaboration. The maritime border dispute between Libya and Malta mentioned above represents one particularly clear case. As the smaller state, Malta viewed its optimal outcome as an *equal* division of the continental shelf along the median line between the two countries (the 50/50 solution). Libya, in contrast, argued that an *equitable* solution entitled it to the majority of the continental shelf based on two possible rationales: (1) the natural rift in the continental shelf just south of Malta and (2) the far greater length of its coastline. Both parties employed a combination of legal precedent and political rhetoric to frame the conflict such that its favored solution became the "conspicuous" solution. The failure of negotiations necessitated the court case, which ultimately dismissed "natural prolongation" yet awarded Libya a greater share of the shelf based on proportionality. The mediator can reinforce the new frame and demonstrate its potential to reinvigorate the negotiations by setting a new constellation of (in this case, economically oriented) salient points on the table to replace those (in this case, sovereignty-oriented) salient points that have been exhausted.

The important interaction between reframing and salient principles was also demonstrated in negotiations between Canada, Denmark/Greenland, Norway, the Soviet Union and the United States aimed at establishing a new conservation regime to address the declining population of polar bears. After five years of scientific coordination and drafting and two years of political preparations, the final negotiations were in danger of stalling due to the conflicting jurisdictional concerns of the five countries (Fikkan et al. 1993: 110). The principle question was how to define national jurisdiction in a way that would match all five parties' national interests and also regulate polar bear populations that regularly crossed international boundaries (both over land and at sea on circulating ice flows).

The five drafts assumed that the subject was the prohibition of polar bear hunting in international waters, with regulation within national jurisdictions left to the states. This distinction required a definition of the boundary between national and international waters, a distinction that had become controversial in the early 1970s in the preparations for the UN Conference on the Law of the Sea. Any definition among the five ice states on the polar bear matter might constitute risky precedents affecting larger interests in the broader UNCLOS negotiations. Furthermore, the five states sought different levels of legal protection for the polar bears and different terms of exemption for native hunters (Fikkan et al. 1993: 120–121). The Soviet Union loosened this legal knot by reframing the issue in simple “status quo” terms: In all areas currently inhabited by polar bears, hunting would be banned, with exception for traditional hunters in all places where traditional hunting had existed in the past. The proposal resorted to historical precedent to cut through interminable debate on legalistic criteria (Fikkan et al. 1993: 132). The issue had initially been framed in legalistic terms that raised further jurisdictional issues and provided no simple solution now found consensus in a single clear focal principle.

6.2 *Making and Coordinating Concessions: Breaking Stalemates over Ambiguous Expectations*

Tacit and explicit bargaining often lead to similar results because even in explicit bargaining, the parties are tacitly coordinating their expectations. Negotiations tend to arrive at a zone of possible agreement (ZOPA) within which each party would rather make a concession than fail to reach agreement at all but would also seek to move the other to a more favorable point (Schelling 1960: 70). When both parties are willing to concede something in order reach an agreement, the result is an impasse that stems from the sheer multitude of possible outcomes and from competing efforts within the range. “The final outcome must be a point from which neither expects the other to retreat; yet the main ingredient of this expectation is what one thinks the other expects the first to expect, and so on. Somehow, out of this fluid and indeterminate situation that seemingly provides no logical reason for anybody to expect anything except what he expects to be expected to expect, a decision is reached. These infinitely reflexive expectations must somehow converge on a single point” (Schelling 1960: 70).

In this common bargaining situation, both focal points and focal principles have a role. A focal point has the power to facilitate agreement on

the details of a deal. A focal point, with its “intrinsic magnetism,” may permit one party to take a strong stand in a particular bargaining position, providing a reason to stand firm at a point along the continuum of qualitatively undifferentiable positions that contain no inherent rationale. “The rationale may not be strong at the arbitrary ‘focal point’, but at least it can defend itself with the argument ‘If not here, where?’” (Schelling 1960: 70). In other words, focal points facilitate concessions. A focal point provides a “groove” where a party can dig in its heels (Schelling 1960: 70). Because focal points possess their own inherent stability, a party can concede to a focal point—for example, from 55 to 50%—without signaling that it is willing to concede further. A concession to 49%, on the other hand, suggests that the concessions may continue; a commander can retreat to a river without opening himself to further retreat.

The function of focal and even salient points in facilitating concessions is apparent in the case of negotiations on wealth sharing between Khartoum and the Sudan People’s Liberation Movement/Army (SPLM/A). The rebels initially demanded that the southern administration receive 60% of oil revenues from oil producing wells in the south, while Khartoum demanded 90% (Paris AFP 2002). In the 2004 agreement on wealth sharing signed in Naivasha, Kenya, 50% of revenues were allocated to each party (UN Mission in Sudan 2004), giving both parties—which both sought a deal amidst ambiguous expectations—a place to “dig their heels in.” In another case, the unusual focal point of 49–51 governing the division of territory in Bosnia between the Serbs and the Bosnian-Croat Federation expressed the balance of forces—almost even if not quite equal. “At one point [Swedish negotiator Carl] Bildt ran into [Serb president Slobodan] Milosevic...and found him ‘desperate’. ‘Give me anything,’ he said, ‘rocks, swamps, hills—anything, as long as it gets us to 49-51’” (Holbrooke 1998: 302).

In other situations, more than simply a valueless point may be required to escape from the morass of the ZOPA; a substantive reason or arguments may be required to provide a point of agreement from which the parties can craft their solution. Such need for a focal principle need not occur only in the formula phase but also in the concluding phase where parties still have no guideline for establishing details. It is a not infrequent situation where the parties agree that they want to agree but have no common indication as to where. In the negotiations on the North American Free Trade Agreement (NAFTA), the automotive sector was a subject of intense haggling because of different interests of the three parties. “By May 1992, the

detail phase has already begun,” but after eleven months of the parties were still searching for a criterion on which to base the details. After debating several criteria, the notion of “net cost” was finally accepted at the end of the month as a focal principle, and the parties could turn to consider the threshold for the rules of origin. Canada was willing to go higher than the 50% figure contained in the earlier US-Canada Free Trade Agreement but not more than 60%; the US asked for 65%. “The Canadians could not be seen as capitulating to the Americans [after having already gone up 10 per cent], so a 65 per cent level was out of the question. We ended up with 62.5 per cent” (Roberts 2000: 192, 203, 204). A focal principle had set the stage for a focal point; both were necessary for agreement. In dealing with the pharmaceutical issue, the presence of a package for full patent protection announced at the end of 1991 by GATT director general Arthur Dunkel provided a focal principle about which to build consensus. “The detail phase, which began in the spring of 1992, and ‘legal scrubbing’, benefitted from the fact that the negotiators were using the Dunkel Text” (Roberts 2000: 242).

6.3 *Salience and Facilitating Concessions in Multi-Issue Bargaining*

Salient points and principles have a particular role in facilitating convergence of expectations in multi-party talks. “The influence of salience lies in its capacity to facilitate the convergence of expectations in international bargaining involving numerous parties operating under a consensus rule” (Young and Osherenko 1993: 14–15). For an exploration of this question, the Law of the Sea negotiations provide a useful case study. A brief examination suggests that in multi-party, multi-issue talks salient points are applied both as framing devices and facilitators of concessions. First, the parties highlight certain salient points in an attempt to frame the issue according to their own interests. Then the parties use salient points to facilitate concessions that will permit a convergence of their positions. These concessions permit a gradual whittling down of the number of competing salient points. Since these negotiations address a broad range of issues, the parties are likely to collectively arrive at multiple salient points, which are eventually packaged together in a single deal.

The UN Conference on the Law of the Sea (UNCLOS) used salient principles and points in an attempt to reach agreement on national maritime boundaries, among other issues. In the seventeenth century, Grotius

asserted that states were entitled to jurisdiction over waters that could be policed from land, while the remainder of the sea was to be left free according to natural law. This concept evolved into the Netherlands' cannon shot rule, which stated that no leader "could challenge further into the sea than he can command with a cannon." (Sanger 1987: 12). The law was interpreted differently by different nations, with the US and Great Britain eventually claiming a territorial sea three miles wide, France a territorial sea six miles wide, and Russia a territorial sea twelve miles wide (Sanger 1987: 13). When (mainly European) states met at the Hague Codification Conference of 1930 to attempt to formalize the law, maritime powers such as Great Britain pushed for a permanent, universal 3-mile limit to territorial waters, despite the existence of modern weaponry with a range well beyond 3 miles. "The cannon shot justification of the cannon shot salient point was stretched to breaking by Louisiana and Texas in 1938 and 1941 laws claiming 27 miles into the Gulf of Mexico on the grounds that artillery could fire that distance" (Sanger 1987: 22).

As a maritime power, Great Britain sought a modern law based on Grotius's natural law of freedom of the seas; therefore, its negotiators sought to highlight the age-old 3-mile territorial sea as historical precedent. However, other parties were not easily dissuaded from their own goals, and the negotiations that proceeded sporadically for the rest of the twentieth century were in no small part a contest to frame the negotiation by selecting certain precedents over others. By the time of the Hague conference, countries were claiming jurisdiction over territorial seas of varying breadth for different reasons: "for national security ..., for control over fisheries, for customs purposes, and for more general civil and criminal jurisdiction" (Sanger 1987: 13).

After failing to reach an agreement at the Hague, negotiations over territorial waters resumed in 1958 at the First UN Conference on the Law of the SEA (UNCLOS-1) (Sanger 1987: 14). Following the Hague meeting, a new precedent had been set by the United States in the Truman Proclamations of 1945, which claimed "'jurisdiction and control' over the natural resources of its continental shelf and also claimed the right to establish fishing conservation zones in parts of the high seas adjacent to its coast" (Sanger 1987: 14). As a natural feature, the continental shelf represented a new salient point that meshed with the American interest in highlighting the continuity between the coastal sea and the continental land mass, with the goal of maximizing its access to natural resources. Because the

continental shelf is irregular, the US later defined the shelf in fixed numerical terms: the 200-meter depth line, which reached as far as 250 miles from shore. Although arbitrary, the 200-meter depth line quickly became a standard shorthand for the continental shelf and, therefore, a new focal point.

Another debate arose when Latin American nations sought “sovereignty” over the continental shelf whereas West Germany sought to award nations “rights” over the continental shelf. Using the “split the difference” focal point to facilitate mutual concessions, they invented a new, vague term halfway between their positions: “sovereign rights.” This is an apt example of a focal point that does not provide a final solution but instead a blurry accommodation destined to become a new starting place for further negotiations.

In 1945, the US had favored expansive jurisdiction because it had been primarily concerned with fisheries and oil extraction. By 1958, it was preoccupied with Cold War security concerns and alarmed that Latin American countries were claiming vast territorial seas based on an American precedent. Reframing the issue as one of the “freedom of the seas,” the US now sought the smallest possible definition of territorial waters—a three-mile belt—so Polaris submarines could freely patrol the Mediterranean. However, in the 1956 Suez Crisis the Arab states had closed the Straits of Tiran to Israel by claiming a twelve-mile territorial sea, and these same states now formed a coalition with the USSR and East European states that refused to consider any agreement limiting territorial waters to under six miles (Sanger 1987: 16). The twelve-mile definition aligned with the Arab states’ security concerns and with the Russian precedent.

After the failure at UNCLOS-1, Iceland unilaterally claimed a restricted fishing zone extending twelve miles from its shores, and four Middle Eastern states unilaterally claimed 12-mile territorial seas (Sanger 1987: 17). Therefore, by UNCLOS-2 in 1960, the 3-mile precedent no longer represented a viable focal point. The American and Canadian “6-6” proposal now represented the narrowest remaining option for the territorial sea. Latin American countries agreed with the proposal on the condition that they would be able to extend the restricted fishing zone beyond twelve miles. However, the USSR/Eastern Europe/Arab state coalition held firm, and the agreement failed to achieve a two-thirds majority by one vote.

At UNCLOS-3 in 1974, The Single Negotiating Text was used in an attempt to find consensus, and special interest groups formed, each group framing the negotiation to match its preferred salient point (Sanger 1987:

31–33). Coastal States were “territorialists” seeking to offset the influence of the maritime powers and claim a territorial sea 200 miles wide. The Margineers, a much smaller group, claimed a potentially larger territorial sea that extended to the limits of the “natural prolongation” of the land territory. An Environmental group highlighted the damage to beaches caused by marine pollution. With nothing to gain from a wide territorial sea or restricted economic zone, the Land Locked and Geographically Disadvantaged States sought to maintain the freedom of the seas to the greatest possible extent. The Gang of Five—the United States, the Soviet Union, Britain, France and Japan—met “to plan tactics on their common concerns, particularly freedom of navigation and freedom of scientific research” (Sanger 1987: 32).

Eventually, the majority of parties reached agreement on a twelve-mile “contiguous zone” in which countries could restrict international fishing, but they could not agree on how much of this belt would be a territorial sea. The US and Canada offered a compromise to the USSR and the Arab States, in place of a 12-mile territorial sea proposing territorial waters to six miles (the French precedent), followed by a six-mile fishery zone. No agreement on territorial seas or restricted fishery zones could be finalized at UNCLOS-1.

In these multi-party, multi-issue talks, the parties attempted to draw attention to preferred salient points by framing/reframing the negotiations in a manner that emphasized their own central interests. Salient points gradually came to serve as centers of gravity around which coalitions formed, and the eventual agreement on a Law of the Sea—the final details of which are beyond the scope of this paper—was reached through a complex process of prioritizing, trading, locating compromises between, and packaging these competing salient points. In addition to facilitating the formation of interest groups, which simplified the process by minimizing the number of parties, salient points streamlined the negotiations by narrowing the number of potential solutions.

In many conflicts, one uniquely focal solution emerges and exerts a pull on the parties. In such cases, the challenge—whether the parties are negotiating alone or under the guidance of a mediator—is to find a way to meet at the focal point (Zartman 2005: 53). In some cases, as in the case of Korean unification, there may be “no way to get there” in the short term due to the parties’ attachment to the status quo (Zartman 2005: 54).

7 CONCLUSION

Focal and salient points are, of course, but one of many factors that together shape the result of a given negotiation process. Nonetheless, negotiators clearly stand to benefit from developing an awareness of the influence that salience exerts on the negotiating process. In the formula phase, focal or salient principles of substantive content are important for constructively framing the conflict and potential solution; when negotiations reach an impasse, unique, simple fair points have great authority in cutting through otherwise disoriented debate. Especially in cases where the parties possess relatively equal bargaining power, the bargaining power inherent in salient points can be accessed to facilitate concessions. Salient points can also make multi-party, multi-issue bargaining more manageable by facilitating coalition-building and narrowing the number of solutions under consideration. Unique focality, however, is an elusive element: some points are more focal than others; some saliences need merely open further negotiations on their specific application, whereas others establish a new frame or formula from which to proceed in new, creative directions.

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Focal Points in Arms Control

Mikhail Troitskiy

1 INTRODUCTION

Arms control is a process of negotiation and measures by which the participants seek to leverage their possession of certain arms or weapon technologies to achieve certain goals without using those arms. The objectives behind arms control range from reducing the likelihood or destructiveness of a potential war to avoiding the costs of an arms race,¹ to achieving unilateral advantages over opponents by exploiting their trust in the sincerity of their negotiation counterpart. Arms control includes developing principles to underpin formal agreements, negotiating those agreements and verifying their implementation by the signatories. Unilateral action to reduce national stockpiles of weapons, forgo certain military or dual-use technologies, or de-alert forces can also be seen as a component of

¹This is the understanding of arms control set forth by two classic authors in their seminal book: Schelling and Halperin (1961).

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arms control because such moves may help build the necessary trust for successful international arms control initiatives or to create incentives for other actors to follow suit without a formal agreement. Arms control also involves measures to deny access to arms or related technologies to potential users (this is referred to as non-proliferation and is sometimes seen as an area of activity distinct from arms control).

To complement this classical definition, different authors have offered a number of alternative perspectives, stressing various motives and overarching goals. For example, Henry Kissinger emphasized the strengthening of strategic stability by ensuring that the rival parties' defenses are stronger than their offensive capabilities.² Another way of looking at arms control is to interpret it as "cooperative threat reduction".³ Yet another perspective on arms control in the nuclear field focuses on risk reduction, promoting "nuclear responsibility" (guarantees of safe handling of nuclear materials and technologies and commitment to not share them irresponsibly), transparency of nuclear arms negotiations, and enhancing confidence-building measures (ways to convince potential rivals of one's non-aggressive intentions).

How significant is the imprint of focal points and salience on arms control, and to what extent have they facilitated arms control negotiations? Arms control involves bargaining—explicit and tacit—about both the general principles underlying agreements and the concrete numbers enshrined in those agreements. This chapter argues that traces of focal points and salience can be found both in the guiding principles and numerical solutions that form the contemporary normative base of arms control. The principles are usually rooted in fundamental conceptions of justice and efficiency that constitute focal points for negotiators. In certain instances, there is more than one conception competing to serve as a basis for an agreement. In that case, negotiation either stalls or the solution reached becomes unstable and prone to leaping towards a competing focal point.

This chapter also shows that zero clearly stands out among numerical solutions to arms control problems—whether actually implemented or only mooted. Other "beautiful numbers," such as 1000, have also played a role in anchoring negotiating positions of the major actors. On the whole, however, numerical focal points have not been in high demand, largely because

² Kissinger (1960).

³ Krepon (2003), see also: Krepon (2009).

once the underlying principles for an agreement are determined by the negotiators, the detailed numbers can be relatively easily agreed upon.

2 FOCAL POINTS AND BARGAINING

Thomas Schelling and his followers suggested two strategies for identifying potential focal points during negotiations or other types of interactions between humans. *First*, a focal point can be found in a given conspicuous material phenomenon.⁴ For example, the main clock at a city's central railway station is usually considered a default meeting place. In arms control, the range that separates strategic and other classes of missiles is agreed to be 5500 km—roughly the distance a missile launched in Eurasia has to travel to reach North America, and vice versa. The “focal allure” of these points, usually called “salient”, results from the fact that they are expected to appear distinct, even to individuals who seek coordination but are unable to communicate. In the absence of a widely recognized natural phenomenon or landmark underpinning a focal point, participants to a negotiation without the possibility of communication cannot resolve a coordination problem. Some observers have noted, however, that the effectiveness of “non-communicable” focal points is debatable because it is not guaranteed that the parties “would attach the same salience to the same point”.⁵

Second, a round number that does not correspond to any widely known phenomenon can serve as a focal point in negotiations in which parties are able to communicate freely. Round numbers can be found in nearly any topic under negotiation, including arms control. A round numerical solution need not be so unique as to be identifiable without communication between the parties. Schelling, who was mostly studying cases of rapid crisis escalation when the adversaries did not have sufficient time to communicate, was not interested in this second source of focal points.⁶

For the purposes of analyzing arms control from the focal point perspective, it seems appropriate to introduce a *third* type of focal point into our discussion. This additional category can be called “focal (or salient) principles.” Rooted in conceptions of justice or ethics, these principles once

⁴Schelling (1960: 57, 77) and Schelling (1966: 137).

⁵Freedman (2013: 167). See also Chapter 2 in this book by van der Rijt.

⁶Schelling (1960: 100–101).

applied in a concrete negotiation setting, largely define the outcome of that negotiation or set the boundaries for an agreement. The focality or salience of these principles has a slightly different nature from the focality and salience of the first two categories above. Rather than serving as a point of convergence in resolving a coordination problem, a focal or salient principle is invoked by one or more sides in a negotiation to support that side's claim by grounding it in a fundamental ethical value, such as equality, consensus, stability and others.

Salient principles propounded by the negotiating parties often clash. For example, equal cuts in weapon stockpiles can be presented as a fairer solution than equal numbers of weapons kept by the parties after the reductions are implemented. And yet suggesting the opposite also makes sense: equal end results are more important than the equality of costs needed to achieve those results.

“Stability vs. morality” is another example of clashing salient principles. It is commonly accepted that if one of the rivals stands good chances of disarming the other with a surprise strike, that is, of destroying the other side's attack capabilities (missiles in silos and submarines armed with missiles at sea) before the opponent realizes what has happened, the situation between the rivals becomes highly unstable. In the domain of strategic nuclear weapons, chances for a successful surprise strike to disarm the rival increase if the attacker deployed robust anti-missile defenses that would allow an interception of any missiles the opponent has left to launch in retaliation. If the right combination of offensive and defensive capabilities is available, the temptation to strike first to disarm the opponent and dictate the conditions of surrender may become too strong to be resisted.

One can argue that in order to eliminate the first strike temptation, both sides need to be certain that they will be able to strike back after a surprise attack. In relations between the United States and Russia (formerly, the Soviet Union), such a situation of mutual vulnerability that evolved in the 1960s was referred to as “mutually assured destruction (MAD).” According to this logic, the two sides would be advised to maintain mutual vulnerability by forswearing missile defense capabilities, among other measures. However, it can equally be argued that forgoing the opportunity to develop missile defenses is immoral and should not be pursued by responsible politicians because it leaves their country's population under constant threat of extermination. As long as pursuing defenses can be seen as more ethical than agreeing that a country's population should remain under a constant threat of annihilation by a rival, the rival state may be called upon to not protest

against missile defense deployments. If the ethical principle of protecting the country's civilian population is taken as the lodestar in negotiations on nuclear arms control, then insisting on ultimate mutual vulnerability in the form of MAD becomes immoral. "Stability" and "morality" can therefore be seen as competing salient principles in arms control negotiations. In the US-Russia context, while Moscow insists that stability should take priority and that there is no place for moralizing in nuclear arms posture, members of the US Congress with an interest in arms control issues refuse to concede permanent vulnerability of the US and are working towards ensuring that missile defense projects remain on the agenda and are well-funded.

In general, because arms control is a less rapidly unfolding process than a real-time international crisis or war, salient points in arms control are mostly numerical and situational, that is, they are selected within the vicinity of negotiators' initial positions. Conspicuous or salient solutions are employed by negotiators when they need to delineate geographic boundaries of areas to fall under a negotiated arms control regime, such as a nuclear-weapon-free zone (NWFZ). Salient principles can be used to add credence and demonstrate commitment of a negotiating side to its pre-formulated position or claim. They can sometimes also be used to develop solutions when neither side has a clear preference other than for the negotiations to end in an agreement.

3 TACIT AND EXPLICIT NEGOTIATIONS

Arms control involves both explicit face-to-face negotiations and tacit bargaining.⁷ While the former is usually considered to constitute the substance of the arms control process, the latter is no less important as it creates both the basis and the need for direct negotiations if the parties are to avoid

⁷"Tacit bargaining" is sometimes referred to as "costly signaling" – demonstration of commitment to a certain position by an action intended to prove the negotiator's sincerity or his determination to not back down. The demonstration effect is achieved by accepting a non-trivial cost of the signaling action. For example, Soviet leader Mikhail Gorbachev signaled his willingness to cooperate with the West (as opposed to propagandistic posturing) by agreeing to pull out large contingents of Soviet troops from Eastern Europe in the second half of the 1990s. This move entailed a material cost for the USSR and—most importantly—a significant political cost for Gorbachev himself, and was therefore highly appreciated—and to an extent reciprocated—by his Western counterparts. See, for example: Montgomery (2006: 151–185). It should be noted that the applications of the "costly signaling" concept reach far beyond studies of negotiation to other disciplines in social science to biology and evolution theory.

armed conflict or overspending on arms. Tacit bargaining in arms control can take the form of deployment of weapons that a certain state is ready to negotiate down if offered a strong enough incentive by the negotiating counterpart. It can also come across as exchanges of statements by the different sides about the principles that underpin their own force structures and doctrines or that they would like to enshrine in arms control agreements. In that regard, publishing a defense (or military) doctrine that formulates new conditions, for example, under which nuclear weapons could be used first by the country issuing the doctrine could be considered a move in tacit bargaining.

Examples of high-profile tacit bargaining moves in arms control include nuclear tests by India, Pakistan and North Korea. Conducting its tests in 1974 and 1998, New Delhi sought to signal its readiness to deter China and to retaliate against Pakistan in case of a large-scale conflict with any of its rivals. Islamabad tested the bomb in 1998 to show that it would not fold to India's superiority in conventional arms while Pyongyang's multiple nuclear and ballistic missile tests since 2006 were at least in part intended to extract economic aid and force acceptance of the North Korean political regime by key stakeholder nations. Israel has regarded its purported nuclear arsenal as an indispensable guarantee against large-scale aggression by regional adversaries and did not want to openly put it on the table as a bargaining chip. Instead, Israel has sought to maintain sufficient ambiguity about its possession of nuclear weapons in order to not be formally pressured into submission to the nuclear non-proliferation regime.

Trappings of tacit bargaining are easy to identify in the mutual positioning of Russia and the United States vis-à-vis the Intermediate Nuclear Forces (INF) Treaty of 1987 (the treaty bans all ground-launched missiles with ranges from 500 to 5550 km). In the early 2010s, Washington began alleging that Moscow was testing a ground-launched cruise missile that fell within the prohibited range. In February 2017, the United States claimed that Russia had successfully completed the testing phase and had deployed the missile.⁸ After several unsuccessful rounds of negotiations, Washington announced in February 2019 that it would be withdrawing from the treaty within six months if Moscow failed to substantively address the US's

⁸Gordon (2017).

concerns regarding the breach of the treaty.⁹ Russia denied the US allegations and reciprocated by claiming that long-range unmanned aerial vehicles (UAVs, or drones) as well as missile interceptors the US was deploying in Europe and beyond violated the treaty. While, as some observers suggested, Russia's change in attitude towards the treaty could have been motivated by fundamental shifts in the country's military and security strategy since the mid-2000s,¹⁰ the exchange of accusations between Washington and Moscow could be viewed as bargaining over who should take the initiative to pull out of the treaty. It could be Moscow based on its misgivings about the treaty or Washington because of its claims of treaty violations by Russia.

4 CLASSIFYING ARMS CONTROL SOLUTIONS

Arms control agreements and negotiating positions contain plenty of numbers, designations of various types of borders and other easily formalized parameters. How many of them meet the criteria of focal points? Do focal point solutions in arms control break down into distinct types? From the focal point perspective, three types of solutions embodied in arms control agreements are identified here. Solutions may have no connection with focal points whatsoever (1); represent a salient point that "competes" with an alternative salient point (2); or rely on an "isolated" focal point with no clear salient alternative in sight (3).

Outcomes of the *first type* of arms control negotiations are not based on any focal point. The majority of negotiated arms control solutions represent this type of outcome. Such solutions are reached without reliance on any symmetry or appealing number. In many cases, numbers in arms control negotiations are chosen in a consensual manner without the need to attract negotiating parties to a position they would otherwise consider suboptimal based on their interests. In such situations, the appeal of the number may be present, but is not necessary to override or alter anyone's initial negotiating position. Only a small share of numbers in arms control agreements conform to the definition of a focal point.

For example, the round numbers used extensively in the New START (2010) and Conventional Forces in Europe (1990) treaties were not

⁹ Emmott (2019).

¹⁰ Fitzsimmons (2018–2019: 119–136).

needed as tools to draw the positions of the sides closer to one another; agreement on these numbers came relatively easy for the negotiating parties before having to address more controversial issues. According to senior negotiators involved in the most recent round of strategic arms control talks between the US and Russia, the ceilings for deployed nuclear warheads to be enshrined in the New START Treaty of 2010 were in fact not difficult to agree upon. Neither side considered it a major concession to commit to a maximum of 1550 deployed warheads and 800 deployed and non-deployed carriers.¹¹

In a similar vein, the Conventional Forces in Europe (CFE) Treaty signed in 1990 and the preceding negotiations on “mutual and balanced force reductions” in Europe involved dozens of numbers, most of which, according to the existing accounts of CFE negotiations, were in no way focal or salient.

In arms control negotiations, in general, numbers often generate less contention than, for example, the terms according to which the sides will be monitoring and verifying implementation of the negotiated agreement. In these and many other cases, the round numbers’ “focal promise”, which can be defined as the power of attraction, was either unnecessary or weak.

Arms control solutions of the *second type* rely on what I call a *non-equilibrium focal point*. This is a focal point in whose vicinity is another salient point, meaning that a shift from one to the other can occur relatively easily and oftentimes unexpectedly. One example of non-equilibrium focal points are counter-value and counter-force targeting principles in nuclear strategy. Each principle has an underlying coherent logic that can be adopted by the mutually deterring sides. Counter-value targeting is premised on the notion that even a minimal risk of a major city being hit by a nuclear-tipped missile is sufficient to deter the adversary from all-out aggression. In turn, counter-force targeting is based on the assumption that a nuclear war can be fought and won by a sudden disarming strike that would eliminate all (or nearly all) of the adversary’s nuclear forces. While it would be most economically and politically sensible for a dyad of potential nuclear-armed adversaries to converge around the counter-value principle, certain trends in the evolution of their mutual political attitudes and force structures can result in a quantum shift to counter-force targeting—a much more costly and risky position.

¹¹ See, for example: Lewis (2012).

These trends include an expansion of nuclear arsenals, the emergence of missile defense technologies, and the rising of stakes in the confrontation between nuclear-armed powers. As the stakes increase, assessments by the sides of “acceptable damage” from a nuclear war follow suit. Policymakers begin to doubt whether the threat of destruction of an entire adversary city is strong enough to deter the adversary from launching an attack. Who would know for sure, for example, what price the USSR was prepared to pay for occupying the whole of Western Europe at the peak of the Cold War in 1961? Moreover, governments waging all-out wars are notoriously indifferent to the fate of their civilian populations. It has also been argued that destroying cities is akin to terrorist attacks that only help to rally people around their government.¹² Missile defense technologies increase the uncertainty about the effectiveness of retaliation and raise the question: would the side deploying missile defenses be deterred by the threat of a small number of missiles launched at its cities? If that side also has a massive nuclear arsenal, the threat of it being used to carry out a surprise disarming strike against the enemy’s own land-based missiles and submarines becomes too serious to be ignored (of course, only if the policymakers do not believe that any large-scale nuclear attack will inevitably lead to the cooling of the planet as a result of the “nuclear winter” effect).

In broad terms, the position of choice depends on the decision makers’ dominant worldviews, namely whether they generally believe in deterrence and whether they believe that the side with the larger arsenal stands real chances of prevailing in a crisis.¹³ They must also bear in mind that counter-force targeting is a significantly more risky posture than counter-value targeting because of the much larger arsenal one needs to maintain in order to target an equally large arsenal of the opponent. In addition, to protect the nation from the threat of a successful surprise attack against its command and control centers, that nation’s government needs to seriously consider launching its missiles on warning of the enemy’s incoming missiles (i.e. before they hit their targets) and deploy a system that would ensure massive retaliation even after all human decision makers have been exterminated.¹⁴ Needless to say, the risk of a massive launch of nuclear weapons

¹² Cf. Wilson (2014).

¹³ For a discussion of the role of the size of nuclear arsenals in determining the outcomes of crises, see: Kroenig (2018).

¹⁴ Such systems and their real-life implications are accessibly described in the Pulitzer Prize winning book: Hoffman (2010).

due to a technical glitch or human error rises exponentially as such weapons are made more ready for use.

Another example of a non-equilibrium focal solution can be found in the history of negotiations on reductions of conventional forces in Europe (CFE). The purpose of those negotiations that were launched in the early 1970s was to reduce the risk of a confrontation between the two rival military blocs, NATO and the Warsaw Treaty Organization. Both organizations had deployed massive numbers of conventional arms—tanks, armored vehicles, attack helicopters, combat aircraft and artillery—on their territories, including—most dangerously—in direct proximity of the mutual border between NATO and the Warsaw Pact. A shooting war could start any moment on account of an accident or miscalculation. By the late 1980s, the two sides acknowledged that their number of forces had to be reduced and de-alerted.

The Soviet Union started off by demanding mutual force reductions in equal proportion to the initial numbers (in which Moscow had an advantage). In turn, the United States and its European allies insisted that the USSR should make greater cuts to eliminate the disparity between the Warsaw Pact and NATO. Eventually, the reform-minded Soviet leader Mikhail Gorbachev agreed to NATO's principle in 1988 because he considered the number of Soviet troops deployed in Eastern Europe to be excessive and unaffordable. This change in preferred focal point promptly allowed a conclusion of the negotiations and the signing of the CFE Treaty in November 1990.

A similar focal point debate unfolded during the US-Soviet negotiations on intermediate-range missiles during much of the 1980s. The Soviet Union was the first to deploy such non-strategic capabilities in Europe in the late 1970s. Unsuitable for striking the United States, missiles of ranges between 500 and 5550 km were designed to stir up concerns of Soviet blackmail among European NATO members: would Washington be ready to conduct nuclear strikes against Soviet targets if Moscow only struck US allies in Europe? NATO eventually responded by deploying similar US missiles in key European NATO states, and in 1983, the USSR was confronted with the severe threat of extermination of its command and control centers by a strike from Western Europe (which could come quicker than missiles launched from mainland USA). Soviet superiority in terms of the number of non-strategic missiles in Europe thus became futile.

During negotiations on intermediate nuclear forces that began soon following Soviet deployments, Moscow requested a halt to NATO's plans

of reciprocity in exchange for a “freeze” on the number of missiles the USSR had deployed by that time. NATO disagreed and demanded a return to the *status quo ante*, that is, the situation before the Soviet deployments, as a fair outcome. Initially refusing to back down, the Soviet Union under Gorbachev’s leadership eventually agreed to fully eliminate the entire class of missiles in question, even though this required a higher reduction in absolute numbers from the Soviet Union compared to the United States. An alternative solution would have been to cut similar numbers of missiles or to compensate Moscow in some way for scrapping a greater number of weapons than the US.

The third type of arms control solution is based on *equilibrium focal points*. These are focal negotiation outcomes with no evident salient alternatives rooted in competing symmetries or conceptions of justice, such as “equal cuts” vs. “total elimination.” Numerous examples of equilibrium focal points are provided below.

Both equilibrium and non-equilibrium focal points in arms control usually come in one of the following forms:

- numbers: round or otherwise “magical”, that is, numbers that stand out because of certain special characteristics;
- symmetries: points at the same distance from the preferred position of each negotiating side;
- natural or other physical phenomena or objects, such as borders drawn along rivers or mountain ridges or physical principles underlying weapon technologies.

Several trends in the use of focal points in arms control deserve closer attention.

5 THE ATTRACTION OF ZERO

“The number that matters most in norm-setting is zero,” noted one prominent arms control analyst. He continued: “This number is the clearest and most meaningful way to set norms and customary practices among responsible states. The number zero is embedded in the Comprehensive Test Ban Treaty, the Chemical Weapons Convention, and the Biological Weapons

Convention. States that do not honor the number zero become, *ipso facto*, outliers.”¹⁵

Zero is indeed one of the most powerful focal points in arms control and far beyond. On the bilateral level, the US-Soviet Intermediate Nuclear Forces Treaty of 1987 represents the zero category. This treaty fully eliminated two classes of ground-launched missiles covering ranges between 500 and 5500 km.

Yet however attractive zero may be as an appealing number, arguably signifying absolute security for all, it has the clear trappings of a non-equilibrium focal point in many contexts. Many opponents of zero argue that it would be very difficult to detect and to timely punish any breaches of the zero-based norm.

The global zero principle—total elimination of nuclear weapons—is an example of a non-equilibrium focal point. As an end-state, global zero is morally attractive because it fully resolves the problem of an accidental use of nuclear weapons and at the same time appears fair as an end-state: everyone has an equal number of nuclear weapons – namely none. Its supporters point to the success of the efforts to ban full classes of weapons such as chemical and biological weapons, by adopting the Chemical Weapons Convention (effective from 1997) and the Biological Weapons Convention (effective from 1975), respectively. Can a nuclear weapons ban treaty be passed at the United Nations and be implemented, given the broad support for nuclear disarmament among non-nuclear weapon states and the commitment by nuclear weapon states under the Non-Proliferation Treaty of 1968 to pursue nuclear disarmament in “good faith”?

The challenge to global zero is that a world without nuclear weapons appears unstable, given the difficulties verifying compliance with a nuclear weapons ban treaty. It is impossible to “disinvent” nuclear technologies that are available to several dozen states, including those that do not maintain nuclear weapons. A critic points out that global zero could be achieved by default as soon as nuclear arms become redundant and/or outmoded. This may be the case if a more powerful weapon of deterrence is invented or the risk of conflict involving major global or regional players is reduced to negligent levels.¹⁶

¹⁵ Krepon (August 2013).

¹⁶ Tertrais (2013–2014).

Moreover, even if all existing nuclear arsenals are verifiably destroyed, the temptation would remain strong among states to obtain a decisive edge by quickly (and covertly) deploying just a few nuclear weapons. The existing international controversies and manifold conflicts would make such option particularly appealing. Ensuring this does not happen requires not only a tremendously intrusive watchdog apparatus, but also agreement among all states upon whose actions the maintenance of a global zero regime would depend. Clearly, nuclear weapons can become easy to forgo if the risk of a conventional conflict among great world powers is significantly reduced. None of this is easy to imagine. Analyst Michael Krepon argues that “[b]ecause numbers of chemical and biological weapons that are greater than zero can be hidden, suspicions can only be conclusively affirmed by use, if they cannot be revealed by national technical means or intrusive treaty-monitoring regimes.”¹⁷ This effectively illustrates the immense difficulties of monitoring universal compliance with global zero.

Alternatives to global zero are the salient points (or rather principles) of “current” or “small” numbers of nuclear weapons. The current dynamic of nuclear arms control negotiations could continue (which as of 2019 seem to have stalled at best or collapsed at worst) or—in an almost science fiction scenario—attempt a breakthrough to agree on a substantially smaller number (e.g. 1000 deployed weapons for each of the two nuclear superpowers—the United States and Russia) which would still be far from zero.

6 THE PROMISE OF “ARBITRARY NUMBERS”

Round numbers began playing a visible role in arms control negotiations with the emergence of mass-produced standardized weapons. As the number of weapons at the disposal of each negotiating party rose to overkill levels, these numbers became very large and abstract. A recent think tank report on US nuclear weapons capability suggested that “deep uncertainty [persists] in estimating the adequacy of nuclear forces: how will they work in the environment they might create? Lacking data, planners sought assurance in larger inventories, while analysts usually had recourse to modeling gains and losses under simplistic scenarios contrived to show the numerical consequences of various constraints—what Aron derided as ‘strategic

¹⁷Tertrais (2013–2014).

fiction.”¹⁸ For example, how can one plausibly calculate the number of nuclear weapons the US would need to deter an attack not only against its territory, but also against those of its allies in Europe and Asia (this situation is called “extended deterrence”)? Or what are the exact numerical requirements to Russia’s nuclear and non-nuclear deterrent if Moscow is to hedge against not only the United States and its allies, but also a potentially expansionist China? What assumptions should underlie such calculations? I return to this discussion below.

With abstract models and simplistic scenarios dominating the scene, solutions based on numerical focal points became easier for negotiators. This concerned, first and foremost, nuclear explosive devices and the means of their delivery. In the 1960s, consensus emerged between the United States and the Soviet Union, as well as on a broader multilateral scale, that the accelerating expansion of the deadly arsenals had to be contained. First results were achieved in the early 1970s in the form of “ceilings” imposed on further increases of Soviet and American nuclear stockpiles. At approximately the same time, negotiations opened between NATO and the Warsaw Treaty Organization on limiting the massive conventional weapons arsenals the two blocs were accumulating in Europe. CFE talks also had the potential of generating a wealth of focal point outcomes.

The attraction power of salient and focal points in arms control should not be overestimated, however. Numbers are usually dictated by the sides’ strategies and posture, that is, based on their determination of the most likely adversaries and conflict scenarios. Arms control negotiations usually focus on the possibility of an agreed change in posture that would, in turn, lead to a review of the optimal number of weapons necessary to maintain the new posture. Once postures are defined, agreement on numbers becomes relatively easy. At the same time, round or otherwise “magic” numbers may serve as reference points that attract negotiators’ attention and prompt them to consider changes in posture that correspond to those “magic” numbers.

For the United States and the Soviet Union (Russia), rising numbers became both the cause and result of the choice in favor of counter-force targeting. Large nuclear stockpiles only make sense if nuclear weapons are regarded as a war-fighting capability and as usable, allowing to prevail in a conflict. Mutually deterring sides keep the numbers low if they only perceive

¹⁸ Butterworth (2013: 6).

nuclear weapons as a guarantee against ultimate defeat in a conventional conflict and do not consider surprise disarming strike scenarios to be realistic. The decision of the two nuclear superpowers to proceed with building massive overkill arsenals signified a choice in favor of the counter-force targeting focal point. Once the US and Soviet postures were adjusted and the sides moved towards discussing disarmament options in the 1980s (as opposed to just agreeing to cap the arsenals' growth), the exact number of retained warheads and/or missiles became—within certain limits determined by the two sides' postures—less a matter of principle than a technical decision.

At the same time, the three other NPT-compliant nuclear-armed states, including China, have remained content with their limited arsenals, unwilling or unable to plan for responses to a potential first disarming strike by an adversary. Their nuclear postures remain centered on the focal point of counter-value targeting. In recent years, according to some analysts, India and Pakistan have reached counter-force numbers and are therefore likely to plan for retaliation against massive surprise nuclear attacks by the other side.¹⁹

Once the United States and the Soviet Union had securely locked themselves in an overkill situation, potential arms control solutions between them or their blocs began to be based on raw estimates of “sufficient” numbers rather than on precise calculations or plans of using the weapons, especially nuclear weapons. For example, it became popular to claim in Moscow or Washington that a nuclear superpower “cannot afford” to reduce its nuclear arsenal below the sum of warheads deployed by second-tier nuclear-weapon states. Alternatively, it was maintained, a nuclear superpower needs to have an order-of-magnitude edge in numbers of a nuclear superpower over any second-tier nuclear-weapon state. Both assumptions converged on 1000 as the minimum acceptable number of deployed warheads to be retained by a nuclear superpower.

Apparently using 1000 warheads as a focal point, US President Barack Obama asserted in his 19 June 2013 speech in Berlin that the United States “can ensure the security of America and our allies, and maintain a strong and credible strategic deterrent, while reducing our deployed strategic nuclear weapons by up to one-third.”²⁰ The number of deployed US

¹⁹ See, for example: Krepon (July 2013).

²⁰ Obama (2013).

warheads at the time of Obama's speech was capped at 1550 by the New START Treaty. The Russian side, subject to the same limit, did not explicitly endorse the 1000 warheads goal, citing concerns with US plans to deploy potentially robust missile defenses. However, the number 1000 had previously featured in public statements of Russian officials who suggested that 1000 would be the absolute minimum Moscow could possibly consider if "smaller" nuclear-armed states continued to refrain from multilateral limitations talks with the United States and Russia.

Assumptions about how much a country should be prepared to endure if it is to prevail in a nuclear stand-off are instrumental in nuclear strategy. The highly hypothetical nature of those assumptions made them fertile ground for "arbitrary salient numbers" as the debates on "unacceptable damage" from a nuclear attack unfolded. At the height of the Cold War era arms race, policymakers in the US and the USSR had to make bold assumptions about the scale of destruction the adversary would prefer to not risk. US Defense Secretary Robert McNamara defined the situation of mutually assured destruction (neither side is tempted to undertake a surprise disarming nuclear strike against the adversary) as one in which the attacker would be sure to lose at least 25% of its population and 50% of its industrial capacity.

As the prominent expert on military strategy Lawrence Freedman notes, these numbers were not just appealing, but arbitrary: "These levels [...] reflected less a judgment about the tolerances of modern societies and more the point at which extra explosions would result in diminishing marginal returns measured by new damage and casualties, the point at which – to use Winston Churchill's vivid phrase – 'all you are going to do is make rubble bounce'."²¹

Focal points in arms control can also take the form of calendar dates. 1 January 1967 was chosen by the Non-Proliferation Treaty (NPT) negotiators as the pivotal cutoff date for the treaty. By setting the criterion of a nuclear test conducted before the cutoff date, this point helped to resolve the non-trivial problem of who should be allowed to keep nuclear weapons under the NPT.

Time focal points sometimes crystallize when negotiators are faced with the need to reach a new agreement not just before the existing one has expired, but to commemorate a certain anniversary of another treaty. For

²¹Freedman (2013: 170).

example, the United States and Russia sought to sign a new START treaty before May 2010 when an NPT Review Conference was scheduled to begin. Thereby, Washington and Moscow wanted to present non-nuclear weapon states with a major accomplishment on the path towards nuclear disarmament—an NPT commitment of nuclear-armed nations. The treaty was indeed signed in Prague on 10 April 2010, three weeks before the Review Conference kicked off in New York City.

NPT itself contained a provision mandating discussions about the extension of the treaty at a certain focal date in the future. The treaty entered into force in 1970 for a term of 25 years, thus making 1995 an important focal point when the future of NPT had to be determined.

7 FOCAL PRINCIPLES

Verification regimes in arms control provide valuable examples of focal principles. The “*everything is accessible to everyone*” principle is enshrined in the Antarctic Treaty of 1959, according to which 12 signatory nations have the right to send representatives to inspect any area in the Antarctic, including any signatory’s scientific bases, arriving sea vessels and their cargo.²² In a similar vein, the Seabed Treaty of 1971 allows all parties to fully monitor one another’s seabed activity beyond the 12-mile territorial waters zone.²³

A competing salient principle in the sphere of verification would imply a *finite maximum number* of permitted inspections. For example, the US-Russian New START treaty of 2010 envisages 18 annual short notice on-site inspections (in addition to inspections carried out by national technical means) to verify observance of the treaty limits and conversion or elimination of delivery systems (missiles). This includes 10 on-site inspections of deployed warheads and deployed and non-deployed delivery systems at ICBM bases, submarine bases and air bases (Type One inspections), and 8 on-site inspections at facilities that may hold only non-deployed delivery systems (Type Two inspections).²⁴ The Open Skies Treaty of 1992 provides for an *equal number* of “passive” and “active” inspections for groups of participating countries. Each signatory—alone or together with another

²² See: Antarctic Treaty (1959).

²³ See: Seabed Treaty (1971).

²⁴ See: New Strategic Arms Reduction Treaty (2010).

participant—is assigned a number of overflight inspections by other signatory nations and is entitled to the same annual number of flights over the territory of other signatories.²⁵ The Comprehensive Test Ban Treaty requires a qualified majority of signatory nations (30 out of 51) to launch an on-site inspection of a suspected nuclear test. The exact figure of 30 votes in favor of an inspection was agreed upon as a result of a mid-way compromise between the salient figure of 50% (25 votes) and some nations’ insistence on a two-thirds majority (34 votes). This way of reaching a consensus and enshrining it in a treaty also exemplifies a focal point solution.

In bilateral US-Soviet and US-Russian arms control negotiations, any numerical solutions reached (on the permitted number of missiles or warheads, details of inspection regimes, etc.) reflected—apart from the sides’ posture—compromises between their espoused notions of justice, such as preponderance vs. parity (discussed below) or equal starting points vs. equal end results (discussed earlier in the chapter in application to the INF and CFE treaties). The United States has regarded its preponderance over any potential rival as fair—possibly due to the belief that even in an overkill situation, advantage in numbers still matters.²⁶ Russia centered its negotiating position on parity with the United States for its own sake, refusing *inter alia* to consider the option of minimal counter-value deterrence that could, for example, be based on the submarine-launched component of the nuclear triad.

While questioning the need for parity, the US equally rejected minimal deterrence. In the 2010 Nuclear Posture Review (NPR) report, the Obama administration argued that “the need for strict numerical parity between the two countries is no longer as compelling as it was during the Cold War.” However, it also warned against “large disparities in nuclear capabilities” that “could raise concerns on both sides and among US allies and partners, and may not be conducive to maintaining a stable, long-term strategic relationship.”²⁷ The 2018 NPR pushed this point further, arguing that “global threat conditions have worsened markedly since the [...] 2010

²⁵ See: Kimball (2012).

²⁶ See: Kroenig (2018). U.S. President Donald Trump famously proclaimed in 2017 the need for a “stronger and more powerful” nuclear arsenal, without specifying whether that meant larger numbers or more advanced technologies, or both <https://twitter.com/realdonaldtrump/status/895252459152711680?lang=en>.

²⁷ U.S. Department of Defense (2010: 30).

NPR, including increasingly explicit nuclear threats from potential adversaries.” As a response, the United States pledged to “maintain the range of flexible nuclear capabilities needed to ensure that nuclear or non-nuclear aggression against the United States, allies, and partners will fail to achieve its objectives and carry with it the credible risk of intolerable consequences for potential adversaries now and in the future.”²⁸

Finally, a clash of non-equilibrium salient principles occurred in the debate on the definition of outer space. Russia prefers the borderline to have an exact numerical value: outer space begins at the altitude of 100 km above sea level. The alternative approach championed by the United States is to use the distinction between two physical forces allowing an object to move above the ground: aerodynamic or gravitational. According to this principle, airplanes that fly in the air thanks to the lifting power of their wings would be considered as travelling in the atmosphere while a missile orbiting Earth thanks to gravitation would be regarded as an outer space object.

These principles are mutually exclusive, and each of them has clear practical implications that are desirable for the respective party. Deployment of weapons of mass destruction in outer space is prohibited by the Outer Space Treaty of 1967. If the US interpretation of the atmosphere/outer space border prevails, Russia will be faced with the possibility of a high-flying WMD-equipped aircraft—a prospect Moscow considers a threat to its security. If the Russian definition is accepted, the United States will be deprived of the opportunity to deploy high-altitude weapon systems that Washington believes it is capable of developing in the long run.

* * *

So far, salient and focal points have played a visible yet limited role in arms control negotiations—mostly due to the lack of urgency to achieve coordination. Indeed, unlike military crises involving great powers, arms control negotiations can be open-ended and take years, if not decades, to complete. For the most part, arms control negotiations are about principles rather than numbers. Principles in this context are understood as broad concepts of threat, deterrence, force structure and posture, etc. Once principles are defined, agreement on exact numbers of weapons can be relatively easily reached.

²⁸ U.S. Department of Defense (2018: V, VIII).

Principles usually form alternative (competing) salient points, with arms control talks essentially being centered on choosing between these points. Negotiating sides seek to substantiate the rightfulness of their respective versions of a salient point on the grounds of fairness or effectiveness. Sometimes, a shift can occur from one focal point to another without the basic characteristics of a focal point (understood as a solution grounded in a certain interpretation of justice or the appeal of a number) being lost. This does not mean, however, that once reached, a non-equilibrium focal point is likely to be dropped quickly in favor of a competing salient point. In fact, solutions such as the “zero principle” applied to intermediate ballistic missiles remained in place for decades. However, the probability of them being challenged at a later time through invocation of a competing salient point is higher than the same probability for focal points that do not have visible “competitors.” The lack of stability of non-equilibrium focal outcomes in arms control can be explained by the equal standing enjoyed by alternative conceptions of justice (e.g. equality of starting points vs. equality of end results) used to underpin solutions.

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CTBT Negotiations and the Split-the-Difference Principle

Mordechai Melamud and Rudolf Schuessler

The Comprehensive Nuclear Test Ban Treaty (CTBT) is an important pillar of the international nuclear non-proliferation regime, banning all nuclear tests by its member states.¹ It was negotiated by the Conference on Disarmament (CD) in Geneva during 1993–1996, approved by the UN General Assembly in 1997 and opened for signature on 24 September 1996. This brought a process to an end that was started by the Prime Minister of India, Jawaharlal Nehru, in 1954, who advocated a “standstill agreement” on nuclear testing. One important element of the CTBT is a regime of On-Site Inspections (OSI) designed to prevent or uncover violations of the treaty by undeclared, clandestine nuclear weapons tests. The inspection regime allows the member states of the CTBT to call for international

¹On the CTBT, see Hansen (2006), Johnson (2004), Melamud et al. (2014), McKinzie (1997). Hopmann (2014) offers a good summary of the aims of the treaty.

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inspection of a geographical region in which an undeclared nuclear test is supposed to have taken place. Scientific data collection on a presumed test site allows ascertaining whether, in fact, a nuclear explosion has occurred or whether a false alarm was raised. The triggering process for OSI was a highly controversial issue in the CTBT negotiations, because of fears that the process might be used for spying or alternatively for blocking an investigation of a presumed nuclear test. It was soon agreed that an Executive Council (EC) of the CD should oversee and deal with OSI, and that the decision to initiate an OSI was to be taken by vote in the EC with 51 members. However, when it came to the number of votes required within the EC to launch an OSI, the parties involved had very differing views. Some states pushed for a low threshold for inspections to deter potential violations of the test ban and nuclear non-proliferation regulations. Other states feared that the treaty would be misused by the great powers to spy on them under the guise of the cause of nuclear non-proliferation. As a result, some states demanded a low threshold of positive votes for initiating an OSI, while others insisted on high thresholds. During the negotiations, the proposals for the required threshold ranged from one-third to three-fourths of the EC members. Ultimately, the chairman of the CD strongly advocated a simple majority rule, proposing to set the threshold at 26 positive votes. One crucial member, China, refused to accept this proposal. It had initially pushed for a two-thirds threshold (34 votes), but now proposed 30 positive votes as a compromise. This threshold of 30 is of particular interest, as it constitutes both a focal point and represents an instantiation of the principle of fair division known as ‘splitting-the-difference’. The present chapter provides a detailed analysis of how the final adoption of the threshold for initiating an OSI of 30 votes in the CTBT can be explained from a focal coordination perspective.

Section 1 provides an introduction to the CTBT negotiations with an emphasis on issues relating to the start of an OSI. Section 2 analyzes strategic considerations resulting from the framework of the CTBT negotiations, the structure of its EC, and different voting thresholds for OSI. Section 3 relates the choice of voting thresholds to salience and focal points.² Section 4 applies considerations of salience and their strategic use

²Salience is used here to denote the known conspicuity of an outcome or proposal, focality stands for a unique conspicuity that is common knowledge.

in negotiations to the final phase of the OSI threshold negotiations. The Chinese split-the-difference position of 30 required votes in the EC for the launch of an OSI was finally accepted by all parties supporting the CTBT. We will discuss the role of salience for achieving this agreement. Section 5 summarizes the findings of this chapter and highlights their implications for other contexts of negotiation.

I BACKGROUND: FROM NUCLEAR NON-PROLIFERATION TO THE CTBT NEGOTIATIONS

Fears about the proliferation of nuclear weapons spread with the first use of atomic weapons in Hiroshima and Nagasaki.³ In the 1940s and 1950s, nuclear arsenals were being built up in a growing number of countries. This gave rise to an increasing fear, perhaps even expectation, by peoples around the globe that sooner or later there would come a moment when these weapons would be used in a conflict situation. At the same time, those countries that had already acquired nuclear weapons did not want others (and, above all, not hostile others) to share their privilege. US President Eisenhower assuaged widespread fears of nuclear proliferation in his ‘Atoms for Peace’ speech of 1953. He called for joint international control of atomic energy and advertised its peaceful use in nuclear reactors. His plea for peaceful use of atomic energy improved the image of nuclear technology, but also paved the way to nuclear weapons for countries that used nuclear reactors to produce the required fissile materials. In any case, nuclear non-proliferation did not remain an exclusive issue of the powers who already had nuclear arsenals at the time, as the above mentioned initiative of Jawaharlal Nehru from 1954 documents. Nehru’s speech at the UN made clear that a ban on nuclear testing was to be an integral part of nuclear non-proliferation. Subsequently, efforts to ban nuclear tests and the proliferation of nuclear weapons became a diplomatic success story when judged by the number of concluded treaties and the number of states that signed them. By 1963, the nuclear powers were well aware what a radioactive fallout could do to their populations, and a ban on nuclear tests in outer space, the earth’s atmosphere, and under water went into force. In 1968, the Nuclear Non-Proliferation Treaty (NPT) was concluded, which today

³For the history of the nuclear non-proliferation movement in relation to CTBT, see Hansen (2006: Chap. 1), Corden (2014).

has been signed by 186 states. North Korea, a former signatory state, withdrew in 2003, and has now developed nuclear weapons. The only states to never sign the NPT are Cuba, India, Israel, and Pakistan.⁴ The latter three are now nuclear powers (although Israel has never officially admitted possessing nuclear weapons).⁵

Realizing that test bans are crucial for the NPT and for nuclear arms control, talks about a comprehensive test ban treaty were conducted by the US, USSR, and UK from 1977 to 1980. These talks remained unsuccessful, however.⁶ In this respect, it is interesting to note the import of the various US administrations' efforts to negotiate test ban treaties. In 1992 (still under the outgoing President George Bush Sr.), the US declared a unilateral moratorium on nuclear testing, and the US Congress called for CTBT negotiations. Bill Clinton, when coming to power as President in 1993, endorsed this initiative. With this backing, the UN Conference on Disarmament (CD) started to negotiate a CTBT in earnest, pursuing a 1996 deadline for the treaty. The CD is not an ad hoc conference singularly established for this purpose, but a long-standing and permanent UN institution. It evolved from a committee of ten nations that began to collaborate on disarmament in 1960. In 1979, the CD was established as a permanent body of states, which forms and discusses issues and initiatives of disarmament. The CD reports annually to the UN and receives UN funding. Several disarmament and arms control treaties, most prominently the NPT, have been successfully negotiated by the CD and its predecessors.

The CD offered a framework for the CTBT negotiations, which then, of course, developed their own character. A host of scientific and technical questions had to be answered and political challenges solved, to get the CTBT on its way. Politically, the US and Russia, the most powerful successor state of the USSR, were still in a kind of post-Cold War honeymoon.⁷ For both, the end of the Cold War created a significant amount of pressure to come to terms with a test ban treaty. We will see, however, that this did not imply an easy game with respect to other crucial powers, such as

⁴Hansen (2006: 13).

⁵Whether the nuclear non-proliferation regime should be considered a success story is open for debate, depending on whether one chooses to highlight the many countries that currently use atomic energy without developing nuclear weapons, or to emphasize the fact that there is a small number of countries that nonetheless acquired nuclear weapons in spite of it.

⁶Hansen (2006: 85).

⁷On Russia's changing rationales for concluding the CTBT, see Fenenko (2014).

India and China. On the technical front, problems of definition and verification threatened to block the negotiations. These technical problems were professionally resolved with the help of the superpowers, the International Atomic Energy Agency (IAEA), and prospectively with the creation of an organization (CTBTO) for the surveillance of the coming CTBT. One of the most important hurdles on the way to concluding the CTBT (and the only technical part of the negotiations that interests us here) was that of reaching an agreement on the OSI regime for the detection of treaty violations.

OSI are implemented to detect prohibited nuclear weapon tests perpetrated by signatory states of the CTBT in violation of the treaty.⁸ The issues the negotiating parties had to take a decision on included what detection technology was to be used, how large the geographical space of an inspection might be, what timescale was suitable for an inspection, and so on. From the beginning, dealings concerning OSI were fraught by distrust between the parties. Some parties, led by the US, wanted to use OSI as a deterrent against secret nuclear weapons programs. Consequently, they argued for a tripwire mechanism for initiating an OSI. Since it was agreed that OSI should be initiated by a vote in a subcommittee of the CD, the Executive Council (EC), this amounted to the ‘red light’ approach. If a member state of the CTBT demanded an OSI to be launched, the EC had to block the proposal (‘red light’) according to this approach with a high majority to stop the OSI from being realized.⁹ The ‘red light’ idea gained clout because the US managed to achieve agreement in the CD on the use of data collected by any member state for convincing the EC to conduct an OSI. That is, an OSI could be justified not only with data on presumable nuclear tests available to the IAEA, CTBTO, or the international scientific community, but also with the data surveyed by member states, such as the US.¹⁰ In other words, the US or other states could demand an OSI to be launched based on their own intelligence gathering activities alone, if need arose. Several other states considered the resulting strong position of the US to be problematic. The US was well equipped to conduct global surveillance operations, and a ‘red light’ approach to OSI nourished fears that the US could use OSI to intimidate, denounce, or spy on opponents.

⁸On OSI, see (Hansen 2006: 34), Melamud (2013), and Melamud et al. (2014), part II.

⁹On the Western ‘red light’ position, see Hansen (2006: 41).

¹⁰On verification of tests by member states, see Hansen (2006: 36).

The critics of the ‘red light’ approach wanted to ensure, as they insisted, that OSI could only be launched if it was clear that a nuclear test had occurred. Whether they wanted to preserve a backdoor to secret nuclear testing was and is a matter of interpretation.

What the opponents of ‘red light’ proposed instead was a ‘green light’ approach that required a specific number of positive votes in the EC to start an OSI.¹¹ Abstentions would thus count against and not, as in the ‘red light’ approach, for an OSI. Given the entrenched position of many non-Western states, it soon became clear that the ‘red light’ approach was doomed and that the ‘green light’ approach was the only viable option for an agreement. Hence, the question how many votes in the EC sufficed to start an OSI became crucial.

Yet before we address this question, let us look at the composition of the EC in a bit more detail.¹² The composition of the EC as a decision-making board was only agreed on in 1996, quite late in the CTBT negotiation process. The haggling over voting thresholds in the EC, therefore, has the strategic character of an end game, a point to be discussed below. Presently, it should suffice to note that agreement was reached for the EC to consist of 51 members, each representing a CD member state. Moreover, membership in the EC is not permanent. A certain number of EC members rotate out of the council every two years and are replaced from the CD according to a complicated arrangement. Geographical clusters in the CD send a specific number of their members to the EC, which remains constant over time (Table 1).¹³

Outgoing members of a region are replaced by members from the same region, guided by considerations of importance but also taking into account

Table 1 Membership of the Executive Council of the conference on disarmament

	<i>Af</i>	<i>EE</i>	<i>LA</i>	<i>MS</i>	<i>NW</i>	<i>SPF</i>
EC members	10	7	9	7	10	8

Af = Africa; *EE* = Eastern Europe; *LA* = Latin America (incl. Caribbean); *MS* = Middle East and South Asia; *NW* = North America and Western-Europe; *SPF* = South-East Asia, Pacific, and Far East

¹¹ Hansen (2006: 41).

¹² See Hansen (2006: 93) and Ramaker (2014).

¹³ Hansen (2006: 93).

that every country should have its turn. This complicated EC membership rotation process renders it uncertain and difficult to predict presumable majorities in the EC, especially in the future. It is therefore also uncertain and difficult to predict how the EC will respond to a demand to conduct an OSI. Under the assumption that voting behavior in the EC depends to a considerable extent on the interests of states and their mutual loyalties and vulnerabilities, prospective majorities may vary with the composition of the EC. The strategic import of this insight will be addressed below.

For the moment, let us focus on the positions concerning voting thresholds in the EC for launching an OSI. As to be expected, a wide range of positions was favored by different states.¹⁴ The US, which had been an advocate of the ‘red light’ approach, naturally demanded a low threshold of one-third of the EC (that is, 17 members). Russia, China, India, and Pakistan (the latter two having become nuclear powers by 1996 with practical certainty), on the other hand, argued for a high threshold of three-fourths of the EC (38 members). As indicated, all this took place in the last months of the CTBT negotiations. Western countries were not inclined to go soft on the threshold issue after they had to sacrifice their ‘red light’ approach. It was the other side that largely budged, with Russia, China, India, and Pakistan lowering their aspirations to a two-thirds threshold. India, however, also decided to signal that it might opt out of the entire CTBT process if its needs, which went far beyond the OSI issue, were not met. As we will see, this was a threat it subsequently lived up to. At this point, the chairman of the conference, Dutch Ambassador Jaap Ramaker, submitted a compromise proposal which he urged the parties to accept, as he feared that the negotiations would end in failure since the time remaining for their conclusion was coming to an end.¹⁵ This proposal required a simple majority in the EC (26 members) for launching an OSI. Under pressure to accept or court failure in a tight negotiation end game, nearly all parties conceded and subscribed to the chair’s proposal. Only China remained recalcitrant, but constructive.¹⁶ China’s constructive attitude consisted in accepting a compromise between its own last position (a two-thirds threshold) and the simple majority rule that by that time had gathered widespread support.

¹⁴ See Hansen (2006: 41) and Zartman and Lendorfer (2014).

¹⁵ Hansen (2006: 40) and Ramaker (2014).

¹⁶ On China’s role in the CTBT and OSI negotiations, see Hansen (2006: 38) and Zartman and Lendorfer (2014: 128).

The compromise consisted of demanding 30 positive votes for an OSI to be launched, precisely midway between the 26 votes of a simple majority and the two-thirds threshold of 34 votes. Without this compromise, China signaled, the CTBT was doomed. Given the time pressure of the negotiation end game, the supporters of a simple majority rule yielded to China's demand and the chair changed the text of the agreement that was to be submitted to the CD for approval accordingly.

However, as unanimity was required in the CD, India's and Iran's disappointment concerning the general course of the negotiations led them to block acceptance of the CTBT text in the CD.¹⁷ India and Iran also tried to prevent a submission of the treaty text to the UN general assembly. However, using procedural tricks, a large group of states led by Australia managed to put the CTBT treaty to a vote in the UN, where it passed with great fanfare on 10 September 1996 (with a surprising positive vote by Iran, but now against the ominous resistance of North Korea).¹⁸ On 26 September, the treaty was opened for signature by the UN. It had been agreed that all 44 countries, which by 1996 used atomic energy for peaceful or military purposes (and were therefore listed in an appendix to the CTBT), had to sign and ratify the treaty to bring it into force. Of these countries, all but India, North Korea, and Pakistan signed the treaty (Pakistan refused to sign if India did not sign). Of the signatory states, however, China, Columbia, Egypt, Indonesia, Iran, Israel, the United States, and Vietnam did not ratify it. The CTBT thus never entered into force. For some years, uncertainty about the ratification process and hopes attached to ratification by China or the US kept it in limbo. However, Bill Clinton's failed attempts of getting the CTBT ratified by the US Senate did not bode well, and in 1999, the Senate overtly denied ratification. This practically pulled the rug out under all attempts to turn the final CTBT text, as passed by the UN, into a binding treaty. In 2001, the new US administration of George W. Bush declared that it would abandon the CTBT (Table 2).¹⁹

¹⁷Iran had an issue with Israel's affiliation with the Middle East group, a problem that was independent of the OSI agreement; see Hansen (2006: 42) and Zartman and Lendorfer (2014: 130) for further details.

¹⁸For the UN stage of the negotiations, see Hansen (2006: 44) and Ramaker (2014). India's attempts to block the CTBT in the UN and its final rejection of the treaty are analyzed by Möller (2014).

¹⁹See Corden (1997) and McIntosh (2014).

Table 2 Comments on the changing views on OSI during the CTBT negotiations

20 June 1994	China stated that approval on OSI should be taken by a two-thirds majority of the members present and voting. China's position on this question would evolve as the negotiations progressed	77
29 June 1994	Israel proposed a decision on OSI by 2/3 of the EC membership	138
26 July 1994	A contentious discussion began on the composition of the EC and on how much of a majority vote it would need to take a decision on the launch of an OSI	77
5 Aug 1994	There was a clear divergence of opinion on how easy OSI should be to initiate; proposals ranged from 1/4 of EC membership to 2/3 of present and voting to 2/3 of membership (which was already a reduction from an earlier 3/4 requirement by some)	139
June 1995	Some states required a 2/3 majority of members present and voting for OSI approval; some required 2/3 of all members; Some (incl. India) wanted a 3/4 majority; the US required a 1/3 majority of membership	80
28 May 1996	The draft treaty text stated that an OSI approval required a majority of all EC members. China, supported by Pakistan, firmly held that it should be 2/3 of all members	86
26 June 1996	Pakistan objected in particular to the provisions on the composition of the EC and the OSI trigger mechanism. China stated that the draft did not reflect its interest in the decision making process of the EC on OSI	34
9 Aug 1996	Last change to the draft by the chairperson—the provision that the decision to approve an OSI should be made by 30 (rather than “the majority of”) affirmative votes of the EC (out of 51 members)	36
12 Aug 1996	A revised draft treaty with one substantive change replacing “majority of all” by “at least 30”	86

Last column refers to the page number in Ramaker et al. (2003), where the information can be found

2 OSI: STRATEGIC ISSUES

Trying to assess strategic aspects of EC composition and voting thresholds for OSI, several points immediately come to mind.²⁰ First, the EC was obviously not conceived to comprise states with the greatest influence and interest in nuclear non-proliferation. The EC is rather a typical UN council, in which all have an opportunity to co-decide and care is taken to represent various regions of the world. Consequently, the composition of the 51

²⁰For a more general analysis of strategic aspects of CTBT and OSI, see Hopmann (2014) and Zartman and Lendorfer (2014), and the conclusion by Melamud, Meerts and Zartman in Melamud et al. (2014).

EC members changes over time, like in democratic parliaments, but with a provision that facilitates the entry of new members. Given the unanimity rule in the CD for agreeing on a CTBT, nothing else was to be expected. In any case, the shifting outlook of the EC renders it difficult to predict probabilities of coalition formation for more than one or two years in the future, even if political analysts would be able to confidently assess them for the present. This issue complicates the strategic analysis of OSI voting thresholds for all interested parties. Take, for instance, the US. An analyst might be asked to specify the chances of the US to successfully initiate an OSI, given a voting threshold of 30 EC members and an underground nuclear explosion that occurs five years from now on the territory of state X. Moreover, let us add some evidential uncertainty. The seismic signal for a nuclear explosion is ambiguous, and is taken by the US administration as evidence for a nuclear test, mainly because of a combination with further intelligence data.²¹ However, other states can be expected to distrust US intelligence. Due to possible differences in the interpretation of data (and the possibility that some states might even deny clear evidence), our analyst might simply count the friends and foes of the US in the EC, assuming friends will vote with the US and foes against it. For neutral states, the votes are left open. The point is that even such a straightforward friend-foe consideration, whatever its merits, must remain uncertain with respect to future EC because the analyst does not know who will be in the EC at the time of decision. Of course, one can conduct scenario-analyses concerning future EC membership, but uncertainty grows with the number of scenarios to be analyzed. There is thus considerable uncertainty how the EC will respond to the wish of a member state to conduct an OSI, especially when a nuclear test is detected only with some probability and not beyond reasonable doubt.

Signatory states of the CTBT, which nevertheless pursue an undeclared nuclear weapons program, might strategically exploit this uncertainty. They could wait with a nuclear test until the composition of the EC is favorable for them to carry out their endeavor. This is not to say that a potential vote by the EC is transparent to them. CTBT violators also face considerable uncertainty with respect to the implementation of an OSI. They possess, however, an asymmetrical advantage. Since they can wait with a test until the composition of the EC is in their favor, they have an informational

²¹ On the potential ambiguity of seismic signals, see Hopmann (2014: 55).

advantage over others who want to safeguard nuclear non-proliferation. It is not clear how important this advantage is. After all, EC voting behavior remains a factor of uncertainty, even for presumed CTBT violators. Yet it is conceivable that the asymmetric informational advantage of potential violators on the prospects of an OSI might be considered a drawback of the CTBT setup.

For protagonists of nuclear non-proliferation, such concerns can serve as an additional reason to demand low thresholds for launching an OSI. Note that low thresholds may backfire for all states that already possess nuclear weapons. For them, ambiguities in the CTBT text may pose another problem. To see why, let us examine the following hypothetical, but hardly farfetched, scenario.

Imagine that a nuclear power wants to modernize its arsenal of nuclear weapons. It conducts an underground test without full nuclear explosion, which nevertheless leads to the incidence of some radiation. There is no notable seismic signal, but another member state of the CTBT presents strong intelligence data that the state in question has conducted a ‘sub-critical’ test including an aborted nuclear explosion.²² How will the EC respond if the possessor of the intelligence data calls for an OSI?²³ A low threshold for inspections increases the likelihood that an OSI needs to take place in the nuclear power in question in our case. Let us assume that the nuclear power in question is the US and one-third of the EC members (17 votes) suffice for launching an OSI, as proposed by the US. Let us also assume that all 10 EC members from the region ‘North America and Western Europe’ vote with the US turning down the launching of an OSI. There are still 41 other EC members from which only 17 (42.5%) need to be convinced to initiate an OSI. This hardly seems impossible.

Western nuclear powers, and above all the US, apparently have a strategic reason to reject very low voting thresholds for OSI, which might hamper

²²The CTBT text prohibits “nuclear weapon test explosions or any other nuclear explosion” (Hansen 2006: 26). However, it remains vague what that exactly means. Is an explosion that involves (fissile) nuclear material, but is not caused by a nuclear chain reaction, contained in the category ‘any other nuclear explosion’?

²³For those who believe that in such a case clearly no OSI is called for, assume that Iran conducted the test. And if an OSI would be called for in the case of Iran, why not for the US or others? Are CTBT member states not juridical equals?

their research on nuclear weapons.²⁴ They also have an incentive to strive for a just low enough threshold to be easily reached by a US-led coalition in the EC. Viewed from this angle, the majority rule of the chair's text or the final compromise of 30 required votes do not look all that bad for a Western coalition. Take the majority threshold of 26 votes. Although the composition of the EC may not be known in detail, ten members come from 'North America and Western Europe'. Let us assume that they all vote with the US. Seven countries come from Eastern Europe, most of which are even more pro-US than Western Europe—which results in 16 positive votes. Only ten further votes from the 35 remaining members from Africa, Latin America, and South or South-East Asia, etc., are required for an OSI to be launched. There are enough clients and friends of the US in these regions to render a positive vote likely, regardless of the precise composition of the EC. Such a scenario seems quite possible, and it is not unfavorable to the interests of the US.

In consequence, the uncertainty of the EC composition, if considered from a detached analytical perspective, does not really pose a major problem for the US, by far the most influential superpower in the world. For moderate voting thresholds, say below two-thirds or three-fourths, the US can pretty much rest assured that it will be able to attain the required number of votes to start an OSI if its data suggest that a nuclear test has occurred abroad. Ironically, in light of the US's initial 'red light' approach, a moderately high threshold even protects its leading role in nuclear weapons research, specifically if activities in grey zones of the CTBT should prove necessary for retaining the lead. By contrast, it is much more difficult for the US's usual adversaries, say Russia, China, or Iran, to launch an OSI against the US with a 26- or 30-vote threshold than under a 'red light' regime. They are the ones who should be most concerned about the uncertainties of EC composition, and the ability of CTBT members to choose a suitable point of time for weapons tests. With a threshold of 30 votes, the US only needs 22 blocking votes, and abstentions now count as blocking. Assume again that 16 North American and Western or Eastern European members vote with the US or abstain, and that at least 6 countries from the rest of the world support the US. It is difficult to see how Russia, China, or Iran could overcome this barrier.

²⁴For US qualms about restrictions for the modernization of their nuclear arsenal, see Ferderber (1997) and McIntosh (2014: 155).

The outlined considerations characterize the agreed upon threshold of 30 votes as good for the US. This is not to say that it was perceived as such in circles that wanted to retain strong US capabilities for modernizing its nuclear arsenal. US strategic perceptions are heavily colored by domestic bipartisan controversies. In the competition between the Democratic and Republican parties in the US, polarized positions concerning nuclear arms reduction and non-proliferation have evolved, which are used to distinguish political friends from foes, and have their own political dynamics. Internal political rifts within the US have always had a decisive impact on US foreign policy, but the end of the Cold War between the US and the USSR in the 1980s added further weight to them. The more the US can act as the sole remaining superpower, and the more it therefore resembles an empire, the more internal political considerations can influence its foreign policies, because external constraints on US power have diminished. This in good part explains why a treaty that most non-aligned political analysts consider to be clearly beneficial to the US has come under attack in Congress and has not been ratified. Democrat presidents Clinton and Obama have pushed for ratification, whereas Republican president George W. Bush has opposed the CTBT.²⁵

Since we are only concerned here with the negotiating process up to the signing of the CTBT in 1996, we need not further account for US party politics. The Clinton administration was extremely supportive of the treaty, and for various reasons (not necessarily those highlighted here), it did not staunchly oppose a threshold of 30 votes. It might have sufficed that, for the US, the prospect of a 30-vote threshold was not so different from a 26-vote threshold. Given 16 votes from North America and Europe, 40% (that is, 14) of the remaining 35 are required to start an OSI. This percentage is up from 28.5% (10 of 35), but given the global influence of the US, hardly a matter of serious concern.

3 THE ROLE OF SALIENCE AND FOCAL POINTS

The OSI issue within the CTBT negotiations is ripe with salience. This is not surprising, as it involves an agreement on voting thresholds, and voting thresholds are an issue par excellence for studying the role of salience in decision making. (Remember that in the present context, salience is a

²⁵ See McIntosh (2014).

matter of jointly recognized conspicuity with respect to outcomes and proposals). Many voting thresholds have no specific justification besides their simplicity and salience in partitioning a constituency. Take requirements of two-thirds or three-fourths majority. Such thresholds emerge when a stronger consensus than a simple majority is required in a community. But why two-thirds or three-fourths? In principle, any high percentage of voters could represent a significant majority. 68.73 or 73.12% are as good in this respect as 66.66 or 75%. For straightforward majority voting, of course, other considerations can be adduced.²⁶ A threshold of 50%, the mid-point in the continuum of fractions of a constituency, is a uniquely salient point (and thus, a focal point), given that unanimity as a requirement is ruled out for practical reasons. Yet, it is also the threshold at which more members of a community are in favor of than against a proposal, which is a reason to adopt it, as it instantiates the principle that a majority of the members of a community should be entitled to speak for the community. This, at least, is a classical way for understanding majority rule. In the case of a 50% threshold, we therefore find a combination of salience and justification grounded in political theory. In some contexts, majoritarian considerations can also be used to shed light on the need to set acceptance thresholds higher than the majority line. If the task is to avoid spurious victories of one side, which are merely due to statistical fluctuations in competition between equally strong parties, a slightly higher threshold than 50% approval might suffice. In practice, a threshold of 55% is sometimes adopted.²⁷ Why not 54 or 56%? It matters here that 55 is a focal mid-point between 50 and 60, and thus a ‘natural’ solution in the presumed range of statistical fluctuation. In contrast, higher voting thresholds, such as the two-thirds (66.6%) or three-fourths (75%) lines seem to represent different considerations, the most important being the predominance of the winning side in a community. With such high thresholds, the losing side would usually see no point in standing up against the outcome of a vote, either through violence or through peaceful campaigning.

Given that strong consensus is indeed the aim, two-thirds or three-fourths thresholds seem natural because they are salient. There is no *specific* political or normative reason why a two-thirds majority should be better

²⁶ See Black (1958) and Pattanaik (1971).

²⁷ See the chapter by Sinisa Vuković on Montenegrin independence negotiations in this volume.

than one of, say, 68.73% or some other number that suits the *general* consideration of representing a ‘dominant’ consensus in a community. All these numbers are equally eligible because they stand in the same relation to the theoretical reasons calling for a pronounced, strong majority. However, the salience of simple fractions, or plain percentages such as 60, 70, or 80%, renders them particularly suited for being selected as voting thresholds. If no contrary reasons exist, we most easily agree on solutions that ‘stand out’ and thus attract our attention.

Salient percentages for strong majorities exist in the plural, whereas genuine focal points in the sense of Schelling (1960) should be commonly known to be uniquely salient, or at least stick out head and shoulders above other salient options. This is not the case for voting thresholds such as two-thirds or three-fourths, all of which seem eligible by political planners or by a community. Two-thirds might appear ‘simpler’ because it is a fraction of smaller natural numbers than three-fourths, but three-fourths has the advantage of being the mid-point of the relevant range of 50–100%. We may therefore conclude that the problem of setting high voting thresholds has no obvious focal solution but is nevertheless structured by the existence of several salient outcomes. The same is true, of course, conversely for the search for low thresholds below 50%.

It deserves to be mentioned that the requirements of communication to the public also speak for the adoption of a salient solution. The public will understand that a salient solution or proposal was chosen because of its salience, and thus does not require a specific justification.²⁸ Calling for a strong majority of two-thirds will not puzzle the public like a quorum of 68.73%. In the latter case, stakeholders will ask: why did they settle for this specific number? By contrast, a two-thirds threshold will not raise such questions. That is, focal and salient solutions may be particularly suitable in negotiations for which easy acceptance by an observing public is an issue.

4 ANALYSIS OF THE FINAL COMPROMISE

Coming back to the case of the OSI thresholds in the CTBT negotiations, we can now use these preliminary considerations to gain a better understanding of the numerical proposals and demands made in the OSI negotiations. The final proposal, which was accepted, was the 30-vote threshold

²⁸ See Chapter 2 in this book.

in the EC. China insisted on this threshold, which is the midpoint between the preceding suggestions of 26 (i.e. majority) and 34 (i.e. two-thirds) members of the EC. Therefore, we should discuss the split-the-difference property of China's final position. At the same time, we should take into account the fact that China was largely isolated in insisting on it. Other nuclear powers, including Russia, had already acquiesced to the US demand of majority voting, and that, in turn, was the result of a softening of the initial US 'red light' position.

Split-the-difference is probably the most popular negotiation outcome between parties that respect each other as equals.²⁹ It is intuitively perceived as fair by persons who are not familiar with elaborate theories of justice and principles of bargaining theory. On deeper reflection, there are also more fundamental reasons for the split-the-difference approach. In simplified Nash bargaining, for instance, splitting-the-difference is a rational result.³⁰ Since the Nash solution is the best-known result of mathematical bargaining theory, coincidence with it adds an aura of sophistication to the down to earth proposal of evenly dividing a cake.³¹ In ethics, the principle that equals should receive an equal amount of goods can also count on widespread support. Aristotle's concept of distributive justice already included reference to this type of proportionality.³²

On deeper inspection, there is even more moral appeal in the idea of splitting-the-difference. The full normative strength of halfway solutions is only disclosed if their role as moral meta-solutions in negotiations is accounted for. A meta-solution, as understood here, seeks a compromise between suggested incompatible solutions or picks one of them for reasons that go beyond the dispute between the proponents of the incompatible solutions. If the reasons that guide the compromise or the selection of a solution are moral, the meta-solution becomes moral, too. Meta-solutions are interesting in the present context, because they take a plurality of conflicting approaches to the solution of a problem as being given. Starting from there, they show that solutions are nevertheless possible if the parties are more interested in overcoming disagreement than sticking to their entrenched positions. Thus, moral meta-considerations, a field of ethics

²⁹ See Farber (1981), Flood (1958), and Zartman and Berman (1982: 103).

³⁰ See Kreps (1990: 131).

³¹ See Binmore (2007: 473, 482).

³² Young (2006).

and justice that has to date been neglected, become particularly important when the existence of widespread moral disagreement about distributive principles is acknowledged.³³ In fact, negotiating parties usually disagree about what fairness dictates at the outset of negotiations if not at their end. What one party perceives as fair, others will regard as biased and unfair to them. This is not merely a consequence of the parties' egotistical propensity to close their eyes to ethical truth. Not even supposedly disinterested professional ethicists agree on ethical principles, and the question how a cake should be fairly divided between persons when their needs, interests, and aspirations differ, is one they disagree on with particular vehemence. Looking back over a few millennia, historians of morality may tell us that this is not a new predicament.³⁴ Justice and fairness have always been pluralistic concepts to be differently conceived by different persons. Fairness in negotiations is therefore a typical subject for tenacious reasonable disagreement, the argumentatively irresolvable disagreement that arises even between reasonable persons. If this is the predicament of negotiators, the fair (or perceived as fair) resolution of disagreement about fair outcomes or procedures attains some importance in negotiations. What is called for, in other words, are fair meta-solutions which deal with the agents' moral claims in a fair and equally respectful manner.³⁵ Since all agents are assumed to be moral peers, their views should carry equal weight. In that light, the equally weighted average of their positions regarding what justice demands can be defended as a possible fair meta-solution. This, of course, equates to the split-the-difference principle applied to moral differences.

This is not the only point to be made with regard to the split-the-difference principle, however, as there is another second meta-solution method that speaks in its favor. The midpoint of an interval denotes an equally weighted average of the boundary points, but it also constitutes a

³³ Gaus (2011) argues that ethical meta-solutions should be taken seriously, and so do I with respect to negotiations in Schuessler (2018).

³⁴ On tenacious moral disagreement and how to live with it, see, e.g., Feldman and Warfield (2010) and McMahon (2009).

³⁵ This has also given rise to the idea of meta-bargaining, i.e. formal bargaining concerning the choice of a specific bargaining solution, see Naeve-Steinweg (1997) and Van Damme (1986).

focal point. Hence, the split-the-difference principle simultaneously represents not one but two viable methods of finding a meta-solution to problems of moral disagreement and respect for moral agency. These meta-considerations help explain the normative resilience of what at first glance may seem little more than overly simplistic split-the-difference folklore, as it shows that this folklore coincides with more sophisticated ethical considerations or axiomatic models of bargaining.

Despite this, some experts on negotiations warn to not “fall for the even split ploy”, pointing out that accepting an even split is not always in the interest of a negotiating party, nor is it always moral.³⁶ There is some truth in this, as the meta-level morality of split-the-difference depends on the morality of the initial positions that form the basis for finding a focal point or calculating an average. Only the morality of the initial positions grants moral status to a meta-solution that accepts the initial positions as a starting point. By contrast, an even split between arbitrarily chosen outer positions would lack moral significance. The question, therefore, is whether the penultimate positions in the negotiations on an OSI voting threshold can be plausibly regarded as fair. This question is particularly pressing, as China was the only country holding out. One could therefore question whether China was entitled to call for a halfway compromise when no other country did.

In the CTBT case, the original positions represented familiar voting thresholds or were based on precautionary considerations. They therefore do not appear arbitrary in the sense of individual willfulness. Moreover, if we aggregate the parties into low threshold and high threshold supporters, both sides had taken comparable steps toward a compromise. The ‘low’ parties had started with a red-light approach, then moved to a one-third green-light threshold, and to a majority requirement. The ‘high’ parties went from accommodating the US’s demand of possible use of single party intelligence to a three-fourths threshold, and then to a two-thirds threshold. Hence, the interpretation that both sides had taken comparable steps to arrive at positions (26 and 34) that were 8 votes apart is a plausible one. From that perspective, splitting-the-difference is not just focal, but also seems fair.

There is, however, the problem that when a last compromise was called for, the ‘high’ party was divided. Russia and Iran were willing to accede

³⁶See Thompson (2001: 52).

to Western demands and accept a majority threshold. As far as the 30-vote proposal is concerned, China went for it alone. Still, the Chinese position was not mere willfulness. As shown, China was insisting on a solution that can be plausibly defended as fair. The fact that formerly likeminded countries were yielding to US power has no bearing on its fairness. Many moral systems accept such stand-alone defenses of moral principles or just outcomes even against considerable odds.

It is, of course, doubtful whether this was the only reason why China decided to be tough. More than likely, the fact that China wanted the US to feel its rising power, and non-aligned countries to register this, played at least as big a part in its positioning as considerations of fairness did—if, indeed, fairness played any role for China at all.³⁷ Yet even if that is the case, it is important to note the strategic advantages that can be gained when one's self-interested position can also be styled as a moral one, and even more so if it is moral from a reasonably defensible perspective.

From the point of view of low threshold supporters, the split-the-difference property of a 30-vote threshold had advantages, too. As outlined above, split-the-difference has a variety of moral and non-moral properties, which render it attractive as a compromise solution. Hence, accepting it does not commit a party to accepting its opponent's specific conception of justice. Instead of regarding it as a fair compromise between equally defensible penultimate positions, low threshold supporters could interpret it simply as a focal point in the final zone of possible agreement. Accepting the final offer of 30, therefore, does not imply any recognition of the 34-vote proposal as an anchor for a fair solution.

Nevertheless, the US had to accept that China had prevailed, which somewhat dimmed the brightness of the US's aura as the sole remaining superpower. Such issues of signaling and reputation were probably influential considerations at the end of the OSI threshold negotiations as well. Yet they did not dominate the outcome. At the time, inducing India to accept the entire CTBT package still was to be regarded as a genuine possibility, if only a compromise on an OSI threshold could be reached.³⁸ India, as already mentioned, was generally disappointed with the course of the CTBT negotiations, and subsequently tried to block the acceptance of the treaty

³⁷ See Hansen (2006: 39).

³⁸ See Möller (2014).

by the UN. When the compromise on OSI thresholds was made, however, it was not entirely clear that India would rebel. It was therefore not unreasonable to hope that the compromise on the OSI with China might sway India to acquiesce to the CTBT—binding India and Pakistan to a nuclear test ban would have been a major success for international nuclear diplomacy. In the light of such considerations, it appears understandable or even commendable that the US swallowed its pride to achieve a justifiable result. As so often with focal solutions, the outcome could be regarded as suboptimal by all sides. Yet it was far less suboptimal than failure would have been, which is the general justification for compromise solutions in negotiations. Moreover, if the foregoing considerations are correct, then as far as purely strategic considerations are concerned, it should not have mattered much to the US and its allies whether the voting threshold was set at 26 or 30 votes of a total of 51. From a practical perspective, it would be no more difficult for the US to marshal 30 than 26 votes by its friends and clients in the EC in case of a nuclear test by one of the signatory states of the CTBT.

The problem of the outcome of the CTBT negotiations was that it appeared in a different light to various stakeholders after the negotiations were finished than it did to the participants during the negotiation process. These stakeholders could, and did, block ratifying processes for reasons of domestic politics.³⁹

5 CONCLUSION

The haggling over OSI thresholds within the CTBT negotiations represents a paradigmatic case for the role of salience and focal points in negotiations.⁴⁰ We refer to a proposal or a solution as focal (or a focal point) if it is commonly known to be singularly conspicuous to all parties involved. This may be the case because the respective proposal or solution is known to be the only conspicuous one, or because it is beyond doubt more conspicuous than any other. We refer to a conspicuous proposal or solution that does not possess the mentioned additional properties, or which competes

³⁹ However, it should also be noted that one of the crucial reasons for the compromise no longer applied when these stakeholders had to decide whether to ratify the treaty or not: at that time, the prospect of tying India to the outcome was no longer present.

⁴⁰ For the terminological distinction between salience and focality in the present context, see Chapter 2.

for conspicuity with other proposals or solutions, as salient. With these terminological decisions in place, the OSI threshold negotiations involved salient proposals before an (near) agreement on a focal point was reached.

Voting thresholds of one-third, one-half, two-thirds, or three-fourths of a constituency are salient. They derive from an apparently natural partition of a total constituency into simple fractions. Except for the majority threshold of one-half, political theory does not offer any reason why a voting threshold should be a simple fraction rather than an arbitrary, more complicated number. The thresholds in question are usually chosen because they appeal to us in their simplicity and salience, while representing different views of the amount of consent that should be required for a decision. For sure, the mentioned fractions are often also chosen because they represent familiar voting thresholds. This argument of precedence might have motivated parties to the CTBT negotiations to suggest simple fraction thresholds for OSI inspections. However, present salience can arise from precedence just as much as past salience may have caused the precedence.⁴¹ That is, precedence is itself a salient motive that can influence negotiations and more generally actions. Be that as it may, in making salient proposals for voting thresholds, the CTBT parties followed a foreseeable course.

The final compromise on a threshold of 30 votes in the EC is a different matter. It arose from a power struggle between a US-led group of states and a countervailing group from which China emerged as a hard-liner. The US-led group had settled on a majority rule in the EC (26 votes) after protracted haggling, whereas the opposing group called for a two-thirds threshold (34 votes). Due to China's insistence, the final compromise was 30 votes, exactly the mid-point between the penultimate positions of the two antagonistic groups. In the end game of the negotiations, the number 30 formed a focal point in the remaining zone of possible agreement. It also embodied the split-the-difference logic of compromise, whose various strategic and moral justifications have been discussed above. It nevertheless seems surprising that the US-led group accepted China's solo run, especially since Russia was willing to yield to the US Considerations of power and reputation spoke for taking a tougher stance on China. However, the US administration was eager to arrive at an agreement, and rightly so (depending on your view concerning the importance of reputation vs. reason). At the time, there was still a realistic chance of getting India

⁴¹ See the Chapter by Brown and Zartman in this book.

on board if an agreement was reached, and successful CTBT negotiations would have served the whole world, including the West. As argued here, the difference between a 26- and a 30-vote threshold was not significant in objective strategic terms, especially for the West. Given these reasons, it is understandable, perhaps even commendable, that the US administration sacrificed some of its reputation to achieve a reasonable result. The formulaic, focal, and split-the-difference character of the agreement may well have helped to make the implied sacrifice easier to bear.

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Negotiating Peace Agreements: The Value of Focal and Turning Points

Valerie Rosoux and Daniel Druckman

1 INTRODUCTION

The purpose of this chapter is to show that the notions of focal points and turning points offer new “lenses” through which we can examine negotiation cases. To do so, it compares four emblematic cases of peace agreements and asks how focal points and turning points can catalyze each other

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in ways that make agreements more durable. The study does not demonstrate a necessary causal relation between focal points and turning points. It explores the implications of these concepts for producing effective and durable peace agreements. On this particular matter, it indicates that the more precise and specific the focal points, the more sustainable the agreement may be, particularly when accompanied by turning points.

The concept of a focal point (FP) was introduced by Schelling (1960, 1980). It is construed as a feature of a bargaining situation that provides a salient solution to the bargaining problem of reconciling the dilemma of realizing one's own preferences without jeopardizing an agreement. It takes on particular relevance as a way to resolve the indeterminacy of this dilemma, not because it is the best joint outcome but because it is a salient or prominent way out of the dilemma. As Schelling puts it: "If not here, where?" (1980: 70). Examples of FPs are precedents, the status quo ante, features of the landscape, well-known formulae such as a 50% solution, and geometric configurations. Recognizing these features as a way out of their dilemma, bargainers understand the value of converging on them as solutions.

Focal points are especially attractive when both (all) bargainers feel some degree of desperation for an agreement. This is demonstrated by the results of an experiment conducted by Benton and Druckman (1973). These investigators found that the differences in competitiveness between team representatives and non-representatives were attenuated when a salient equal concessions outcome—a focal point solution—was possible. Another early study showed that bargainers coordinated on fair outcomes and got quicker agreements when these options were available (Joseph and Willis 1963). This outcome served to minimize the maximum concessions that either bargainer had to make. It is the preferred outcome when deadlock is discouraged in the task instructions (Hermann and Kogan 1968) and when loss of face is at stake (Hornstein 1965). Thus, pressures to compete are reduced when bargaining representatives have an opportunity to converge on an equal-split outcome: They also have lower resistance points (a willingness to move further from their initial positions) and feel that their teammates did not expect them to win as often (Benton and Druckman 1973).

Interestingly, those bargainers in the Benton and Druckman study that rejected the equal-split solution in favor of an asymmetrical outcome that favored themselves were less satisfied with their outcome than were the representatives who settled on the equal split. They viewed themselves less

positively and as behaving more selfishly than did the “losers.” This suggests that they may have felt “guilty” for attaining more resources than their opponent when an equal split was possible. An implication of these findings is that FPs are powerful solutions to the bargaining dilemma of striving to win versus getting an agreement. They provide a way out of this dilemma that, if rejected, leads to a kind of bargainer’s remorse. With regard to mediation, a study by Conlon et al. (1994) found that mediators were more effective in moving bargainers in the direction of integrative outcomes when they communicated an understanding of equal-split, compromise solutions. These functions served by FPs render them as important tools for negotiators and mediators.

Taken together, Schelling’s insights about factors that facilitate coordination and the experimental findings on the availability of fair outcomes pave the way for further investigations of the FP concept. One direction is to examine the role played by FPs in various cases of international negotiation, particularly in matched cases that facilitate comparative analyses. Lacking in the earlier experimental research is an analytical framework to guide this sort of investigation. The research does however provide a starting point for the development of a framework. It suggests some antecedent conditions for the emergence of FPs and possible consequences emanating from discovering these FPs. One condition is the idea that parties are mutually desperate for an agreement; the alternatives are unattractive. Another is that they recognize cues in the bargaining environment that suggest possible solutions. They also evaluate potential FPs in terms of their value in minimizing the maximum concession that either party must make. With regard to consequences, mutual satisfaction with the FP as an agreement provides short term stability. Improved relationships over time and a willingness to re-negotiate as needed are longer-term consequences. The linear connection between antecedents, FP acceptance, and consequences of the agreement provides a framework for analysis of FPs. It is similar to the three-part framework that has been used to analyze the related concept of negotiation turning points (TPs) (e.g. Druckman 2001). It would seem useful to analyze FPs in relation to TPs.

Similarities and differences between FPs and TPs are instructive. Both concepts address impasses and provide possible solutions. Both are triggered by a need to reach agreement or to make progress toward agreements. And, both emphasize coordination that results from a new idea, procedure or external event. A difference between these concepts is that FPs are usually considered to be solutions or outcomes while TPs are part

of a negotiating process that is understood in terms of a chronology of events. The word “point” has a different meaning for these concepts. A FP refers to a salient coordinating concept or formula shared by the parties. A turning point describes the point in time at which the trajectory of a negotiation changes—it is an element in a chronology of events. A TP is a departure that takes place during the course of a negotiation, when the course seems to change. Precipitants precede turning points and consequences follow them. The term “turning point” is used as a shorthand designation for this three-part process. That process provides a structure for understanding the functions served by FPs. They can precipitate negotiation departures or they can actually be a type of departure. Of course, they can also occur independently of each other and have no relationship within any given negotiation, as illustrated by the overlapping circles in Fig. 1.

The relationship between these concepts is illustrated by the 1987 talks between the Soviet Union (SU) and the United States (US) on intermediate-range nuclear forces (INF). Reagan’s July 1987 double zero proposal (the elimination of all nuclear weapons by both parties) provided a FP for the talks. It included the elimination of both short and long range INF in Europe and SS-20s in Asia. It resolved the key sticking point which was verification of force reductions. It led to procedural changes in the talks: the delegations were divided into working groups (a procedural precipitant) that produced the mechanics for getting an agreement in principle (a departure/TP) which opened the doors for a treaty signed by both parties in December 1987 (short term consequence). It also set the stage for

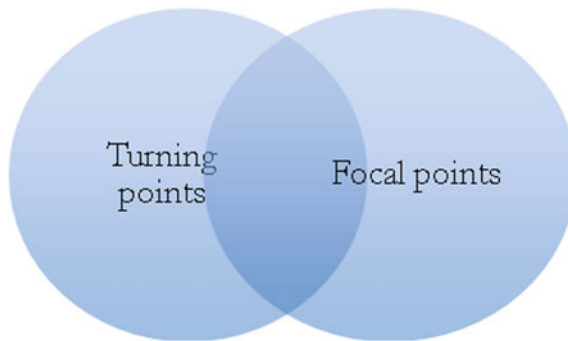


Fig. 1 Schematic overview of overlap of turning points and focal points

the stream of unilateral force reductions taken by the SU (long-term consequence). This example illuminates how a FP (double zero) can produce a TP (agreement in principle) that has both short and long term consequences. It also suggests that there may be value in placing the FP concept in the context of the TP framework.

When FPs precede TPs, as in the INF example, they serve to improve the prospects for making progress toward an agreement. But they may also follow TPs, just as outcomes emerge from processes: the TP is a departure from a stalemated process that sets the stage for the discovery or invention of a FP. These time-sequenced processes demonstrate a conjunction between the concepts as shown in the overlap of the figure above. Yet it is likely as well that FPs (TPs) occur without TPs (FPs) as shown in the non-overlapping areas of the figure. These possibilities are summarized in the form of a 2×2 table as follows (Table 1).

By presenting the alternative possibilities, this table provides a structure for comparative case analysis. By adding a temporal dimension, the following questions are suggested:

- When (under what conditions) do FPs precipitate departures?
- When (under what conditions) do departures lead to FPs?
- When do FPs (TPs) occur without TPs (FPs)?
- Are FP agreements more (less) durable than non-FP agreements?
- Are FP agreements that emerge from or follow TPs more durable than those that occur without TPs?
- Do FP agreements that emerge from or follow TPs enhance the relationship between the negotiating parties more than those that occur without TPs?

These questions are the bases for hypotheses, which can be developed and refined from more in-depth analyses of selected cases. We begin to address these questions in the case analyses to follow. Regarded as a first

Table 1 Combination of focal points and turning points

		<i>Focal points</i>	
		Yes	No
Turning points	Yes	<i>Case A</i>	<i>Case B</i>
	No	<i>Case C</i>	<i>Case D</i>

step in a research program, we focus on cells A and C in the matrix and ask the question: Do better, more durable agreements occur when FPs occur in conjunction (before or after) TPs? The comparison is between cases where TPs precede or follow FPs (cell A) or do not occur with FPs (cell C). The cell A cases include negotiations between the German government and international organizations over compensation for victims of the Nazis that took place in July 2000 and negotiations in South Africa on the creation of the Truth and reconciliation commission (1986–2003). The cell C cases consist of Arusha Peace and Reconciliation Agreement with regard to the civil war in Burundi in 2000 and the Noumea Accord between France and New Caledonia in 1998 to set a timetable for the gradual transfer of responsibilities from France. Implications for the value of FPs in producing effective and durable agreements are developed along with a discussion of further steps in the research.

2 FOCAL POINTS AND TURNING POINTS

Cell A is illustrated here by two case studies that allow us to question the notion of focal point with regards to the issues of truth and justice in the aftermath of mass atrocities. The first case shows that a focal point can be seen as a precipitant leading to a turning point, while the second case illustrates how turning points can also produce focal points. Thus, turning points can be seen both to precede and to follow focal points.

We decided to work on the reparation issue for three reasons. First, this is one of the “most difficult hurdles in the negotiation process” (Colvin 2006: 178). Case studies show that this contentious issue always takes so long to resolve (Maharaj 2008). Second, this is one of the most decisive questions to deal with in order to move on in a durable manner. The absence of negotiated agreements on that matter prevents any transformation of relationships between former adversaries (Rosoux 2013). Third, this specific focus allows us to widen the scope of FP in real life. This reparation issue is being currently faced by parties all over the world, with examples from Tunisia, Colombia, Cote d’Ivoire and Egypt.

2.1 *FPs Leading to TPs: The German Foundation Agreement*

In 2000, the US and Germany concluded negotiations with the Agreement Concerning the Foundation “Remembrance, Responsibility, and the Future” (called “Foundation agreement”). The explicit purpose of the

negotiation process was the rectification of mass human rights violations. It was concretely to establish a voluntary fund financed by German industries and the German government. The whole process illustrates how compensations are negotiated.

Historical Context

In 1945, post-War Germany focused on economic recovery, rebuilding and integration into the west. Rather than emphasizing the past, the objective was to put it aside in order to move forward. At the end of the war, all parties shared a common objective, i.e. avoiding the perceived mistakes of Versailles (1919). They chose a system of state-to-state reparations rather than individual compensation claims (see the Transition Agreement—*Ueberleitungsvertrag*—and the German-Israeli Treaty—Luxembourg Agreement—in 1952). In 1953, the London Debt Agreement (signed by the US, German Democratic Republic and 17 other nations) suspended all legal claims arising out of the Holocaust until the 2 + 4 Treaty in 1990 (Allies + East Germany and West-Germany), which courts interpreted as lifting the moratorium.

In the aftermath of the fall of the Berlin Wall, two main events precipitated a FP, which led to a TP. The two precipitants that led to the German Foundation Agreement are the threat of litigation and the new elections. In 1998, Swiss banks agreed to a 1.25 billion class action settlement. Art Galleries were also confronted with claims that valued items in their collection that had been stolen during the Aryanzation of Jewish property. Then, slave laborers began to sue German companies for restitution seeking compensation and damages for pain and suffering. In response to the flood of litigations, German companies sought alternative resolutions and initiated negotiations with the US. The second precipitant regards the elections, which occurred in Germany in the Fall 1998. A new center-left coalition of the social democrats and the green party immediately declared that compensation of slave laborers of the Third Reich would be one of its programmatic goals. A negotiation process started between American government officials, trial lawyers representing the victims, German company heads, American Jewish leaders and foreign representatives from many nations.

Process

The negotiation process was based on a basic tension between Germany and the US who were the only signatories: The Germans wanted to put an end to Holocaust related litigation (“legal peace”) while the American representatives were eager to facilitate compensation for Holocaust victims. The process unfolded as follows. In February 1999, Chancellor Schroeder announced a plan to establish a \$1.7 billion foundation. The rejection of this plan led to an initial impasse largely due to the disagreement on the sum. In December 1999, the parties settled on a total of 10 billion DM—DM 5 billion funded by the German government and DM 5 billion by 70 German companies. These round numbers (10/5–5) are decisive FPs that simplified the whole debate and led to the TP, which consisted of the establishment of a voluntary fund (henceforth: the Fund). The parties agreed on a formula that constituted the basis of their compromise: Germany would establish the Fund in exchange for a Statement of Interest by the US Department of State urging dismissal of every case filed in American courts by a claimant eligible for a foundation payment. This agreement on the formula was followed by another round of rancorous negotiations about how the money ought to be distributed among the survivors. After four months of discussion, parties accepted a new FP on individual compensation, namely, DM 15,000 per *slave laborer* and DM 5,000 per *forced laborer*. Since then, there has been no further litigation on this matter.

This brief description of the process leads to the following path (Fig. 2).

The major interest of this case lies in the existence of two FP – one before the TP and one after. Both consisted of round numbers that were accepted by both parties, an FP in terms of general amount and an FP in terms of individual amounts. The specific form of these focal points is a practical solution that by-passes moral issues. The question was not “how to deal with ‘blood money?’”, but rather “how much shall be paid to the survivors?”. Even though parties extensively repeated that to them, it was “not about money”, the whole process demonstrates that it was primarily about money.

The agreement has been durable. We contend that the interplay between the FPs and TP contributed to its durability. Even though the agreement had critics among the victims’ representatives, it seems to have provided a sense of closure. This case is also an interesting example of how a FP leads to a TP which, in turn, produces another FP.

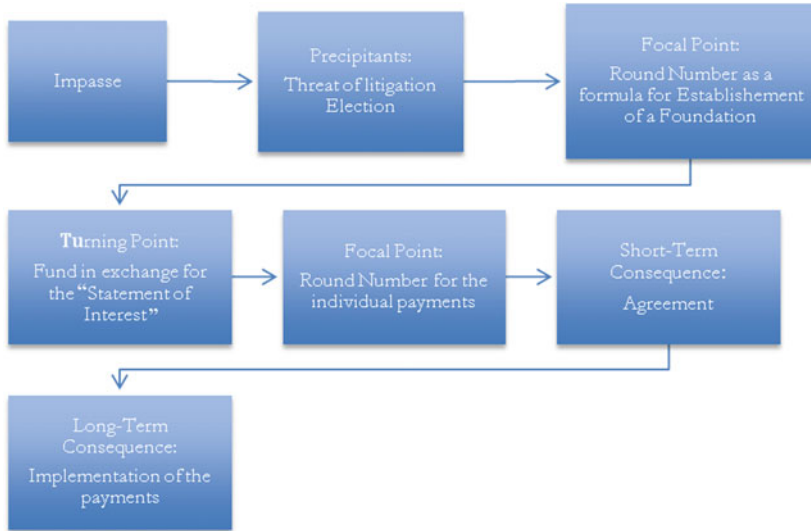


Fig. 2 Schematic overview of the process leading to the German foundation agreement

2.2 *TPs Leading to FPs: The South African Interim Constitution Negotiations*

Like the US-German example, the South African case presents a surprising accumulation of developments—within the domestic and international arenas—that created favorable conditions for an extended negotiation process.

Historical Context

The fall of communism in Eastern Europe meant that the utility of the South African government to the West was diminishing. Western allies began to pressure the government to reform. At the same time, a campaign for the boycott of South African goods was launched in the United Kingdom and led to an increasing number of sanctions against the apartheid regime. Within the country, mass revolts against apartheid succeeded one another during the 1980s. These troubles provoked a succession of states of emergency intended to crush the revolts. Further, major trade unions and churches played active anti-apartheid roles. Similarly, the mainstream

media turned against apartheid by the early 1980s. Various economic inefficiencies provoked a very high level of dissatisfaction with the policies of the government among the white South Africans (see the polls presented by Lloyd 2005: 223). Moreover, black-on-black violence resulted from the rivalry between black organizations in the mid-1980s and early 1990s. In these tense circumstances, both parties—the African National Congress (ANC) and the National Party (NP)—perceived themselves to be in a mutually hurting stalemate. Neither could perceive a way out without the support of the other party. Accordingly, a long negotiation process started and moved from secret talks, consisting of “talks about talks” during the period of 1986–1990, to multilateral negotiations between political parties.

Process

In December 1989, a meeting of the Mass Democratic Movement provided an important platform to disseminate the ANC’s Harare Declaration that dropped Marxist rhetoric and called for a negotiated political settlement. This event precipitated a TP: on 2 February 1990, President de Klerk announced the release of all political prisoners and the unbanning of anti-apartheid organizations. He released Mandela nine days later. This step allowed formal negotiations (1990–1993) interrupted by unfortunate events on the ground, such as the massacre of 40 residents in a township. The negotiations were also at impasse over a fundamental conflict of interest: Those who had power were not going to surrender it without guarantees that they would not be prosecuted after stepping down. The representatives of the democratic movements firmly rejected a ‘blanket amnesty.’ This difference made it difficult to create a zone of possible agreements.

Nonetheless, parties agreed to establish a Truth and Reconciliation Commission (TRC) based on the philosophy of *ubuntu* (Boraine et al. 1994). Ubuntu, a Bantu word that translates roughly to “human kindness,” has evolved as the philosophy that a universal bond of sharing connects all humanity. By providing a culturally acceptable underlying philosophy for restorative justice, this concept constituted a focal point. All parties emphasized that the goal was to serve everyone, victims and offenders. The process did not seek to punish offenders but to reintegrate them into the community, to uncover the truth and acknowledge the injustice, and to repair damaged communal bonds. The traditional notion of ubuntu provided a

ZOPA that made devising a compromise solution somewhere between full justice and blanket amnesty possible. To obtain amnesty, an offender had to apply to the TRC, participate in its hearings, and meet its requirements including full disclosure. The entire process can be summarized by the following path (Fig. 3).

Ubuntu is not a focal point in the sense of a round number. However, it does constitute what we could call a focal *principle* that ultimately allowed both parties—and their constituencies—to bring the negotiation to a satisfactory conclusion. It has several characteristics typical of focal points. A first element is simplicity. Nelson Mandela and anti-apartheid activist Desmond Tutu both stated that the equation that traded individual amnesty in exchange for truth simplified the transition to a new state (Graybill 2002). A second element is contextual fairness. In conflict, focal points appeal because they represent our own understanding of what we think our counterparts will think is fair. In the South African case, all parties expected that a process based on ubuntu would reach an equilibrium solution. As Tutu explained, such an institution was “the only alternative to Nuremberg on the one hand and amnesia on the other” (quoted by Eddings 1997: 13).

This approach also spared the new government from having to “translate suffering into numbers” (Colvin 2006: 192) and thus avoid having to pay possibly unaffordable claims for compensation. The choice made by the South African government illustrates the tension between strictly individual

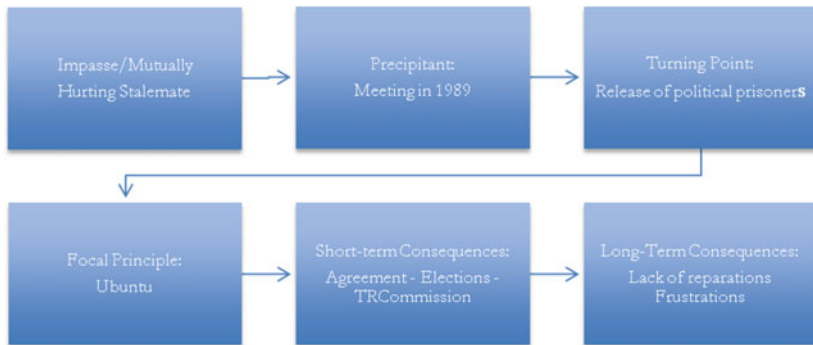


Fig. 3 Schematic overview of the process leading to the South African interim constitution

compensation, as in the German Agreement case, and collective efforts to repair the social order. From this perspective, the work of the TRC was presented as a “stepping stone from a ‘radically unjust’ to a ‘nearly just’ society” (Verwoerd 1999: 482). In addition, like many focal points, this agreement also “split the difference”—although admittedly, not in an arithmetical way—between those who called for full justice (retribution) and those who were in favor of a blanket amnesty that pardoned everybody.

In stressing the important contribution made by this FP, we should not lose sight of the role played by the TP. Negotiations were made possible by de Klerk’s bold moves of releasing political prisoners including Mandela and allowing freedom to congregate and protest by anti-apartheid movements. These moves were major departures in history and thus qualify as TPs. They can also be considered as precipitants to negotiation, which itself could be considered a TP. The concept of ubuntu was a useful device for framing the TRC process that was a basis for societal healing. Clearly, this process would not have unfolded absent the key decisions on prisoners and protest organizations. Illustrated here is how a TP provides momentum for a process in which parties discover a FP principle that provides a solution.

Consequences

In the short term, the negotiated transition ended apartheid and established a democratic regime. It led to the first democratic elections, and created the TRC (1996–1998). From that perspective, the emphasis on *ubuntu* and restorative justice was a vital contribution to the reconstruction of the nation. Participants in the TRC hearings never regretted the establishment of the Commission. However, this popular support became progressively weaker. In 2003, the TRC issued its final report and recommended that reparations be paid to the victims of apartheid, urging businesses to contribute along with the government. Yet, to this day, thousands of people are waiting for reparations. Criticisms towards “the government’s apparent reluctance to deliver reparations” multiplied (Colvin 2006: 177) and numerous voices denounced the gap between the immediate delivery of amnesty to perpetrators and the lack of reparations to address the basic needs of victims. To them, the initial equilibrium resulting from the eagerness to rehabilitate *both* victims and offenders is no longer credible.

The restorative justice promises suggested by the focal principle were not kept. This evolution is decisive to understand the impact of the turning point and focal principle that were identified. In the short term, the

South African population supported the negotiated transition. Restorative justice, as it was negotiated, aimed at achieving the healing and restoration of *all* concerned—of victims in the first place, but also of offenders, their families and the larger community (Van Ness 1993). The ultimate purpose of this initiative was not to punish offenders, but to reintegrate them into the community *and* to repair damaged communal bonds (Tutu 2000). However, many claim that if the offenders’ needs were taken seriously, victims’ needs were not. In the long term, the lack of substantial reparations frustrated victims’ expectations and increased anger among those who wanted more than symbolic acknowledgement.

This shift in attitude raises an important question regarding the TP/FP nexus in terms of durability: Why was their impact critical but not sustainable? The crucial influence of the TP, in the form of an official declaration by De Klerk in February 1990, is clear. As we note above, the release of all political prisoners and the unbanning of anti-apartheid organizations precipitated the negotiation process. As for the focal principle, its particular salience allowed a useful consensus between protagonists but raised expectations that were too ambitious. Major polls demonstrate that the main cause underlying the conflict in South Africa was inequality between blacks and whites. Continuing disparities in wealth, housing, education, and health means that the political settlement “resolved the immediate causes but not the roots of the conflict” (Lloyd 2005: 234). As a result, the durability of the agreement stands on a weak foundation.

At the end of the day, this case questions what is an evident premise to many peacebuilders: honesty is a road to reconciliation. The pretended healing dimension of the TRC can be questioned as well. Even though some individual victims report experiencing feelings of “catharsis”, a lot of them agree that feelings of anger and frustration have not diminished. Given this ambivalent evidence, questions are raised about the likelihood that truth commissions will “secure the claimed benefits, even for individuals” (Allen 1999: 316).

3 FOCAL POINTS WITHOUT TURNING POINTS

3.1 *Arusha Peace and Reconciliation Agreement for Burundi (2000)*

In Burundi, explosions of inter-ethnic violence and more recently intra-ethnic violence have devastated the country since its independence in 1962.

Ongoing impunity for human rights abuses is often depicted as a root cause of the violence. Between 1993 and 2006, a civil war between Burundi's ethnic Hutu rebels and the Tutsi-dominated army ravaged the country and left more than 300,000 people dead, most of them being civilians. There were many attempts to negotiate an end to conflict under the auspices of Jimmy Carter and the facilitation of Julius Nyerere, the former President of Tanzania, until the coup d'état by Pierre Buyoya in 1996. Another round of negotiations was launched in Arusha in June 1998, including 19 parties, but excluding the main rebel group, the Forces for the Defense of Democracy (FDD). These talks initially started under the auspices of Julius Nyerere until his death in October 1999, after which Nelson Mandela replaced him. They resulted in the Arusha Peace and Reconciliation Agreement (APRA) for Burundi, signed on August 28, 2000. The APRA was signed by the government, the national assembly, an alliance of predominantly Tutsi parties, including UPRONA, and an alliance of predominantly Hutu parties, including FRODEBU. However, two active rebel movements did not sign the agreement and have continued their armed struggle.

Process

This case illustrates the role played by international pressure during the negotiation process. Put under intense international pressure with sanctions and embargoes imposed by its neighboring countries, and unable to ensure a military victory, the government was compelled to negotiate. The main purpose of the talks was to find a compromise between the need to protect the right to security for the Tutsi minority and the right to representation for the Hutu majority. The Arusha discussions were based on five committees to encompass various aspects of the conflict. Parties relatively quickly agreed on power sharing, security guarantees, economic and social reconstruction, including reintegration of refugees, but they were stuck with respect to truth and justice.

They eventually accepted the model of the TRC. In this case, the FP takes the form of a precedent, namely, the South African TRC. As a mediator, Nelson Mandela was strongly influenced by the South African model. To the EU and the major western donors, the South African TRC was seen as an ideal compromise to deal with the peace versus justice dilemma. At the same time, actors like the International Center for Transitional Justice (ICTJ) actively diffused their "transitional justice paradigm" (Vandenginste and Sriram 2011). This paradigm has developed over the past 30 years.

It emerged initially from the experiences of a particular group of countries in Latin America's Southern Cone, and focuses on a set of specific measures (prosecutions, truth-seeking, reparations, and institutional reform) in order to redress the legacy of massive human rights abuses. In these circumstances, the South African TRC appeared as an obvious precedent in the eyes of many outsiders. However, this choice did not resonate with the Burundian cultural environment.

Even though all the political and military stakeholders publicly underlined the need for transitional justice, they instrumentalized the notion. Numerous observers denounced a lip service to truth and accountability (Vandenginste 2017). Beyond a rhetorical adherence, they depict a resistance to any form of honesty about the past. The TRC has in fact never been established and all the measures announced to comply with transitional justice were postponed. The main reason for this resistance is that most Tutsi- and Hutu-dominated parties in Burundi had been both victims and perpetrators of human rights abuses since the 1960s, and therefore have a certain degree of responsibility in the past abuses.

The attraction of this case lies in the discrepancy between the exhibited focal point largely shaped by the international community (TRC with an emphasis on the truth dimension) and the actual compromise (TRC with an emphasis on reconciliation, conceived as a “mutual forgiveness”).

In this case, the model of the South African TRC constituted a focal point that seemed initially obvious in the donors' eyes. This coordinating point could hardly be seen as a TP since it did not lead to successful implementation. As it is shown in the following path, the Burundian case illustrates a FP without TP (Fig. 4).

Consequences

Fifteen years after the signature of the APRA, it is worth calling into question its impact. In the short-term, the presumed fifty-fifty solution—the TRC being presented as “halfway” between full justice and blanket amnesty—did not turn into reality. As such, the APRA was a “fundamental step on the road to peace” (Vandenginste 2017). Yet, the root causes of violence remain largely unaddressed (HRW 2010). Violence did not completely end since two rebel groups never signed the agreement. In terms of justice, impunity remains the rule insofar as the TRC was never fully established. The National Assembly approved the names of the eleven members of the Commission in December 2014. However, the vote was

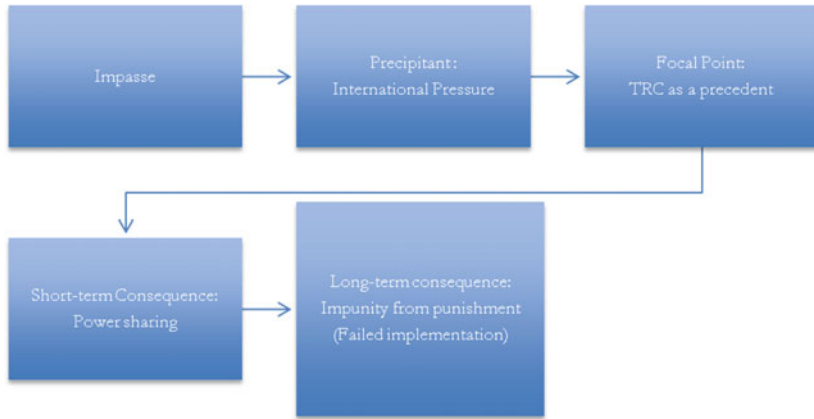


Fig. 4 Schematic overview of the process leading to the Arusha Peace and reconciliation agreement

boycotted by opposition politicians who considered that the commission would only protect the ruling CNDD-FDD party of President Pierre Nkurunziza and therefore ignore the element of justice contained in the Arusha peace accord. Since then, Burundi is facing a major crisis after weeks of protests sparked by Nkurunziza's decision to prolong his rule by a third term. This recent evolution on the ground shows how explosive the situation remains.

From a theoretical perspective, this case is both meaningful in terms of FP and TP. It shows how futile and even counterproductive a FP under international pressure can be. It also indicates that the absence of a decisive TP—before or after the choice of a FP—actually decreases the chance of a sustainable impact on the ground. We do not claim that the absence of a TP systematically decreases the chance of a sustainable impact on the ground. Simple negotiations that do not reach stalemate and go relatively smoothly to a conclusion are not as a rule less stable. However, in the aftermath of mass atrocities, smooth negotiations between former adversaries—and often long-term enemies—seem highly unlikely.

It is interesting to draw a parallel between the South African and the Burundian cases with respect to the way the protagonists in both cases did not succeed in dealing with the root causes of the conflict. However, the South African negotiated transition, which was characterized by decisive

precipitants and a crucial TP, is more convincing in terms of transitional justice than the Arusha Peace and Reconciliation agreement, which was largely shaped by international pressure. But, yet, the South African case also failed to address root causes as we noted earlier. For that reason, the agreement was less durable than may have been expected. An important difference between the cases, however, is the turning point that occurred in the South African but not the Burundi case. Without the TP, it is unlikely that the agreement, hallmarked by the ubuntu concept, would have resulted.

3.2 *Nouméa Accord (1998)*

Historical Context

New Caledonia became a French colony in 1853. Since 1946, it has been an overseas territory of France. As in most post-colonial contexts, the relationships between Noumea and Paris can be regarded as being “ambivalent”, with a mix of resentment and fascination typical of cases of colonial domination (Feron and Rosoux 2014). By the late 1970s, Kanak (i.e., Noumea indigenous) militants increasingly called for independence. During the 1980s, violent tensions succeeded one another between the pro-independence militants coming from various ethnic communities, but mostly from the Kanak indigenous population, on the one hand, and French settlers and other migrants insisting on continued French presence in the territory on the other hand. These confrontations culminated in April 1988 when Kanak militants took twenty-seven hostages and killed several police officers on the island of Ouvéa. The hostage rescue launched by French military and police forces left nineteen Kanak militants killed. This bloody event precipitated an intensive negotiation process in order to prevent a civil war between the two rival factions.

The second key precipitant was the signing of the “Matignon Accords” in June 1988, by Jean-Marie Tjibaou (leader of the Kanak independence movement),¹ Jacques Lafleur (leader of one of the two anti-independence parties in New Caledonia, the Rally for Caledonia in the Republic—RPCR),

¹ It is interesting to note that two of Tjibaou’s brothers were murdered and that their killers were amnestied. When he met with Michel Rocard in 1988, Jean-Marie Tjibaou was living underground. One year later, he attended the commemoration of the Ouvéa massacre, and was killed by an independentist Kanak, who was radically opposed to the Matignon Accords.

and Michel Rocard (French Prime Minister). The agreement recognized the ‘double legitimacy’ of indigenous *and* immigrant inhabitants to build the country. Parties committed at three main levels. First, the accords favored a Kanak participation in the political institutions of the territory. Second, they aimed at readjusting the economic and social conditions between Kanak and non-Kanak peoples in New Caledonia. Third, the parties agreed to hold a referendum on self-determination in 1998. Ten years later, they considered that the lack of consensus among the population could lead to a new bloody confrontation between rival factions. On the eve of the scheduled referendum (5 May 1998), the French Prime Minister, Lionel Jospin, the RPCR and the Kanak Socialist National Libertarian Front (FLNKS), which represents Kanak interests, signed the Noumea Accord in order to *gradually* transfer competences from France to New Caledonia.

Process

Rather than settling the disagreement between Kanak independence supporters and those who claimed autonomy within France, the Noumea Accord postponed the possibility of independence until 2018 in return for development aid. In setting the groundwork for a 20-year transition, the parties acknowledged an absence of ripeness for the transition process. The representatives of the RPCR judged that it was “too soon” to launch a referendum on independence and called for an additional extension of time. The FLNKS agreed not to hold the scheduled referendum (1998) because it would likely have resulted in a “No” vote for independence. As French representatives, they perceived the referendum to be a threat to the general stability achieved under the Matignon Accords (Berman 2001). The objective of the new agreement was then to give all parties a chance to work together on a daily basis in order to ultimately balance their respective needs.

The question was then to decide how long this extension would be. How many years would it take to ensure a gradual “transition to a common destiny” (Chappell 2013: 5)? As Lionel Jospin said, “a deadline of ten years” was simply “not enough” (5 May 1998). In choosing a period of fifteen to twenty years, the parties agreed on a focal point, considering that a genuine process of emancipation from France would reasonably take one generation. The notion of a generation is a salient benchmark of time. In this particular case, it constituted a compromise between immediate and

eternally postponed changes, between “now” and “never”. The purpose was to allow people from each side to gradually adapt and to accept the transformation of a post-colonial context into a pre-sovereignty situation. The Preamble to the Noumea Accord reflects this evolution in a striking way. It contains the first formal acknowledgement by France of the “shadows of the colonial period” in the territory. Unanimously perceived as “a decisive symbolic gesture” (Mokaddem 2013: 132), the Preamble refers to the “violent repression”, the “great sufferings”, the “process of dispossession” and the “identity trauma” of the Kanak clans (Preamble of the Noumea Accord 2008: 93). In acknowledging the “long lasting” impact of colonization (Preamble of the Noumea Accord 2008: 93), the parties implicitly refer to the intergenerational dimension of the colonial legacy.

However, this FP did not produce a turning point in the negotiation process. The anti-independence militants admittedly accepted to sign the Preamble, but they probably did so for two main reasons. First, the Preamble was largely perceived as the price to pay in order not to hold a referendum before at least one generation. Second, this document presented a relatively balanced picture of the dark *and* positive aspects of the colonialization. Far from being an acknowledgement of the Kanak sufferings only, the Preamble is also a tribute to the “ideals”, “knowledge”, “hopes”, “sufferings” and “aspirations” of their ancestors (Preamble of the Noumea Accord 2008: 92). This compromise allowed each side to preserve its core identity. From that perspective, it maintained a peaceful coexistence, but did not provoke a genuine transformation of relationships between the parties. The intensity of these resistances in terms of identity explains to a large extent the absence of TP.

Consequences

In fixing a benchmark of twenty years, the parties decided to preserve a form of stability rather than taking the risk to open the Pandora box of justice with regard to the crimes of the past, including those committed during the colonial period and during the 1980s. Regarding the colonialization, French representatives did acknowledge its “traumatic effect” on the Kanak community (Preamble of the Noumea Accord 2008: 93) but they refused to open the door for potential reparations to the victims’ descendants. The perspective was identical about the killings from the 1980s. A general amnesty in 1988 prevented any disclosure in this regard. If we consider the traditional peace versus justice dilemma (Zartman and Kremenyuk 2005),

the Noumea Accord illustrates a clear emphasis on the need for peaceful relationships.

In the long-term, this compromise leaves many questions unanswered. Interestingly, some voices referred to the South African TRC as an appropriate precedent in New Caledonia. Thus, the pro-independence leader Rock Wamytan argued that “in politics, we cannot look in each other’s eyes and build the future” without knowing the truth about the past (Chappell 2013: 4). However, most protagonists refused to focus on this issue, considering that it would have raised the specter of re-polarisation of the political and social arena.

At this stage, all New Caledonian citizens have accepted self-government, even though they differ over the degree of separation from France. The elections of May 2014 confirmed the strong antagonism between pro- and anti-independence militants. Since then, the French government kept its promise and organized an independence referendum in November 2018: 56.7% voted to stay French. However, the deal allows for two further votes on independence before 2022—meaning that separatists could still achieve their dream of splitting from France. If one of these referendums turns out to lead to an independent State, it would then mean that the FP actually led to a TP.

The particular role of France is emblematic. Rather than being stuck in the role of former colonizer, the French state presents itself as an impartial mediator between pro- and anti-independence factions. As the former French Prime Minister, François Hollande, explains, “the Noumea Accord, after the Matignon Accords, transformed the State into an arbiter, and also a partner. Arbiter because it has to take care of the implementation of the commitments; partner since it cannot simply be a spectator, it has to go *with* the parties, it has to be active and it has to show solidarity as well” (Nouma 16 November 2014). The analysis of the concessions made by each party indicates how efficient the mediation of France was. In compensating each of the parties’ concessions, France acted as a manipulative mediator able to strongly influence the direction of negotiations (Touval and Zartman 1985: 7–17).

This decisive influence of France and the absence of a TP—that would have reflected a political willingness to move forward—explain to a large extent that the parties could only agree to postpone the decision to be made in terms of sovereignty. Counter-factual analysis suggests a possible turning point, which would have been active support in favor of the emancipation from France by a legitimate leader in the eyes of the anti-independence

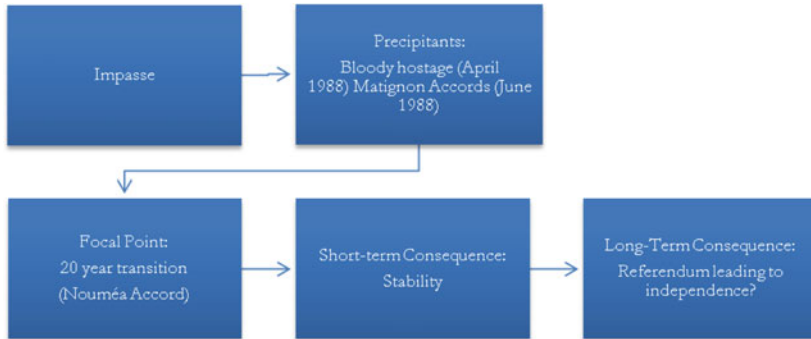


Fig. 5 Schematic overview of the process leading to the Nouméa Accord

groups. Such an historical shift would have been surprising and risky. However, it would have prevented the uncertainties that characterize the New Caledonian horizon.

The process is summarized by the following path (Fig. 5).

4 CONCLUSION

Several questions were suggested at the beginning of this paper: Does the development of focal points precipitate departures, and, if so, how? Do departures lead to the development of focal points, and, if so, how? Are there circumstances in which focal points do not precipitate turning points and vice versa? Do negotiations that feature focal points create more or less durable agreements? Do negotiations that include turning points create more or less durable agreements? These questions indicate what a future research agenda should entail. The analysis of the four cases helped us to start exploring the nexus between FPs and TPs with regard to the durability of agreements.

At this stage of the research, two main points merit further consideration. We highlight the role played by third parties in discovering FPs. Each of the case studies calls attention to a specific driving force. In the US-Germany case, the negotiation process was decisively precipitated by the *threat of litigation*. Thus, national courts—be it in Switzerland, in Austria or in the US—played a critical role in forcing the German representatives to accept a FP that took the form of a salient round number (10 billion DM). The

South African case is different since it demonstrates the key role of *leadership* to define a focal principle that makes sense to all parties. The historical legitimacy of Nelson Mandela and the spiritual legitimacy of Desmond Tutu were crucial in provoking the adherence of all South Africans. Their emphasis on *ubuntu* as a pivotal principle in the emergence of democracy was unanimously perceived as credible. The Burundian case underlines the scope and limits of external pressure regarding FPs. The presence of Nelson Mandela and the considerable influence of western donors explain to a large extent the choice of the South African precedent as a FP. In the case of Noumea, the agreement was mainly due to the active *mediation* of France. Rather than being identified as a party itself, France played the role of the “honest broker” eager to help the adversaries to coexist.

The paths shown in the figure below provide a comparison of the four cases. We see considerable variety in the kinds of precipitating factors, FPs, TPs, and consequences of the agreements. FPs were instrumental in reaching settlements. Burundi illustrates the problems that occur when a TP does not follow the FP. Noumea, on the other hand, illustrates how a FP can be useful in delaying resolution of the key issue: We await the referendum to determine whether a TP in the relationship between New Caledonia and France will occur. More evident perhaps is the realization that while FPs and TPs guide a negotiation process toward agreements, neither can insure long-term resolution of the root causes of the conflict.

With regard to the durability of these agreements, four points can be made. First, we suggest that more durable agreements take place when FPs occur in conjunction with TPs. The most critical variable seems to be the occurrence of turning points. FPs without TPs do not seem to be sufficient in sealing an agreement. And, yet, the durability is shaky when root causes are left unaddressed. Turning points are instrumental in getting a settlement but insufficient in providing a resolution (Druckman 2002). Second, the case studies show that the more precise the FPs, the more sustainable the impact on the ground. The clarity of round numbers in terms of monetary payments were not ambiguous, while the vagueness of *ubuntu* was problematic for many South Africans. Third, the role played by procedural and distributive justice should not be overlooked in the analysis of peace agreements. Recent research shows that the principle of equality bolsters the durability of agreements (Albin and Druckman 2012) while procedural justice principles contribute to long-term reconciliation (Wagner and Druckman 2017). Fourth, the case studies indicate that FPs can hardly favor stability in the long run if they disregard the needs of the individuals

affected by the past atrocities. Each case shows in a specific way that parties cannot perpetually postpone meeting victims' needs. But, the past is also prologue to the future. Without forward-looking solutions, acknowledging and apologizing for past abuses have limited impact on long-term peace.

Three ideas for further research are suggested. One consists of extending the analysis to include various stakeholders, possible spoilers, and third parties. Each of these types of actors contribute to the discovery of TPs and emergence of FP solutions. They are also critical to the sustenance of the agreement over time. Another is to extend the number of cases examined. The cases used in these analyses are considered to be illustrative of the various combinations of FPs and TPs. A more systematic sampling of cases in each of the cells would address questions of generality. A third way forward consists of further probes about the interplay between FPs and TPs, particularly with regard to the sequencing of salient solutions and the decisions or events that create the conditions for their emergence during the negotiation process (Fig. 6).

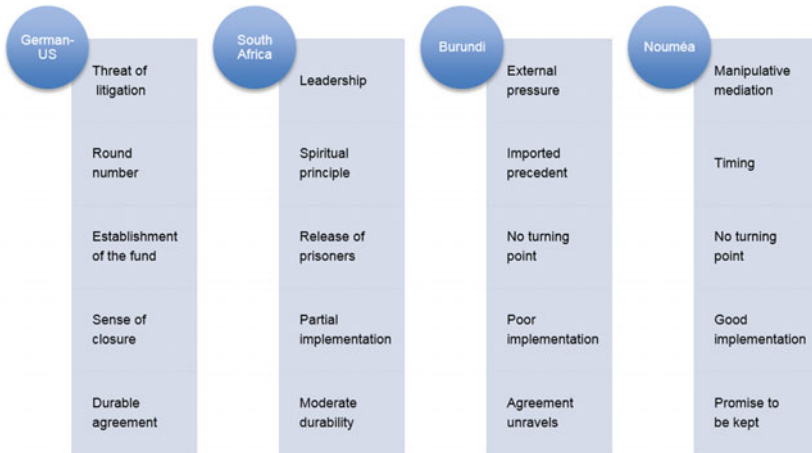


Fig. 6 Schematic overview of the differences between the four case studies

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EU Mediation in Montenegro: *Satisficing, Formulation and Manipulation in International Mediation*

Siniša Vuković

I INTRODUCTION

On 14 March 2002, the EU brokered a new constitutional arrangement between Montenegro and Serbia, creating the State Union of Serbia and Montenegro. The Montenegrin authorities agreed to the State Union under the condition that there be an “opt-out clause permitting either republic to begin independence procedures within three years of the Constitutional Charter coming into effect” (ICG 2006: 2). Throughout the entire transition period it was obvious that Montenegro was determined to

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hold a referendum on independence. The state-status issue—whether Montenegro will remain part of the State Union or regain its independence—dominated not only the political discourse in Montenegro, but preoccupied the daily life of the country's citizens for nearly a decade,¹ making the final resolution a matter of absolute urgency (Darmanović 2003, 2007). The high level of distrust between two main camps (pro-independence and unionists) made the prospect of finding a solution through direct negotiations virtually impossible. The situation required assistance from a third party.

All parties in Montenegro perceived the EU as an international actor with the highest level of legitimacy to facilitate the talks, and as such, the EU was able to prescribe any formula for the disputants to find a proper arrangement for the upcoming referendum. In the eyes of the decision makers in Brussels, the unresolved issue of Montenegrin statehood had the potential to further destabilize an already fragile situation in the Western Balkans: Macedonia was going through a phase of delicate constitutional reforms as a way to de-escalate ethnic tensions that had led to the 2001 conflict; Kosovo's final status was a highly contentious and pending issue that the international community was dealing with in the same period; Serbia was undergoing a profound political crisis following the assassination of Prime Minister Zoran Djindjic in 2003; Bosnia was still coping with a lack of functioning institutions and lingering ethnic tensions which were kept in check through the overly assertive role of the international organizations present in the country. Against such a fragile backdrop, the decision makers in Brussels assumed a pro-active role on the issue of Montenegrin independence. To preclude any potential escalation of violence, the then-EU High Representative for Common Foreign and Security Policy (CFSP), Javier Solana, who was directly involved in pressuring Montenegrin authorities to accept the transitional period of three years in what proved to be a dysfunctional confederal arrangement with Serbia, appointed Miroslav Lajčák as envoy, mandated to find a solution to the problem (EU CFPS statement S415/05 2005).

Fluent in Serbo-Croatian, Lajčák resided in Belgrade as the ambassador of the Slovak Republic to Yugoslavia, Albania and Macedonia from 2001 to

¹Even the most mundane activities such as sport and show-business were not absolved from a significant degree of political polarization, a telling example being the infamous and ludicrous dispute over who Serbia and Montenegro should send to the 2006 Eurovision song contest (Baker 2017).

2005. As stated in his curriculum vitae, “during this time, he deepened his knowledge and understanding of the complexities of the Western Balkans” (MVZ 2017). As soon as his mission commenced, he encountered unyielding positions from both camps in Montenegro which, at the time, indicated no intention to compromise. Leaders of the Unionist camp, composed of opposition parties endorsing a platform that promoted the idea of Montenegro remaining in a State Union with Serbia, voiced their unwillingness to participate in the referendum procedures, as they were aware that under the present referendum law, they would be unable to obtain a majority vote against independence. On the other hand, the Pro-Independence camp, which assembled around the political parties running the government, was adamant that a referendum had to take place, with or without the other side. It was obvious that to arrive at a compromise, Lajčák and his team had to find a formula that would make the referendum result “clear, visible and convincing” (Lipka 2011). After several rounds of negotiation during which the two opposing camps only reiterated their unwillingness to agree on a mutually acceptable solution, Lajčák and his team decided to assert more control over the final outcome and consequently “imposed a formula that two conditions be met for a successful independence vote: participation of 50 per cent +1 of all eligible voters and 55 per cent of those voting in favor” (ICG 2006: 2). Despite the apparent undemocratic spirit of this solution, both sides accepted the terms. This solution was unequivocally centered around these two focal points. Although the parties were both unable and unwilling to consider these focal points as potential solutions on their own, but once they were projected by the EU envoy, they became mutually acceptable, and Lajčák’s mediation efforts were a complete success. How can this outcome be explained?

Successful third-party intervention rests on a mediator’s ability to move the disputants towards a mutually acceptable agreement. In theoretical literature, this ability is referred to as power or leverage. Recent empirical findings show that in cases in which parties in conflict lack sufficient motivation to settle the dispute, a more powerful third-party intervention becomes necessary (Carnevale 2002; Bercovitch 2009). Clearly, mediators characterized by hard power, such as powerful states, are best equipped to do so (Sisk 2009). They do this through the most assertive mediation strategies which allow them to manipulate the conflicting parties’ perceptions of the payoff structures, and induce them to agree on solutions which would otherwise not be acceptable (Beardsley et al. 2006; Svensson 2007).

The mentioned nexus between hard power,² manipulative strategies and state actors as mediators has been widely accepted as a norm in international mediation literature. According to this body of research, states are the only international actors equipped with “economic, military, and political resources to pull or push the parties in their preferred direction, take measures in order to secure their own interests in the country of the conflict, and exercise leverage over the parties in order to make them comply” (Svensson 2007: 230). Recent studies have demonstrated that manipulation is not only contingent upon hard power, but can also be exercised through more co-optive soft power (Vuković 2015a). In fact, the EU mediation efforts in Montenegro relied primarily on the normative appeal the union had among the opposing political elites, and was used to justify the imposition of the previously mentioned formula (Vuković 2015b).

Taking into account that even normative power—which represents a sub-type of soft power (Nye 1990, 2004)—can be used to manipulate the process and impose the formula, this chapter aims to demonstrate that the success of Lajčak’s initiative was directly related to his ability to formulate specific focal points as the only solutions that could be accorded ‘the stamp of EU legitimacy’. Furthermore, these focal points represented a direct manifestation of the mediator’s preferences or biases towards the outcome. Confronted with the disputants’ unyielding positions, the mediators opted to take a satisficing approach: instead of searching for an optimal solution that would maximize the outcome for any given party, the mediator sought to achieve a stable and satisfactory agreement.

This chapter underscores that regardless of the type of actors involved and their relative resources, mediators may employ various forms of social power to drive the parties towards a mutually acceptable solution, which is represented by a predefined focal point. The case study of EU mediation in Montenegro is unique in this sense, as it reveals how without the mediator’s active promotion of a formulated focal point, such a solution would be unimaginable and unacceptable for the conflicting parties. Moreover, the case shows that the focal point was not contingent upon previously

²Based on material resources, this encompasses forms of compensation for cooperative behavior, as well as coercive measures which include various forms of threats or punishments, such as diplomatic pressure, the imposition of sanctions regime or the use of military power (Vuković 2015a: 425).

available solutions, but was tailored to meet the requirements of a legitimate, stable and acceptable agreement, both for the conflicting parties and for the mediator alike.

2 MEDIATORS' SATISFICING AND FOCAL POINTS

The role of a mediator is quite complex. She facilitates impaired communication between the parties, assists them in formulating viable alternatives to settle their dispute, and finally, guides them towards a mutually acceptable solution. Moreover, to make proposed agreements enticing, mediators provide the disputants with various incentives such as political cover, international legitimacy and guarantees of implementation assistance (Beardsley 2011). These (and similar) incentives are never aimlessly applied, but rather specifically tailored to help the parties transform their relationships from confrontational to cooperative. As mediators willingly accept the inevitable costs of developing such incentives, they maintain a strong interest in the terms that are being negotiated. Although their involvement is commonly rationalized by humanitarian concerns, such motivations are inevitably coupled with specific self-interests that drive them to get involved in the first place. These include preventing or halting the spill-over effects of an escalating conflict, asserting (or even expanding) the zone of influence in the area affected by conflict, promoting and/or protecting a specific norm, principle and value that may be challenged in a given conflict, and projecting a mediator's overall relevance as an international actor (Vuković 2015a, b). International mediation therefore represents an effective (foreign) policy tool through which mediators can achieve some of their interests without creating too much opposition (Touval 2003).

As noted by Bercovitch and Jackson, "mediators bring with them consciously or otherwise, ideas, knowledge, resources and interests... [thus, they] often have their own assumptions and agendas about the conflict in question" (Bercovitch and Jackson 2009: 35). A large body of literature associates these assumptions and agendas with the mediator's bias, which is manifested through preferential treatment of one of the conflicting parties (Kydd 2003; Beber 2012; Svensson 2009; Savun 2008; Favretto 2009; Gent and Shannon 2011; Vuković 2011). Since no foreign policy process occurs in isolation, mediators' previous interactions with one or more of the conflicting parties will inevitably have an impact on the overall peacemaking process. Although intuitively a bias may be deemed a severe liability for any peacemaking process, numerous studies have shown that the presence of a

biased mediator may have a positive effect on the mediation efforts. First of all, biased mediators may have a unique capacity to encourage the conflicting party they are partnering with to accept an outcome that would otherwise not have been accepted (Touval and Zartman 1985). Secondly, the information provided by a biased mediator is deemed to be more credible, thus increasing the likelihood that the mediation process will be successful (Kydd 2003). Lastly, biased mediators are more prone to provide the necessary incentives that foster robust institutional arrangements, which may enhance the durability of peace between former disputants (Svensson 2009).

Mediators' assumptions and agendas are not only related to their relations with the disputing parties. As previously mentioned, mediators will never endorse a solution that is detrimental to their interests, even if the conflicting parties agree to such terms. For instance, agreements that sanction a forced expulsion and exchange of populations—even if they can put an end to a highly destructive conflict, as was the case with the 1923 *Convention Concerning the Exchange of Greek and Turkish Populations*—would never secure the political support of international actors promoting respect and human rights as core principles. Similarly, mediators are seldom inclined to advocate partition as a solution to ethnic conflicts, as such a solution is often at odds with the principle of fostering inclusive civic identities in post-conflict environments (Kaufmann 1996). In their efforts to bring about peace in war-torn Bosnia and Herzegovina, mediators often tried to “stitch the country back together”, despite the fact that such formulas countered the secessionist goals which represented optimal solutions for some parties (mainly for Bosnian Serbs and Bosnian Croats) (Holbrooke 1999; Owen 2013).

Possible solutions to domestic disputes are often found within an existing legal framework that is backed by clearly defined enforcement structures. The systemic features on the global level, characterized by the lack of an overarching international authority and reliable enforcement instruments, make the role of mediators unique as their presence facilitates the demarcation of the range of possible solutions available to the parties in conflict. Therefore, in addition to a possible bias mediators may have towards one of the parties, they are also likely to project a preference for a specific outcome as well. To this end, Carnevale and Arad differentiate between a ‘bias of source’—exemplified by closer ties between a mediator and one of the disputing sides—and a ‘bias of content’ which indicates the mediator’s proposed formulas that favor one conflicting party (Carnevale and Arad

1996). The latter may be perceived as a subset of a larger form of satisficing—preference for a sufficient and acceptable outcome rather than an optimal outcome for either one of the conflicting parties (Simon 1956)—pointing to a range of possible solutions a mediator is willing to endorse. Since each mediator is driven by a specific set of interests and goals, satisficing can be considered an intrinsic characteristic of any mediator (Vuković and Hopmann 2019). It is worth noting that satisficing might be seen as a serious source of problems in terms of bargaining dynamics, as it reduces the range of possible outcomes for the disputing parties. Nevertheless, this bias engenders a higher degree of predictability for the process and a sense of direction for the parties. In other words, a mediator’s preference for a particular (set of) outcome(s) already provides a clear set of indicators *how* a particular peacemaking process might end.

Solutions that are facilitated, formulated and endorsed by mediators represent focal points that are generally suboptimal and can therefore be characterized as satisficing rather than maximizing the negotiating parties’ goal satisfaction. As mediators are driven by their own interests and constrained by their own resources, their main objective is to achieve a stable and satisfactory outcome for which they can gain political support and international legitimization and which they can help implement, rather than seek to maximize the outcome for one of the parties. This renders focal point strategies particularly attractive for mediators.

3 FOCAL POINTS FROM FACILITATION TO FORMULATION AND MANIPULATION

Mediators resort to different strategies to achieve different ends. The most commonly used taxonomy to classify mediators’ behavior and their strategies is based on a scale of the degree of intervention, ranging from low to high, from facilitation (both communication and formulation) to directive-manipulator strategies (Touval and Zartman 1985, 1989, 2006; Zartman and Touval 1996). Facilitation strategies tend to be most successful in low-intensity conflicts in which parties are willing to settle, but are unable to communicate their willingness to one another. In cases in which disputants are not motivated to settle and demonstrate an unwillingness to compromise, more forceful intervention on the part of a third party may be needed (Rubin 1980; Hiltrop 1989; Carnevale and Pruitt 1992; Carnevale 2002; Sisk 2009; Bercovitch 2009).

The least assertive role in peacemaking is assumed by mediators who resort to facilitative strategies only. In such cases, mediators focus primarily on improving damaged communication between the parties, and facilitate their cooperative behavior while maintaining very limited control over the actual content being negotiated. This strategy is directly related to integrative bargaining behavior (Carnevale 1986; Hopmann 1996; Beardsley et al. 2006) which aims at assisting the disputants to properly identify an existing overlap of their interests, which in turn could be translated into specific non-violent outcomes. As mediation is commonly associated with the most resistant cases in which conflict dynamics generate increased levels of suspicion and distrust, disputing sides are often challenged to develop and agree on a specific formula, even within a potentially defined zone of possible agreements (ZOPA). This is a direct result of the incomplete information they have of their opponent's goals, level of resolve and resources, which in turn limits their ability not only to recognize a zone of mutually acceptable alternatives to their conflictual relationship, but also to jointly formulate a solution, even when they become aware of its existence. As such, a facilitating mediator may provide the conflicting parties with information that is essential to minimizing their differences, and convince them of the existence of a ZOPA. This type of mediator may also assume responsibility for formulating specific solutions within that ZOPA. This type of strategy, usually referred to as formulation, is far more assertive in nature and requires mediators to exert a greater degree of control over the actual process and delve into the substance of a negotiated solution. Formulation requires mediators to identify and sell attractive trade-offs and creative solutions with the aim of assuaging security concerns and mitigating commitment problems as perceived by the parties. As noted by Zartman and Touval, "formulas are the key to a negotiated solution to a conflict; they provide a common understanding of the problem and its solution or a shared notion of justice to govern an outcome" (1996, 454). The formulas that mediators propose are attractive insofar as they offer useful political cover to the parties that enables them to accept solutions that are justifiable vis-à-vis their constituencies. As a result of this conferring of political legitimacy, conflicting parties may agree to solutions that, while formally within their ZOPA, would have otherwise been very difficult to sell at home.

Both facilitation and formulation are employed with the purpose of defining solutions that are acceptable for all parties involved. Rather than seeking optimal solutions, mediators facilitate and formulate solutions they deem stable and satisfactory. Such solutions are commonly represented as

salient points that mediators project as viable solutions worthy of their political cover and implementation assistance. Focal points may derive from preexisting formulas that were applied in similar cases, or they can be tailored to reflect the issue's salience and the interests and needs of the conflicting parties. Consequently, such customized solutions may become new focal points for future reference, which can be used as precedents for similar conflict dynamics. As the case of EU mediation in Montenegro will later demonstrate, Lajčak and his team were unable to find a preexisting focal point that could be used as a mutually acceptable formula for the two opposing camps. As a result, they formulated an unprecedented solution that was inconceivable for the parties themselves. Prior to the newly proposed formula, both camps sought political support from the EU for specific salient points which were in line with their respective agendas. As the facilitation process failed to bridge the differences between these salient points and no optimal solution could be found, the EU had to opt for a formula that could merit the EU political cover while still being perceived by the parties as a satisfactory solution.

Political cover is just one of many incentives mediators can use to manipulate the conflicting parties' pay-off structures and their perceptions about the utility of a proposed focal point. Hence, in cases in which facilitation is unable to generate awareness of the existence of a ZOPA between the parties, mediators may resort to manipulative strategies through which a new (and artificial) ZOPA is in fact created, and new potential focal points can be explored. To achieve this, mediators may threaten the parties with coercive force in order to decrease the appeal of non-compliance and continued confrontational behavior. At the same time, mediators may promise positive inducements to increase the appeal of a negotiated solution. Similarly, mediators may provide expertise, convey legitimacy and invoke relational incentives to increase the new focal point's appeal for the parties in conflict. Accordingly, there is an obvious difference between facilitation and formulation, on the one side, and manipulation, on the other. While facilitating communication, the distribution of useful information and the formulation of viable solutions are used to assist the disputants in identifying a possible, mutually acceptable solution within their scope of available salient points. The main purpose of manipulative strategies is to enlarge the spectrum of potential solutions and salient points that are mutually preferable to continued conflict.

4 FOCAL POINTS AND POWER IN MEDIATION

Traditionally, manipulative strategies have been associated with coercive forms of power which are tangible in nature, such as military tools or economic instruments (Svensson 2007). While this type of power is observed through the mediator's use of carrots and sticks, power in mediation is a much broader phenomenon. Power, or leverage, represents "the ability to move a party in an intended direction" (Touval and Zartman 2006: 436). Leverage is directly related to the conflicting parties' ongoing need for a mediator's help in reaching a compromise (Touval and Zartman 1985; Touval 1992). Carnevale (2002) classifies sources of power into two groups based on a mediator's "will and skill": resource-based, social power (strategic strength) and the behavior of the mediator (tactical strength). According to this categorization, "strategic strength in mediation refers to what the mediator has, to what the mediator brings to the negotiation table; the tactical strength refers to what the mediator does at the negotiation table" (Carnevale 2002: 27–28).

Tactical strength is exemplified through a mediator's premeditated choice of specific techniques and the ability to follow a specific procedure; for instance, the ability to create a framework that will enhance trust between the parties and alter the negative images they have of each other. Strategic strength, conversely, includes different types of social power. Social power is most often expressed in terms of the mediator's ability to employ 'carrots and sticks', which, in Carnevale's typology, are referred to as coercive power and reward power (Carnevale 2002: 28). While reward power involves forms of 'compensation' for cooperative behavior, coercive measures generally take the form of threats or punishments, including diplomatic pressure, the imposition of sanctions and the use of military power. These forms of power are used to manipulate the mediation process to create the inducements required to move the parties toward a solution that is mutually acceptable.

Other forms of social power are less material in nature and entail various subsets of soft power (French and Raven 1959; Nye 2008). For instance, mediators may possess specialized knowledge and expertise on a particular subject, which allows them to influence the conflicting parties' perceptions and preferences with reference to viable solutions. Consequently, using their expertise, mediators may formulate, endorse and increase the appeal of specific salient points as the most viable solutions. Similarly, mediators may possess relevant information that can make a given focal point more

attractive than any other potential solution. On the other hand, mediators may resort to their relational and referent powers (i.e. their ability to lead by example), which would render specific salient points acceptable inasmuch as they contribute to the strengthening of the relationship between the conflicting parties and the mediator, both in the short and in the long term. However, mediators may also be perceived as actors that enjoy a legitimate form of power that enables them to prescribe behavior to the disputants. According to Carnevale, this power “derives from a norm that has been accepted by the disputants... and influence rests on a judgment of how one should act, and the authority determines the standard” (Carnevale 2002: 28). Legitimacy as such, can be seen as the form of power at the other extreme on a spectrum ending in coercive and reward powers. So, while the latter are often seen as instrumental in manipulative strategies, the former usually complements communication and formulation efforts. Studies have shown that legitimate power tends to be attributed to more often to international organizations than to individual states (Touval 1992).

Despite a common perception that associates legitimacy with less intrusive mediator behavior, as the case of EU involvement in Montenegro demonstrates, legitimate power can also be used to manipulate the process and direct the disputants towards a specific outcome exemplified through a clearly defined focal point. The case also shows that legitimate power and other forms of power are not mutually exclusive. Rather they complement and build upon each other, contributing to the appeal of an endorsed focal point. One of the most powerful tools of EU foreign policy in dealing with neighboring countries that aspire to become EU members is political conditionality (Schimmelfennig and Sedelmeier 2005; Papić 2006). Instead of being coerced into compliance, countries voluntarily adopt EU norms and policies to prove their suitability as candidates for EU membership. The EU’s power to transform and normatively shape neighboring countries has been observed through a process of Europeanization and democratization in these countries. As Grabbe notes, “identification with ‘Europe’ as an ideal of civilization, embodying a distinct set of values and standards of political behavior and socio-economic organization, provided a crucial component of the motivation to press on with painful and divisive reform” (Grabbe 2006: 53). The power of conditionality derives from a broader appeal of joining the EU. For the self-interested political elites in countries aspiring to achieve full EU membership, ambition to join the Union is directly related to the legitimate power this institutionalized international society has; a power that the elites can use to extend their own political

power and assert more authority on the domestic front (Schimmelfennig 2000). To achieve this, actors must play according to the international system's values and rules, reinforcing the perception of their legitimacy. Again, this does not require personal internalization of those values and rules by the elites, but rather a continuous use of norm-based claims and pledges to implement values and norms, which Schimmelfennig refers to as 'rhetorical action' (Schimmelfennig 2001).

In the case of Montenegro, the EU used its leverage primarily to discourage the Montenegrin authorities from invoking the right to organize a referendum on independence (Papić 2006; ICG 2005, 2006). On the one hand, EU officials promised Montenegro a European future if it decided to remain in the State Union, and on the other, threatened that it would have to restart accession negotiations from the beginning in case the country voted for independence, thereby erasing all of the benefits associated with the progress that had been made to date. However, as a referendum was an unequivocal reality sanctioned and legitimized by the EU through its support for the Belgrade Agreement, these 'carrots and sticks' rapidly lost their appeal and consequent impact on the government in Podgorica. Faced with the inevitable, the EU started working on a platform that would ensure that the referendum and its result was widely considered to be legitimate (ICG 2006). For all major political forces in Montenegro, the EU represented such an institutionalized, international society. Consequently, they accepted its legitimate power to prescribe (and if necessary even impose) the 'rules of the game', and chose a focal point under which the referendum would be held.

5 BACKGROUND OF THE CONFLICT

Montenegrin independence became a salient issue in the late 1980s and early 1990s, at a time when other constituent federal units of socialist Yugoslavia started voicing their secessionist plans to leave the federation. Despite the fact that the political system was transitioning from a one-party rule to a multi-party electoral system, much of the public debate was still controlled and channeled through state-run media. As the official policy of the ruling political elite—embodied in a reformed communist party that embraced the name Democratic Party of Socialists (*Demokratska Partija Socijalista* or DPS)—was to remain in a bi-federal union with Serbia, supporters of independent Montenegro were unable to mobilize significant popular support for their political goals. This arrangement, officially called

the Federal Republic of Yugoslavia (FRY), soon proved to be dysfunctional and an easy prey for Milošević and his ruling cronies in Belgrade, the capital of both Serbia and Yugoslavia, in their attempts to completely marginalize the role of Montenegro in rapidly centralizing federal institutions. The evident abuse provoked several high-ranking officials of the ruling DPS—a loyal ally of Milošević's up to that point—to openly oppose the president and challenge his authority in Montenegro. In 1997, this frustration culminated in a turbulent rupture of the DPS: the anti-Milošević Montenegrin prime minister Milo Đukanović took control of DPS and defeated the pro-Milošević president of Montenegro Momir Bulatović in the presidential elections (ICG 2005). Bulatović and other ousted members of DPS took immediate action: they created a new political party, the Socialist People's Party (SNP), which maintained a strong bond with Milošević and quickly assumed the lead role among all opposition parties in Montenegro. The internal DPS split triggered a fundamental social cleavage in the country: a divide over the question whether Montenegro should seek more autonomy and self-governance—perhaps even independence—or whether it should remain a loyal and staunch ally of Serbia.

By 1999, the Montenegrin government was taking significant steps to formalize its status as a *de facto* independent state: the German (*Deutsche*) mark replaced the Yugoslav dinar as the official currency, a parallel and fully independent fiscal system was established, and Montenegro's police forces were significantly strengthened to counterbalance the Yugoslav Army controlled from Belgrade. At the same time, the Government of Montenegro defied Milošević's regime by openly supporting and even giving political refuge for all anti-Milošević political parties in Serbia. Moreover, unwilling to associate themselves with any decision issued by Belgrade, the government authorities in Podgorica took a neutral stance on the 1999 humanitarian intervention provoked by the escalating conflict in Kosovo. On account of such policy preferences, Đukanović and his government to a large extent enjoyed active political and financial support from the West. More importantly, confronted with a veiled threat from authorities in Belgrade, Montenegro could count on (implicit) security assurances from the West (ICG 2005). As tensions between the Montenegrin government and Milošević grew, the discourse around Montenegrin independence began gaining prominence, rapidly becoming the ruling elite's dominant political preference.

Following the 5 October 2000 riots in Belgrade and the success of the Democratic Opposition in Serbia (DOS) in deposing Milošević from

power, Montenegrin authorities were confronted with a completely new Western outlook on the relations between Montenegro and Serbia. As the new authorities in Belgrade began gaining unequivocal Western support, the Montenegrin government received strong signals that under these new circumstances, the re-establishment of a good and functional relationship between the two republics was of utmost priority. For Montenegro, this meant renouncing all of the competencies it had achieved up to that point. Unwilling to accept this highly unwelcomed advice, the Montenegrin authorities formulated two potential remedies: a comprehensive and substantial constitutional reform of the existing federation, or the organization of a referendum to define the future legal status of Montenegro (Friis 2007). Demands for the two countries to improve their strained relations were justified on the basis of undeniable structural differences between the two federal entities. First, there was a stark difference in the two countries' population size: Serbia had a population of approximately 10 million, while Montenegro only had 620,000. At the same time, their economic systems were not synchronized: Montenegro relied primarily on various service sectors, such as tourism, whereas Serbia could depend on a robust industrialized economy. Similarly, their fiscal and monetary policies were fully autonomous and detached from one another. The Montenegrin officials immediately drafted a proposal to transform the federation into a 'union of two independent states'; however, this was openly rejected by the authorities in Serbia, who wanted to pursue a further concentration of power that had begun during Milošević's tenure. According to Friis, "as these talks failed in the fall of 2001, the political elites in both republics concluded that a referendum in Montenegro was the most likely step" (Friis 2007: 70).

EU decision-makers in Brussels were concerned that Montenegrin independence might serve as a focal point for other independence movements in the region, which was especially problematic vis-à-vis the fragile situation in Kosovo (Fawn 2008). Hence, a redefinition of the damaged relationship between Podgorica and Belgrade became a matter of utmost priority for the then-EU High Representative for CFSP, Javier Solana (Keane 2004). Following a series of Solana-led diplomatic efforts, the two republics signed the 'Belgrade Agreement' on 14 March 2002, which formally terminated the Federal Republic of Yugoslavia and created the confederal arrangement of the State Union of Serbia and Montenegro (SCG). As a way to incentivize both sides to accept this solution, Solana guaranteed an expedited path towards EU membership for the State Union (ICG 2005; Papić

2006; Friis 2007). Unimpressed by this pledge, Montenegrin authorities made their acceptance of the Belgrade Agreement contingent on an “opt-out clause permitting either republic to begin independence procedures within three years of the Constitutional Charter coming into effect” (ICG 2006: 2). To lessen the appeal of pursuing the goal of independence, the Agreement envisaged significant restrictions (only) for Montenegro if it decided to organize a referendum. According to the terms stipulated in the Agreement, if Montenegro voted to leave the State Union, Serbia would automatically become the formal successor of both the FRY and the SCG. Consequently, Montenegro would be deprived of all rights and the status it had acquired on the international level to date, thus having to reestablish its international subjectivity from the absolute beginning. While such stringent terms were set for Montenegro, the same provisions did not apply to Serbia (ICG 2005). Solana’s commitment to strengthen the State Union and obstruct Montenegrin ambition for independence inspired a colloquial reference to the State Union as “*Solania*” (ICG 2005; Darmanović 2007; Morrison 2018).

Although the new State Union had a distinctive confederal constitutional character, the existing structural differences between the two confederal units, the competencies they assumed and the diverging political preferences projected by the two governments remained unchanged. Neither side made any serious attempt to turn the State Union into a functioning institutional system. The Constitutions of Montenegro and Serbia were never harmonized with the newly drafted Constitutional Charter of the State Union, leaving the Union’s institutions inoperative. Both sides treated the Union as an interim solution, expecting that a prospective referendum on Montenegro’s state status would clarify the future of relations between Belgrade and Podgorica. By mid-2005, with the three-year transitional period coming to an end, EU officials were called upon to deliver on their promise and endorse a Montenegrin referendum on independence.

The EU’s main concern at this point was to propose policy tools that would legitimize the referendum and its result (ICG 2006). The preliminary assessment of the existing Montenegrin legislation on the organization of a referendum indicated that the most contentious issues was the majority requirement and voting rights. Both the Council of Europe and its Commission for Democracy through Law, also known as the Venice Commission (VC), provided useful inputs on the two issues, which increased the overall legitimacy of the EU’s subsequent policies on the matter. Focusing

on specific legal provisions and comparative legal practice, the Venice Commission formulated an opinion that clearly endorsed a specific focal point on the majority requirement. In December 2005, the Venice Commission issued a statement:

the majority requirement in the Law (50 percent of the turnout) was not inconsistent with international standard... [however] while the legal requirements may vary from a country to country, the Commission notes that the dimension on such issues have in practice been commonly accepted by more than 50% of the registered voters... [therefore] the Commission invites all political parties to reach a negotiated solution on the majority required to ensure the *legitimacy* of the referendum. (emphasis added, Opinion quoted in Friis [2007: 79]; for further details, see also Venice Commission [2005])

Similarly, on the issue of voting rights, the Commission concluded and recommended that only residents of Montenegro listed on the official voters' list were to be granted the right to vote. This meant that citizens of Montenegro residing in Serbia, who already exercised their voting rights in Serbia and were listed in Serbia's voters' lists, would not be granted the right to vote in the referendum, as this would give them the possibility to vote in both countries (Venice Commission 2005).

According to Friis, "the adoption of the Opinion by the Venice Commission meant that the international community had given a symbolic 'green light' for referendum to take place" (Friis 2007: 80). In practice, the Venice Commission's opinion was used as a starting point for the upcoming negotiations. Since the statements of the Venice Commission were not legally binding, it was clear that the two focal points were both based on and a projection of the institution's soft power. The VC's expertise on the matter terminated any further discussion on an alternative salient point becoming focal, and as a result provided the necessary framework for the subsequent negotiations during which the key issues of a political nature had to be resolved. Among those, the most important issues were defining a precise formula of the majority requirements, the broader legislative framework and the post-referendum proceedings (Friis 2007). As was expected, each of the two political blocs in Montenegro interpreted the Opinion as clear support for their political agenda. This rhetoric made it appear that a compromise was unattainable through direct talks. To break the logjam, a third party with sufficient influence over the two competing blocs was needed, and the EU was perceived as the most suitable candidate for the task.

6 KEY ACTORS AND THEIR RESPECTIVE FOCAL POINTS

In the period leading up to the referendum, Montenegrin political discourse was polarized within two major political blocs: the pro-independence and the unionist blocs. By January 2005, both blocs assumed the formal organizational structure of a movement. Their conflicting political agendas and competing visions of Montenegro's future were grounded in diverging conceptions of Montenegrin nationhood (Malešević and Uzelac 2007).

The *Movement for Independent Montenegro* was organized around the government parties: DPS and their smaller coalition partner, the Social Democratic Party (SDP). While these two parties held the majority of seats in parliament (39 of 75), they were not the only political actors participating in the Movement. In fact, in the early 1990s, some of the smaller opposition parties had favored independence. The most prominent was the Liberal Alliance of Montenegro (LSCG), which was dissolved after an internal rift in 2005, and was in part succeeded by the Liberal Party of Montenegro (LPCG), which became a constituent member of the Movement. As the Movement promoted the idea of a civic Montenegrin nationhood, rejecting an ethnic interpretation of the Montenegrin nation, induced various national minorities (Albanian, Croat and Bosniak/Muslim) to also embrace the notion of an independent Montenegro (Malešević and Uzelac 2007).

The DPS-SDP ruling coalition's electoral victory in October 2002 was based on a platform that directly challenged the sustainability of the March 2002 Belgrade Agreement. While emphasizing the Agreement's interim character, the coalition made an explicit pledge to hold a referendum on independence. For many proponents of independence, the Agreement represented a severe setback, which only prolonged the agony of being tied to Serbia in a union. Thus, any further deferment of the referendum represented an excruciating political cost for the ruling coalition. Notwithstanding a series of EU attempts to discourage the ruling coalition's push towards independence, the coalition leaders remained adamant that the referendum would be held no matter what. Moreover, they formulated and promoted a list of preferences that would make the referendum process fair and legitimate. Their main focal points were transposed into the existing referendum law which required a turnout greater than 50% and a simple majority—50% +1—of those casting the vote. While the simple majority rule was justified as the most fundamental democratic principle,

the turnout threshold was intended to increase the sense of fairness. The later threshold was the highest one in Europe at that time. Only Denmark, Scotland and Wales had a similar requirement of a 40% turnout. This was a requirement in Denmark for constitutional amendments to be approved by voters, while in Scotland and Wales, this provision was used to approve the establishment of devolved (autonomous) governments (ICG 2005). Bearing all this in mind, the pro-independence forces were aware that even if they could somehow manage to mobilize over 50% of the voters to show up at the polling stations, it was clear to them that for the outcome to be deemed valid and legitimate by the EU and the international community at large, they needed the participation of the opposing bloc as well.

Aware how significant their participation was for the referendum's legitimacy, proponents of the *Movement for the State Union of Serbia and Montenegro* started playing hardball. The movement was organized around four main opposition parties—SNP, the People's Party (NS), the Serbian People's Party (SNS) and the Democratic Serbian Party (DSS)—all of which predominantly appealed to the ethnic Serbs in Montenegro (approximately 32% of the country's population) and those Montenegrins that endorsed the vision of Montenegro as a "territorial region of Serbdom" (Malešević and Uzelac 2007: 710). The unionists saw the EU's reluctance to support the referendum as an opportunity to obstruct and lessen the likelihood of a referendum taking place at all. Their reluctance to participate in the referendum was directly related to a series of electoral defeats they had suffered in the years preceding the pending referendum. They were aware that under the present referendum law, they would be unable to gather sufficient votes to prevent Montenegro from becoming independent. Therefore, their main strategy was to boycott the process altogether. On the one hand, they knew that keeping the turnout below 50% would invalidate the process. On the other hand, even with a higher turnout, their boycott would still be a tactical move that would deprive the outcome from being perceived as legitimate (ICG 2005).

One crucial exception to a likely boycott was defined by the SNP's leader (the strongest opposition party), Predrag Bulatović, who publicly noted that his party would "not boycott if the EU indicates that it approves of a referendum" (ICG 2005: 10). His statement was based on the expectation that an unenthused EU would not insist on the inevitability of a referendum. At the same time, the unionist opposition parties underwent a major political shift, emboldening them to use very strong rhetoric against the EU. Following Milošević's fall in 2000, who the majority of unionist

opposition parties in Montenegro firmly supported, the new authorities in Belgrade, which were strongly empowered by the EU, directly endorsed the pro-unionist opposition parties in Montenegro, as they were the key political actors still vested in maintaining some form of union with Serbia. The unionist opposition parties in Montenegro saw the transfer of legitimacy from the EU to the authorities in Belgrade as an enticing method to significantly improve their own political sway. As a result, the unionists became increasingly pro-European and very vocal in pledging their commitment to European values and principles.

To obstruct any potential negotiation process, the unionists formulated their position on the required terms for a referendum to be organized. They were mainly focused on raising the approval bar very high: they required a positive vote of 50% +1 of all registered voters, followed by a mandatory approval of 2/3 of the members of parliament (RFE 2005). The former meant that in order for independence to be approved, more than a half of the 484,718 registered voters had to cast a ‘yes’ vote. These focal points were carefully chosen, as the unionists were well aware that in all previous elections, with an average turnout of approximately 75% voters, the pro-independence parties received less than 200,000 votes, on average. At the same time, the unionist parties held 30 of 75 seats in parliament, which automatically eliminated any prospect of obtaining a positive vote for independence in parliament.

In a non-paper³ issued on 10 November 2005, the EU Troika⁴ attempted one last time to discourage the aspirations of the pro-independence forces to call for a referendum (Morrison 2018). The paper highlighted the importance of finding a negotiated solution between the two blocs, concluding with a warning “that failure to hold dialogue on the matter would have severely negative consequences for Montenegro’s future aspirations of European integration” (ICG 2005: 10). Soon thereafter, then-EU High Representative for CFSP Solana also pointed out that

³According to Teasdale, a “non-paper is an informal document, usually without explicit attribution, put forward in closed negotiations within EU institutions, notably the Council of Ministers, in order to seek agreement on some contentious procedural or policy issue. Often circulated by the presidency of the Council, an individual member state or the European Commission, non-papers seek to test the reaction of other parties to possible solutions, without necessarily committing the proposer or reflecting his or her public position up to that point” (Teasdale 2012).

⁴UK Ambassador David Gowan, the Head of the European Commission Delegation to the State Union Josep Lloveras, and Austrian Chargé d’Affaires Ulrike Hartmann (ICG 2005: 10 fn. 45).

“the EU would not accept the outcome of a unilateral process, in which the Montenegrin authorities and the opposition fail to cooperate with the EU and other responsible international bodies” (ICG 2005: 10). Both the non-paper and Solana’s remarks represented a unique opportunity for unionists to capitalize on EU skepticism and blocking any prospects of organizing a referendum. They immediately issued a statement expressing their reluctance to participate in an unnecessary referendum (ICG 2005). Despite these pressures, the pro-independence bloc still had one card up its sleeve: they knew that the EU had a contractual responsibility to accept a referendum process, stemming from the provisions of the Belgrade Agreement that the EU itself had mediated. Thus, when all carrots and sticks failed to yield any results, and as the transitional period of three years came to an end, Javier Solana appointed Miroslav Lajčák as his special envoy on the matter on 16 December 2005. As Friis notes, by embracing its new role as a mediator, the EU had assumed its most pro-active role thus far, as “intended to conclude this chapter in the Western Balkans relatively swiftly” (Friis 2007: 80).

7 MEDIATING PROCESS AND FOCAL POINTS

Lajčák’s first move was to request both the pro-independence and unionist camps to appoint negotiating teams that would discuss and find a solution on the legal framework for organizing the referendum (Friis 2007). Lajčák did the same for himself by establishing a mediating coalition composed of experts from the EU, the OSCE and the Venice Commission. Such a broad coalition would increase the EU’s overall leverage in the peacemaking process.

Severely hostile rhetoric between the two camps made communication between the two virtually non-existent, prompting the mediating team to issue a document entitled “Key principles of a democratic referendum process in the republic of Montenegro”. This document set the tone for the subsequent negotiations, indicating which issues had to be addressed to find a suitable solution. These issues included a revised legislative framework, the majority requirements, the referendum question, campaign, access to media, finances, administration and observation (Friis 2007). Mediators got immediate confirmation that the two camps held polarized and mutually exclusive positions on each issue. On the one side, the leadership of the pro-independence movement resisted the introduction of any new legislation on the matters, insisting that the existing legal framework offered

the necessary democratic mechanisms to make the referendum procedure both fair and transparent. On the other side, unionists requested the establishment of a “concentration government” as a precondition to any further negotiations, as such a government would level the playing field by permitting the opposition parties to assume oversight of state resources and institutions. Moreover, they demanded the referendum to assume a non-binding character and that a robust set of new legislation be adopted if the referendum was to be seen as legitimate (Friis 2007).

Once the mediators familiarized themselves with the two sides’ positions, they began exploring the possibility of formulating a tailored solution. The unionists’ demands required radical changes to the legal-political context, which were highly controversial for the mediators as they were not mandated to interfere in such broad spheres of Montenegrin political life. According to Friis, “Lajčák made it very clear that the EU would help find a political common ground between two sides but would not reverse the reform process or undermine the existing institutions” (Friis 2007: 82). Lajčák’s strategy was to keep coopting the unionists while continuing to reiterate that some of their demands were unacceptable for the EU. Knowing that the unionists wanted to appear pro-European, the mediators declared that some of the unionists’ demands “contradicted the EU standards and positions” and ought to be reconsidered (Friis 2007: 82).

Once the unionists had agreed to revisit some of their positions, the mediation process turned away from the issues that had the highest potential for compromise. This tactical choice was made by Lajčák and his team, who sought to create the necessary momentum to address the most contentious issues. Consequently, the issues of media coverage, campaign conduct and finances, and process oversight were addressed first. Gradually, the mediators managed to generate sufficient momentum by appealing to European values and norms and capitalizing on the two sides’ rhetoric and produced a set of compromise solutions acceptable to both.

The most controversial issue—the majority requirements—was left for last. The mediators aimed to find a formula that would make both sides believe that they had a fair chance of winning (Friis 2007; Lipka 2011). The representatives of the pro-independence movement insisted that the provisions of the existing referendum law had to be upheld. Thus, they demanded the implementation of the formula 50% +1 of casted votes for a successful outcome. On the other hand, the unionists gradually abandoned their initial focal point of 50% +1 of all registered voters as a majority requirement (as the EU mediation was not willing to accept it as a solution),

and began insisting on a similarly very high qualified majority, somewhere between 70 and 75%. Knowing that the parties would never be able to find a compromise on their own, the mediators began contemplating a formula they could impose with a ‘take it or leave it’ approach. They wanted to offer a solution that could be viewed as hardly yet plausibly attainable for either side. Reflecting on the experiences from previous national and local elections in Montenegro, they concluded that the victory margin in each election cycle was never higher than 10%. Such leeway was seen as a useful cushion that would permit both sides to perceive the result as ‘clear, visible and convincing’ (Lipka 2011). Prompted by such analysis, the mediators crafted a customized formula that prescribed “50 per cent +1 of all eligible voters and 55 per cent of those voting in favor” in order for the referendum to pass (ICG 2006: 2).

These focal points stunned both sides. Unionists still expected higher thresholds on both levels, yet eventually decided to accept the solution because of an underlining conviction that what was being offered was still within their reach (Friis 2007). The pro-independence movement was far more displeased with these focal points, claiming that such formulas were not based on any meaningful democratic precedent. Their fundamental concern evolved around the so called ‘grey zone’, where the vote for independence would lie somewhere between 50 and 55%, thus making it possible that a minority could overrule a majority. Nevertheless, it was clear to the pro-independence movement that the success of the referendum process rested on the EU’s willingness to recognize it and thus grant it international legitimacy. Aware of its unique role, the EU did not hesitate to employ its leverage and insist on the suggested focal points. As a result, the formula was presented as a condition that had to be accepted for the referendum to be approved by the EU. According to Friis, “the prospect of EU partnership and conversely the fear of losing it probably made the DPS swallow the bitter pill and accept the 55 per cent formula” (Friis 2007: 85). He also notes that “there is little doubt, however, that this was a gamble on the part of the EU” (Friis 2007: 84). It is important to note that the EU did not plan any contingencies in case the ‘grey zone’ scenario materialized. Faced with ‘insufficient’ victory, the pro-independence camp would refrain from further endeavors to consolidate the State Union, and instead concentrate all of its resources to organize a follow-up referendum. Clearly, in such a scenario, the country would face a severe setback, as all of its institutional and societal energy would be focused on coping with (yet another) transition period in anticipation of a new referendum on independence.

Despite such concerns, the EU pushed forward this specific formula. Using its authority and legitimate power over the two sides, it formulated and delivered a commonly acceptable solution that made the referendum a reality. On 21 May 2006, 55.5% of Montenegro's electorate voted in favor of independence. The country managed to narrowly avoid the gray zone scenario. The results were immediately recognized by the EU, giving the referendum results the essential degree of international legitimacy.

8 CONCLUSION

The EU's involvement in Montenegro is a unique example of how international mediators can influence the peacemaking process through formulative and manipulative strategies, by creating and resorting to specific focal points. This influence reflects their agenda and preference for solutions they are willing to legitimize and provide political cover for. In the case of Montenegro, such authority was largely grounded in an overwhelming societal acceptance of the EU as an international entity that can prescribe solutions based on its normative appeal (Džankić 2016). For the political elites (both across the ruling parties as well as the majority of the opposition parties), the unique source of the EU's leverage was based on its character as an institutionalized international body. Hence, they accepted the EU's legitimate power and authority to prescribe and if necessary, even impose the 'rules of the game' under which the referendum was to be held.

The case also indicates potential liabilities of formulative and manipulative strategies when associated with a vague mandate. With the decision to formulate and impose a tailored focal point, Lajčák and his team led the process towards a very fragile outcome that could have caused severe consequences for the EU's reputation as a peacemaker that is capable of dealing with escalating tension in the Western Balkans and as a normative actor that can prudently develop sustainable solutions.

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Conclusion: Lessons for Theory and Practice

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The chapters of this book clearly substantiate that the focality or salience of proposals and solutions play a significant role in negotiations. They also document the various forms and uses of such proposals and solutions in different contexts and situations. A proposal or solution's commonly recognized conspicuity can be used to either facilitate agreement or to block it. Solutions may be conspicuous for all involved right from the beginning or they may become conspicuous through strategic and skilled communication. This multiplicity of roles and uses of conspicuity—and thus also of focality and salience—renders it difficult to construct a 'neat' theory, whether normative or descriptive, of their application in negotiations. It would consequently be counterproductive to claim that such a neat theory follows from the contributions that make up this volume. Nonetheless, we identify a number of important stepping stones from among the many valuable insights contained in the chapters of this book. We will draw on

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this stock to extract key lessons from the chapters, placing emphasis on possible strategic uses of focality and salience, but also touching upon the implicit fairness of the respective solutions. We will first, however, elucidate the terminological differences between focality and salience again, which our inquiries are based on.

I FOCALITY AND SALIENCE

In this book, we distinguished between focality and salience. Following established practice in game theory and its treatment of coordination problems, focality is defined as a unique conspicuity under a specific epistemic condition. The epistemic condition requires the unique conspicuity to be common knowledge (i.e. a solution needs to be known by all and all involved need to be aware that it is uniquely conspicuous to all). In the context of negotiations, focal points are thus commonly known uniquely conspicuous proposals and solutions. Given the exigency of these prerequisites, it should come as no surprise that focal points in our narrow technical definition are not often encountered in real-world negotiations. Salient proposals and solutions are thus more relevant in the context of real-world negotiations. Also referred to as salient points, they are defined here as conspicuous points whose conspicuity is recognized by all observers in a reference group. Salient points usually come in the plural. That is, in a given context, several salient points compete for our attention.

The chapters of this book have amply demonstrated this aspect, as well as how salient proposals can influence negotiations. Take an example from Chapter 4 by Brown and Zartman. In the negotiations on the maritime border between Libya and Malta, several conspicuous proposals were put on the table: precedent, equal division of the distance between the coasts, a border following physical geography (rifts in the continental shelf), and proportionality to the length of the coastlines. Neither one of these criteria was uniquely or obviously conspicuous in comparison to the others. Hence, none was focal in the technical sense, but all criteria were nonetheless salient. The international court that ultimately dealt with the dispute between Libya and Malta first ruled out precedent (that is, principles gleaned from previous decisions) as a criterion for resolving the dispute. This does not imply that the precedent was not salient. On the contrary, the salience of precedent explains the need for explicit exclusion from the final decision. Nevertheless, a number of other salient options were available, of which the court ultimately chose proportionality. The court had to at

long last settle the dispute because the negotiating parties could not agree on one of the salient proposals. This case clearly demonstrates one of the canonical uses of salient proposals in negotiations: they can also be used to block the appeal of an opponent's salient proposal. Salient proposals appear natural and plausible to observers, features that are crucial for winning a public or constituency over to one's cause. An opponent's salient proposal is therefore often best countered with an equally salient proposal to neutralize its appeal. Indeed, the options presented for the Libya-Malta case all had a certain appeal, naturalness, and plausibility. This did not bar the court from sharing Libya's view, but the court could have also opted for any of the other proposals without appearing unreasonable or incoherent to outside observers.

The case of the sea-border between Libya and Malta demonstrates that salient solutions can be helpful instruments for courts or mediators to resolve a dispute. Yet what if negotiating parties need to sort out their differences among themselves? Mikhail Troitskiy coins the term 'non-equilibrium salient points' in his Chapter 5, referring to elements in a process that in some cases facilitate agreement. The salient proposals or solutions he envisages in the context of his chapter are principles of nuclear strategy: counter-force or counter-value strategy. The first focuses on eliminating or retaliating against an opponent's nuclear arsenals, the second focuses on the opponent's population, infrastructure or economic assets. Technological developments allow for a shift from one strategy (say, counter-value) to the other (counter-force). Thus, nuclear powers have the opportunity to destabilize an existing salient strategic equilibrium and induce a transition to another equilibrium. In the present case, this option is primarily available to the technologically more advanced power. However, such a move can also take place in contexts in which no prior equilibrium exists. Imagine a case in which negotiations on arms reduction have stalled because one side calls for restrictions to nuclear counter-value capacities, while the other seeks to limit (its opponent's) counter-force options. In this case, the latter party can stimulate its opponent's interest in counter-force-limiting negotiations by increasing its own counter-force capabilities. Consequently, a mutual limitation of counter-force capabilities will become more important as well as more salient for both sides. *Si vis pactum, para bellum.*

Reference to principles of nuclear strategy brings us to another issue involving focality and salience. Principles have been repeatedly mentioned in this book as examples for focal or salient points. Rosoux and Druckman (Chapter 7) analyzed the role of *ubuntu*, a South African principle

of shared humanity and connectedness, in the South African process of post-Apartheid reconciliation (and beyond). Principles require interpretation; the more general the principle, the more interpretation they require. Hence, general philosophical or ethical principles such as *ubuntu*, and to some extent even more specific principles such as ‘counter-force’, fail to guide our actions without explicit agreement on their interpretation. Is this a reason to exclude them from our analysis? We beg to differ. Salient points need not be failsafe attractors of expectations to play a significant role in negotiations. Schuessler (Chapter 3) describes a process through which skillful negotiators can transform a merely salient proposal into a focal one, especially if their moves are not thwarted by savvy opponents. In this process, the negotiating parties’ attention is directed towards a specific salient proposal in ways that are recognized by all and all involved know that these ways are recognized by all. If this process is successful, a proposal that had initially not been seriously considered by others may become a commonly recognized unique attractor of attention and thus a focal point. This seems to have been the case with *ubuntu*, because it was not clear at the outset of South Africa’s transition process that one ethical principle only would predominantly guide the entire process. The unopposed appeal of *ubuntu* made it not only salient but focal, so that at some point during the transition process, it became imprudent to not conform to *ubuntu*. The details of the reconciliation process remained to be filled in, of course, and disagreement over details could potentially block overall agreement. Reconciliation is a fallible endeavor. Finding focal or salient principles in negotiation is therefore no guarantee for success. Nevertheless, establishing a focal principle that guides a reconciliation or negotiation process is a suitable strategy for moving towards an agreement. Similar considerations apply to focal or salient formulae, a subject addressed by Brown and Zartman (Chapter 4), the difference being that formulae for a solution usually tend to be more specific than principles. According to Brown and Zartman, formulae are “few-word phrases that capture a guiding idea in the search for solutions”. For instance, ‘land for peace’ was a formula that guided the peace process between Egypt and Israel in the 1979 Camp David negotiations. This example also documents that the boundary between formulae and principles is blurry, and some observers may refer to principles which others refer to as formulae. Since both can, however, be salient and focal, we need not be overly concerned about this inevitable conceptual vagueness.

Despite the positive role salient principles or formulae can and do play on the path toward agreement, they were not included in the category

of what has been called ‘paradigmatic focal or salient points’ in Chapter 3. Paradigmatically, only round or prominent numbers (1, 2, 3, 10, etc.), simple proportions (one-half, two-thirds, etc.), and geographic or geometrical features (rivers and mountain ridges, etc.) are conspicuous in the present sense. Paradigmatic salient properties more or less directly specify what the parties should agree on. This predestines them for solving problems of coordination, at least if no similarly appealing paradigmatic counter-point is present in a given context. By contrast, which path should be taken with regard to principles or formulae usually needs to be specified for an action-guiding agreement to be reached. As the chapters of this book document, there is no scarcity of paradigmatically salient proposals in negotiations. Melamud and Schuessler (Chapter 6) analyze the numbers (voting thresholds) that were at the center of discussion in the CTBT negotiations, Troitskiy (Chapter 5) offers several salient numbers from agreements on nuclear disarmament, Rosoux and Druckman (Chapter 7) also discuss a salient number (10 billion Deutschmark for Nazi victims), Vuković (Chapter 8) focuses on voting thresholds in the case of Montenegrin independence, and Brown and Zartman (Chapter 4) consider geographical saliences. Given the prevalence of numerical examples in our book, it is probably not coincidental that most examples of paradigmatic points are merely salient and stand in competition with other paradigmatic options. It is usually easy to identify other salient numbers in the vicinity of salient numbers, unless the range from which numbers can be selected (here, the zone of expectable agreement) is suitably narrowed down—an allusion that will occupy us in the strategy section below.

One category of conspicuity that deserves special comment is precedent. A precedent need not have any conspicuous properties as such to be conspicuous. The property of being precedential already confers conspicuity to a solution. However, this property also engenders difficulties for analyzing the process through which its salience or focality facilitates agreement. We usually do not know whether a party’s suggestion to follow a precedent relates to the salience of the precedent in question. Alternatively, the party might simply choose a precedent because it has been proven to work or because its legality seems uncontroversial. Such considerations may also guide our acceptance of a precedent as a solution, without assigning a major role to a process of converging expectations in arriving at an agreement. It therefore needs to be shown in a specific negotiation process that precedent plays a significant role in coordinating expectations through its conspicuity, if the role of focality or salience of the precedent indeed emerges

during the process. Recall the case of Libya-Malta. Precedent was compared to other salient proposals and excluded. This demonstrates that the salience of precedent played a role in that case. The role of precedent in the reconciliation process in Ruanda (Rosoux and Druckman, Chapter 7) is less clear-cut. *Ubuntu* and the South African case may have become a precedent because the reconciliation process was successful. On the other hand, the expectation may have been that other African countries replicate South Africa's example as a precedent for reconciliation, in which a relatively strong focality informed the process. From this perspective, the focality of the South African example was a major concern in the design of the Rwandan reconciliation process.

2 EXPLANATIONS AND JUSTIFICATIONS

The chapters of this book suggest a multiplicity of reasons and conditions for putting forward salient proposals or accepting a salient solution. A unifying bond between these reasons and conditions is that salient proposals and solutions are usually not ideal for those who make or accept them. This is a significant difference to pure coordination games. In such games, all coordination outcomes are equally good for all the players, whose task is simply to not fail with respect to coordination. Negotiations always entail diverging interests, and alternative agreements may not be equally beneficial for all. There is no reason to assume that particularly conspicuous proposals or solutions will typically be outcome-optimal in terms of money, power, or some other resource for those who make or accept them. Whoever strives for conspicuity, therefore, usually needs to sacrifice some of his or her goals. But why should an agent do so?

A first reason emerges when the space of outcome values is 'flat'. That is, there is not much to gain or lose from alternative outcomes, hence, a conspicuous proposal may signal that a negotiating party believes there is no need to haggle. In Chapter 5, Troitskiy argues that this is quite often the case in arms control negotiations. A few dozen or even 100 more or fewer nuclear warheads or missiles do not matter from a strategic perspective, given the U.S.'s and Russia's huge nuclear arms stockpiles. President Obama's 2013 proposal to limit the number of nuclear warheads on both sides to 1000 represents this perspective and introduces a salient number. President Obama's message was that reaching an arms control agreement is more important than playing the status game of proportional arms reduction, in which both sides are eager to ensure that they do not make bigger

sacrifices than the other. The failure of the 1000 warhead proposal, nevertheless, documents the power of considerations of proportionality, and perhaps even more so reflects the bipartisan rivalry in U.S. politics. In any case, the propensity of colonial powers to agree on straight lines for borders in Africa and the Middle East in the nineteenth and early twentieth century shows that the ‘no need to haggle further’ motive did at times manifest itself in the outcomes of negotiations.

Another reason to adopt a salient proposal is highlighted by the ten billion Deutschmark agreement to compensate Nazi slave and forced labor victims, as discussed by Rosoux and Druckman (Chapter 7). The need for such an agreement between the German state, German business enterprises (especially those active in the U.S.), and organizations representing the victims arose because German reunification invalidated former agreements that had foreclosed further compensation for Nazi crimes. The outcome space was hardly flat for the parties involved in the respective negotiations. The German government and German enterprises responsible for making the payment would certainly have preferred to pay less, and the victim representatives would have liked to secure a higher amount. However, the outcome, namely the round number of ten billion had several advantages. It allowed the Germans to split the payments evenly between the government (i.e. taxpayers) and the enterprises, using numbers that were (again) salient, i.e. five billion each. This double salience was important because the funds contributed by the private sector were not only paid by companies that had profited from the Third Reich and relied on forced labor. A public call was made to all German companies (even those established after WW II) to voluntarily contribute to the Nazi victim compensation funds. Salient proposals have a major advantage in such situations when a proposal or solution requires public support. They are easily communicable and remembered. Consequently, they are well-suited for use in public deliberation. Moreover, the expectation that this is the case already provides a reason for negotiators to use salient proposals in negotiations where rallying the public’s or a constituency’s support is important.

Considerations of publicity also help explain why simple fractions of small natural numbers ($1/4$, $1/3$, $1/2$, $2/3$, $3/4$) play a dominant role in the calibration of voting thresholds. Only the threshold of one-half has theoretical justification, if we assume that the will of the majority is to prevail in group decisions. Other thresholds are theoretically not more justified than any number in their vicinity, but they are easily communicable. Moreover, human psychology seems to play some role in their choice. If

two solutions seem equally good in terms of outcome, we often tend to favor the simpler one. Simple fractions thus have a psychological advantage over more complicated ones. These considerations have, of course, exerted their influence for a long time, i.e. there is ample precedent for the setting of voting thresholds. The debate on appropriate voting thresholds for launching on-site inspections (OSI) within the context of the Comprehensive Test Ban Treaty negotiations (see Melamud and Schuessler, Chapter 6) may therefore have been driven by precedent as much as by the salience of the respective proposals. As discussed above, precedent can already be considered to be salient.

The final step in the OSI negotiations consisted of splitting-the-difference between the two semi-final proposals of opposed groups of states. The semi-final proposals called for a simple (26 votes) or a two-thirds majority (34 votes) of the 51 members of the executive council that was to decide on the launch of an OSI. In the end, the negotiators agreed on a threshold of 30 required votes. Splitting-the-difference, that is, choosing the midpoint in a space of feasible options, is in itself salient. In fact, given a restriction of the option space in which the endpoints are not feasible, the midpoint is a strong focal point. It is the point on which agents, who are unable to communicate, can *ceteris paribus* coordinate, and it is more conspicuous than any other salient point in the interior of the option space (one-third, two-thirds). For these other points, equally eligible symmetrical alternatives exist on both sides of the midpoint. That is, for any concession made by A which requires a larger concession to be made by B, the question arises why B should not strive for the smaller concession and leave it to A to make the larger one. This is a way to justify an even split among players who are regarded as equals. However, there are even more ways to justify splitting-the-difference. It seems fair to many observers to split a pie evenly if no agreement can be reached on which other considerations ought to prevail. Moreover, under suitable conditions, an even split may also be the outcome of game-theoretical models of self-interested bargaining, in which neither fairness nor salience plays a role. This plurivalent nature of splitting-the-difference renders it difficult to ascertain why it is being implemented in specific cases. Usually, we have no discerning information about the beliefs and intentions of the agents involved. It therefore remains an open question whether the OSI negotiators split the difference between the semi-final positions for reasons of salience or for some other reason associated with this principle.

Siniša Vuković (Chapter 8) offers another example of negotiations that involved voting thresholds, but the situation he investigates was quite uncommon. The EU sent a mediator to assist in the negotiations between pro- and anti-independence camps in Montenegro. Montenegrin independence was a contentious issue within as well as outside the country, and Montenegro's aspirations to establish good relations with the EU gave the latter considerable clout in the process. The EU mediator suggested two voting thresholds, carefully calibrated to be acceptable to both sides. A vote for independence was to be based on a turnout of at least 50% +1 of eligible voters and be approved by at least 55% of those who actually voted. Both conditions are uncommon, because thresholds of voter participation are usually not of principal significance in elections, and 55% is not a widespread requirement for a majority. The 50% line, on the other hand, is a classic focal point in elections. Its focality became particularly relevant in the Montenegrin case, because majoritarian considerations were not pre-eminent in this case. None of the conditions put forth by the EU guaranteed that a majority of eligible voters would approve independence in case of a positive outcome of the elections. The voter participation threshold was rather a token that gave opponents hope to be able to block independence by refusing to go to the ballot box. The other proposed threshold, namely for 55% to be in favor of independence, at first glance appears to not be a salient number. Its justification was that random majorities were to be excluded. Insofar, the threshold should be lower than the usual strong majorities required for constitutional change (e.g. a two-thirds majority) but high enough to preclude a random victory of one side in a 'hung election' between equally strong camps. The number of 55% has no statistical significance in this respect but is one of the most salient numbers in the range between 50 and 60%, which appears as a suitable target range under the stated premises.

We have a case here in which the immediately appealing focal threshold, namely a simple majority of voters, was rejected by one party to the negotiations as being too low. The EU negotiator dealt with this challenge by staying as close to the majority threshold as possible, while simultaneously catering to the interests of the blocking party. He therefore reverted to a salient number in the close vicinity of the majoritarian threshold, signaling evenhandedness by splitting the interval between 50 and 60% in the middle. There could have been other fair divisions in this case (e.g. splitting the interval between the majority and a two-thirds threshold). Yet a mediator with clout often has the advantage of being able to resort to a

given principle or considerations of fairness, which the parties involved will not challenge if the mediator appears to be fair (more on considerations of fairness below).

3 STRATEGY

The cases discussed can be used to glean more abstract and general considerations on the potential strategic role of salient or focal points in real-world negotiations. Let us start with the initial observation that salient proposals are usually only second-best options for all parties involved. This suggests that negotiators will only resort to salient proposals if they abandon their first-best option. There are cases in which this rationale is immediately evident. The German government, which ultimately proposed compensation in the amount of 10 billion Deutschmark to the representatives of Nazi victims, initially offered a mere 1.7 billion Deutschmark (see Rosoux and Druckman, Chapter 7). Germany soon had to recognize that the amount it was willing to pay was far from the mark represented by a possible zone of agreement. The German government promptly submitted a more realistic proposal, this time, a salient one.

However, preparedness to revert to the second-best option need not necessarily be conditioned by the course of a negotiation but may already exist from the very start. Realizing that one will not get the whole pie, aiming to secure a salient part of it from the beginning may be a reasonable approach. This is particularly the case if a party manages to anchor the negotiations with an early salient—or even better, focal—proposal on a range of values. Anchoring is a psychological concept which takes into account that processes of deliberation unfold differently, depending on their starting points. A suitable choice for a starting point (i.e. anchoring to that point) can therefore exert considerable influence on the result of a process of deliberation. It matters in this respect that salient proposals are well-suited to be communicated to the public. As attractors of attention, they resonate within the public. This further increases their value as anchoring devices for negotiations. Considerations of public appeal can be associated with the German government's 10 billion Deutschmark proposal, but they are also visible in the EU mediator's proposal in the case of Montenegro, or President Obama's proposal to reduce the superpowers' nuclear arsenals to 1000 warheads each. All these proposals were well-suited to anchor subsequent debates and negotiations.

This is not to say, of course, that attempts at anchoring will generally be successful. In principle, they should be able to exert considerable influence if given sufficient time to unfold their appeal. The expectations of the parties involved and their supporting public will then become focused on a resonating proposal and will thereby mutually bolster each other. A rapid, widely recognized move to block the proposal can thwart this process. Moreover, alternative salient proposals may be introduced to initiate a counter-resonance process. If the public in the two countries is sufficiently normatively or politically divided, alternative salient proposals may find distinct basins of resonance, which often suffices to block progress in negotiations. A key lesson from these considerations is that studying the uses of salience in negotiations does not amount to creating a recipe for success. It is more like studying the options for strategic moves and counter-moves, similar to the analysis of opening systems in chess. Detailed knowledge of the Sicilian opening is not a surefire recipe for success against equally competent opponents. It is rather a boon against less knowledgeable opponents. In negotiation analysis, strategic common sense plays a greater role than it does in chess, but this does not imply that moves and counter-moves need not be studied with diligence. Given the stakes in international negotiations, strategic options need to be analyzed in advance.

The possibility of anchoring negotiations is a case in point. If a party's salient proposal influences the other party's counter-proposal, this may already amount to something. Take, for instance, party A, which does not propose the salient point it aims to achieve but proposes a point that is closer to its ideal aspirations. If the other side B responds with a counter-proposal, A might, after some haggling, agree to a salient point between the positions discussed so far, i.e. to compromise. However, the final salient point is the one party A initially targeted. Thereby, competition for 'inner salient points', i.e. salient points between the proposed positions, may evolve into a strategic game. Since there are usually only a small number of suitable salient points at any stage of negotiation, clever occupancy of these salient points might lead to an advantage over the opponent. In the OSI negotiations underlying the Comprehensive Test Ban Treaty, for instance, anticipation of a final need to split the difference between entrenched positions might have been used for the benefit of the Western coalition, which sought a low threshold for launching an inspection. This requires counter-factual reasoning, which, in certain cases, is indispensable for the sound preparation of negotiations. It is not farfetched to expect conflict between supporters of low and high voting thresholds to get entangled around the

majority threshold. In the OSI negotiations, the deadlock arose between a simple majoritarian and a two-thirds voting threshold. It would have been better for the Western coalition for the penultimate threshold to be one-third or even 40% vs a two-thirds threshold. The majoritarian 50% threshold is a strong focal point. Prolonged insistence on significantly lower salient points might have turned *this* point into a last-ditch opportunity to forestall failure by splitting-the-difference (although one can never be sure with such counterfactual propositions). The premise of this assumption is that the U.S.-led coalition could have foreseen recalcitrant opposition early in the negotiation process.

The number zero plays a particular role among the salient numbers used in negotiations and in international politics (see Troitskiy, Chapter 5). Zero is certainly one of the most prominent and conspicuous numbers. The prospect of zero nuclear weapons, in other words, a nuclear weapon-free world, has attracted the attention of people around the world. A significant percentage of people even consider this aim to be attainable; yet complete nuclear disarmament will hardly be seriously considered a viable option in negotiations between nuclear powers. This did not prevent President Obama from communicating his dream of a nuclear-free world in a speech in 2009. He cannot have expected to achieve this aim within his 8-year presidential term. Yet his speech signaled to other nuclear powers that President Obama was serious about nuclear arms reduction, and it nourished public support in ‘the West’ for more short-term realistic proposals on arms reduction. Bold visions can thus be used to support mundane policies, and they are often best formulated with the help of salient principles or formulae, including salient numbers. This can be regarded as a variant of using salient proposals to prepare the ground for other solutions in negotiations.

4 FAIRNESS IN NEGOTIATIONS

The import of salient proposals and solutions for fairness in negotiations has not taken center stage in this book. It is, however, appropriate to address this issue in the book’s concluding reflections. Traditional conceptions of purely self-interested conduct in negotiations—often represented by a paradigm of political realism in international politics—tend to underestimate the impact of considerations of fairness and morality in this sphere of agency. Empirical studies, however, convincingly demonstrate that fairness matters for successful negotiations, in the international sphere as much as

almost everywhere else.¹ If we take this insight as granted, it is still unclear how it relates to uses of salience. After all, salience is not a moral category. None of the many extant theories of justice consider salience as a fairness or justice generating property. Equality may be such a property, or proportionality to merit and desert, but not salience as such.

As early as the beginning of the 1960s, Schelling already argued that focal choice has moral aspects. He pointed out that some solutions, such as split-the-difference, are at the same time focal and in some sense fair. The focality of this fair solution reinforces its appeal for negotiators and is therefore a handmaiden of fairness.² Moreover, as argued here, the simplicity and conspicuity of focal outcomes may help gain support for an outcome among the wider public. In many cases, negotiators or their principals are responsible for their actions before the public, and in these cases, it can be morally mandatory to choose a solution that finds public acclaim. However, these are only shallow moral reasons. They reinforce the attractiveness of outcomes whose fairness needs to be independently established in the first place. Insofar, the objection that salience does not represent justice is still valid.

Given this state of affairs, it is important to recognize that standard requirements of justice in negotiations leave an essential part of this field unattended. It is well-known that contending parties in negotiations often embrace different notions of justice, notions that are mutually incompatible but often reasonably defensible.³ Justice in negotiations is, in other words, subject to reasonable moral disagreement. Equally intelligent and knowledgeable persons can disagree about the fair solution to a problem being negotiated. Therefore, it does not suffice to account for the parties' substantive moral positions to show how the notions of justice can influence negotiations. It is also necessary to deal with the various ways in which the parties can reach a compromise between their moral positions—and ideally, a fair compromise. Justice in negotiations will therefore often involve considerations of *second-order fairness*. We call considerations second-order fair

¹ See, e.g., Albin (2001).

² Schelling (1960: 73).

³ It is not clear whether the fact that the parties come to a reasonably tenable moral position because of egotistical interests (should this indeed be the case) gives rise to a moral duty to abandon the position. One could argue that only the morality of the position counts and that reasonably tenable moral positions are morally tenable all things considered. In any case, this is a question of ethical theory which we will not pursue here.

if they pertain to the fair adjudication of the parties' (or all stakeholders') conflicting claims of justice. Note that the first-order/second-order distinction is merely relational. The first-level of moral considerations is defined by whatever reasonably defensible claims of justice the parties disagree on. The second-level is defined by the attempt to find a morally appropriate compromise between first-order positions. This gives rise to peculiar considerations of justice which may be called "justice of compromise". Our claim is now that a salient choice can be a way of achieving second-order fairness, or a just compromise, enabling the parties to signal respect for their respective moral status or standing. Since second-order fairness can differ from the substantive notions of justice on the first level of moral consideration, it is no serious defect if salience fails to resonate with substantive notions of justice. The main thing that matters is its aptness for inducing a fair compromise in situations of reasonable disagreement about justice claims.

In assessing the fairness of salient choices, it helps to distinguish different dimensions of normative concern. A first and relatively unproblematic dimension concerns the *procedural fairness* of salient or focal choices. Solving a coordination problem through focal choice involves a procedure of interlocked reasoning of the parties in question. It therefore matters from a moral point of view that this reasoning process has several properties that are familiar desiderata of procedural justice. Focal choice is impartial, shows equal concern to all parties, and is transparent and straightforward. Its impartiality and equal concern are grounded in a process of reflection in which every party counts as much as any other party for solving a problem of coordination. Moreover, a focal point can form a solution only if it is recognized by all parties. Last but not least, focal points can be easily communicated due to their conspicuity, and modern theories of justice demand that fairness claims should be recognizable as fair by the wider public. Insofar, focal choice displays precisely those characteristics of procedural fairness that we would require for a method of second-order justice.

Merely salient proposals and solutions inherit some of these fairness properties of focal points, but they also differ in significant respects. Salient proposals need not appeal equally to all parties involved. From a multiplicity of competing salient points, some will fit the interests of some parties better than others. Making a salient proposal therefore does not signal full impartiality. It nevertheless signals some distancing from the straightforward maximization of one's preferences because it is unlikely that maximum preference satisfaction is perfectly correlated with salience.

Salience as such reflects the beliefs and perceptions of an agent, but not her preferences. Moreover, the agent assumes to share the respective beliefs and perceptions of conspicuity with others. A salient proposal thus mirrors a willingness to adhere to shared standards, all be it shared standards of conspicuity, instead of strictly prioritizing one's own point of view. Add the mentioned properties of transparency and simplicity, and even salient choices become to a significant degree instances of procedural justice.

Take the German offer of 10 billion Deutschmark as compensation for Nazi victims. It is probably contentious whether this sum was adequate redress for the former victims of the Nazi forced labor system. That is, the first-level justice or moral adequacy of the German government's proposal can be questioned or debated from different points of view that correspond to different sets of moral beliefs. However, moral second-order considerations also matter. It matters, for instance, whether the proposal merely reflects the preferences of the German side, which it tries to optimally satisfy, or whether it already takes the interests and perspectives of the addressees into account. Formulating a salient proposal signals to some extent that the latter is the case. It is unlikely that a neat weighing of one's interests exactly arrives at a round number in negotiations that involve monetary payments. Proposing a round number in a plausible range of outcomes thus signals that a party is willing to favor a mutually beneficial outcome over its own best aspirations. It signifies some respect for the preferences and views of others. Of course, if alternative salient points are more beneficial for the other party than that proposed by an agent, the former will not be satisfied with the consideration their interests receive. Yet even a signal of limited willingness to give justice its due is often important for trust to attain a foothold between the negotiating parties and to prevent others from opting for retaliatory or preemptive strategies. Salience thus can be an important building block for a fair solution. This is especially the case if the parties' understandings of fairness differ. Since salience and focality are not in themselves conceptions of fairness, they transcend the moral disagreement of the parties. For this very reason, they seem well suited to build a bridge between the parties. One could say that many salient or focal proposals or solutions are negatively neutral with respect to conceptions of fairness. Negative neutrality implies here that a proposed solution equally abstracts from the normative views of all parties. Proposing a negatively neutral solution facilitates agreement by avoiding a sense of unjust discrimination among the addressees of the proposal. Hesitant parties will more easily accept a proposal if they are not asked to sacrifice their own notions

of justice while some other parties' notions of justice prevail. The fact that the number 10 billion has no moral significance whatsoever is therefore no handicap, it ensures, on the contrary, that the chosen salient point does not reflect partisan moral views. Of course, negative neutrality alone is no moral reason to select a proposal, but together with a good reason to come to terms, it can amount to a justification for a salient solution.

Let us sum up. Salient or focal proposals can have a moral dimension. If suitably distinct from the parties' incompatible views of justice, they offer some shared neutral ground (shared because of the common perception of conspicuity) to which a fair compromise can converge. The compromise is fully fair if it equally brackets all parties' normative views (negative neutrality). It is fair enough if this bracketing occurs to an extent considered sufficient by the parties who form an agreement.

5 HOW TO CONTINUE

To date, no academic research program for the study of focality or salience in negotiations exists. After Thomas Schelling introduced the topic in the 1960s, it was mainly pursued in game theory and in research on the emergence of institutions. Application to negotiations was sporadic at best. This volume breaks this impasse and shows there is a lot of room to cultivate research on focality and salience, and many possible directions exist for treks in search of arable land. One way to proceed is to take the chapters of this book as sign posts for more systematic investigations into the strategic uses of salience. Take, for instance, the idea of using salient proposals to whip up support for one's aims and positions among a constituency or public. Several of the examples in this book suggest such a nexus. *Ubuntu* in African reconciliation processes, the 10 billion Deutschmark offer of compensation to Nazi victims, President Obama's 1000 warheads speech, and even the Montenegrin 50% +1 participation threshold can hardly be understood in their significance without accounting for their appeal to interested publics. In a next step of investigation, it would be worthwhile to take a closer look at this feedback loop. It would, for instance, be interesting to query veteran negotiators if they ever consciously employed salient proposals to increase public support, or what they think about such a strategy.

A bit further removed from the realities of negotiation, experiments might be conducted to isolate specific strategic features of uses of salience. Some experimentation has already been done in game theory, but we would

consider this to be further removed from practice than simulations of real-world negotiations with real-world data. Game theory represents the most abstract way of thinking about the strategic repercussions of salience in negotiations. This is not to say that game-theoretical experiments cannot be conducive to a better understanding of the present subject matter. Experimental game theory is certainly helpful. Yet to correctly interpret its results, it seems necessary to augment them with experiments that mediate between the abstractions of game theory and real-world negotiations. Such experiments could be conducted to study the interplay between negotiators, their proposals, and interested publics in more detail than possible through the observation of real negotiations. In particular, it seems possible to investigate different scenarios and to some extent probe ‘counterfactual history’ with this methodology.

All this would add to our knowledge about the role focality and salience can play in negotiations. But the main approach, we believe, will remain the one pursued here: case studies combined with conceptual and strategic considerations. We know a good deal more about focality and salience in negotiations after having gone through the chapters of this book. Further case studies will surely expand our knowledge.

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APPENDIX: GAME-THEORETICAL TERMS

GAME

A game is a strategical structure defined by three variables: a set of players (or agents); a set of basic (or pure) strategies for each player; a set of valuations (or utilities, payoffs) for each combination of eligible strategies by the players.

Usually, players can also choose probability distributions over their basic strategies (i.e. players can play strategies with a certain probability only, observing the laws of probability theory). Such randomized strategies are called ‘mixed’.

STRATEGY

In game theory, a strategy refers to a behavioral option or a possible action of a player. The set of strategies is therefore equivalent to the player’s set of possible actions.

MATRIX REPRESENTATION OF GAMES (NORMAL FORM)

Game matrices represent games with simultaneous strategy choices by players. The standard form of this representation for two players and two strategies each is (2×2 game):

		Player 2	
		<i>C</i>	<i>D</i>
Player 1	<i>A</i>	(u_{11}, w_{11})	(u_{12}, w_{12})
	<i>B</i>	(u_{21}, w_{21})	(u_{22}, w_{22})

Here, Player 1 (row player) can choose between strategies *A* and *B*, while Player 2 (column player) can choose between strategies *C* and *D*. The four possible combinations of these strategies make up the matrix. The value of the possible outcome is presented in each cell of the matrix, first for the first player (as utility u_{ij}) and second for the second player (as utility w_{ij}). The indices i and j denote row and column in the matrix.

Game matrices can easily be extended to represent n strategies for the row player and m strategies for the column player. Matrix representation becomes cumbersome if more than two players are involved.

NASH EQUILIBRIUM

A Nash equilibrium is a strategy combination in which no player can increase her payoff by choosing a different strategy while the other players stick to their strategies.

This combination is stable once it is established, because no player has an incentive to unilaterally deviate from the strategy combination.

PARETO SUPERIORITY AND PARETO EQUIVALENCE

A strategy combination is Pareto superior to another if it is better for at least one player and worse for none of them. If none of two strategy combinations is Pareto superior to the other, they are Pareto equivalent.

COORDINATION GAMES

Different and unfortunately not co-extensive definitions of coordination games exist. We use a straightforward definition here:

Coordination games are games with more than one Nash equilibrium in which the game matrix can be arranged to arrive at one Nash equilibrium per row and column.

Example with strategies s_i for player 1 and r_j for player 2:

		Player 2					
		r_1	r_2	r_3	...	...	...
Player 1	s_1	(X,X)	(0,0)	(0,0)	...	...	...
	s_2	(0,0)	(X,X)	(0,0)	...	...	...
	s_3	(0,0)	(0,0)	(X,X)	...	...	...

If all Nash equilibria have the same payoff for all players (as here X, X), the game is a *pure coordination game*. If the payoffs are not equal for all, the game is a *non-pure coordination game*.

One important class of non-pure coordination games are *mixed-motive games*. In mixed-motive coordination games, all players prefer different Nash equilibria, but will all lose if they do not choose one of the equilibria. Moreover, all Nash equilibria are Pareto equivalent (none of the equilibria is better for all players than any other equilibrium).

One famous example of a mixed-motive coordination game is the following 2×2 game, traditionally called ‘*Battle of Sexes*’¹:

		Player 2	
		A	B
Player 1	A	(2,1)	(0,0)
	B	(0,0)	(1,2)

Another important class of non-pure coordination games are *Hi-Lo games*. In Hi-Lo games, each Nash-equilibrium brings an equal payoff to all while one of the equilibria is best for all (i.e. Pareto superior to all other equilibria). The following is a 2×2 example:

¹The label ‘battle of sexes’ derives from a now no longer politically correct interpretation of the available strategies. The man prefers A, namely meeting at a stadium to watch a football game; the woman prefers B, meeting at the opera. Both prefer spending the evening together rather than on their own. There is a problem of coordination if the man and woman cannot communicate.

		Player 2	
		<i>Hi</i>	<i>Lo</i>
Player 1	<i>Hi</i>	(2,2)	(0,0)
	<i>Lo</i>	(0,0)	(1,1)

In Hi-Lo games, both players should obviously play ‘Hi’, but it is difficult to justify this choice on the basis of game-theoretical rationality assumptions.

COMMON KNOWLEDGE

Common knowledge refers to the shared knowledge of certain facts among a group of persons, with the additional shared knowledge that all of the persons involved are aware of this fact, and the shared knowledge that all involved know that all others are aware of this fact, etc. In this definition, the ‘etc.’ cannot be distinctly defined, thus leading to an infinite, mutually entangled hierarchy of knowledge meta-levels (‘I know that you know that I know that you know...’). For the present purposes, it suffices to operate with a simplified concept of common knowledge, such as the following involving two persons:

‘It is common knowledge between two persons A and B that p iff [i.e., if and only if]

- (1a) A knows that p,
- (1b) B knows that p.
- (2a) A knows that B knows that p,
- (2b) B knows that A knows that p,
- (3a) A knows that B knows that A knows that p,
- (3b) B knows that A knows that B knows that p,
- and so on.’ (ad infinitum)

(Heal, J. “Common Knowledge”, *Philosophical Quarterly* 28 (1978): 116–131, 119)

BACKWARD INDUCTION

Backward induction is a solution method for stepwise strategic reasoning. It starts with asking what would be the optimal last decision that has to be made. In then is asked what would be optimal in the second to last step, given the last decision is optimal. Under some conditions, this type of reasoning can step-by-step be continued backwards from the last to the first strategic decision. In such cases, backwards induction determines the optimal strategic choices for the whole process of strategic decision making, that is, the strategic problem can be solved by backward induction.

FOCAL POINT AND FOCALITY

There is a plethora of different understandings of focal points. We use the following:

An outcome is a focal point (or a Schelling-Lewis focal point) if and only if it is

- uniquely conspicuous, prominent, ‘stands out’, etc.
- in the minds of all parties involved,
- and all involved parties perceive this unique conspicuity (i.e. it is common knowledge).

A point of this kind has the property of focality.

SALIENT POINT AND SALIENCE

As is the case with focal points, the definition of salience or salient points varies in the literature. We use: An outcome is a salient point if and only if it is

- conspicuous, prominent, ‘stands out’, etc.
- in the minds of all parties involved,
- and all involved parties perceive this conspicuity (i.e. it is common knowledge).

Salient points differ from focal points in that they lack the property of uniqueness, i.e. their conspicuity is not unique. A point of this kind has the property of salience.

PRISONER'S DILEMMA

Take the 2×2 matrix:

		Player 2	
		C	D
Player 1	C	(x,x)	(z,y)
	D	(y,z)	(w,w)

The players' payoffs are w, x, y, z . This game is a (classical) Prisoner's Dilemma if the following relations hold: $y > x > w > z$ and $2x > y + z$.

In this case, D is the dominant strategy for both players. (Strong dominance of a player's strategy s_i : for all possible outcomes, s_i offers better payoff to the player than any other eligible strategy $s_{j \neq i}$.) It seems straightforward and rational for the player to choose a dominant strategy because the player will be worse off by choosing any other strategy. If all players, however, choose their own dominant strategy D in a Prisoner's Dilemma, they will all be worse off than if they choose strategy C. The Prisoner's Dilemma thus denotes a fundamental conflict between individual and collective rationality.

CHICKEN GAME (ALSO 'CONTEST OF WILLS')

Take the 2×2 matrix:

		Player 2	
		A	B
Player 1	A	(x,x)	(z,y)
	B	(y,z)	(w,w)

The players' payoffs are w, x, y, z . This is a Chicken game if the following relations hold: $y > x > z > w$ (Note the difference to the Prisoner's Dilemma in terms of the order of payoffs).

Under these conditions, both players have an incentive to choose B if the other plays A, but B is not a dominant strategy. Moreover, the two players are worse off if they both choose B over A. Chicken is often interpreted as a game in which the player who holds out in the face of risky or arduous circumstances wins. If both players, however, hold out in order to win, both lose relative to giving in sooner. If the costs of continued holding out are accounted for, the game turns into a 'war of attrition' (whose mathematical niceties need not be described here).

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