



WHY NEGOTIATE?

Jake and Brighid had never been what most folks would call good neighbors. Jake grew up on his place, inheriting it when his parents passed nearly 20 years ago. His ranch is home to close to 7,500 mother cows and his roots in the area run deep. Brighid bought the place next to Jake's after retiring from her career as a Navy officer around 15 years ago. She and one of her sons run 1,500 head of yearlings through the summer, but spend their winters enjoying the sun, somewhere in the Southwest.

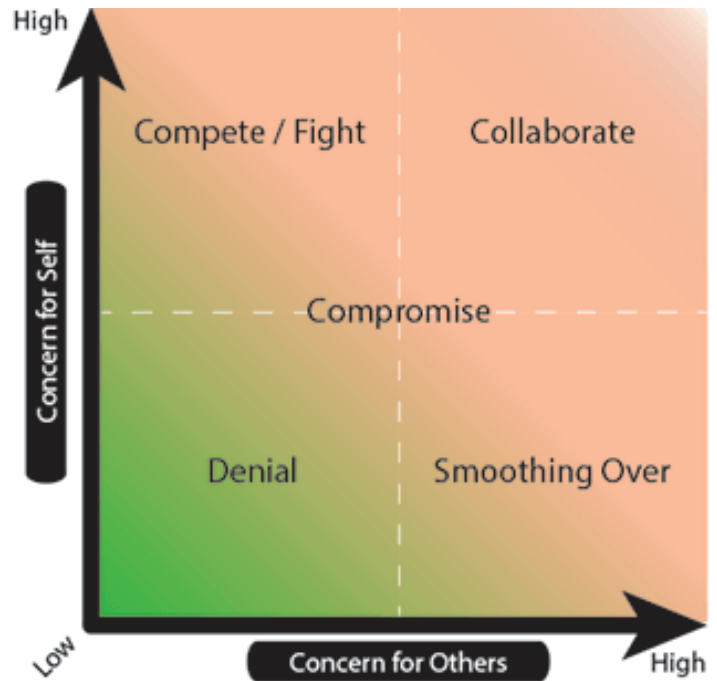
It's been said that "Strong fences make good neighbors." Jake and Brighid did not share much of a fence between their places; fencing had become an ongoing and escalating bone of contention between them for years. Jake argued his cows never had a problem with the fence before Brighid came on the scene, and since his ranch had been around the longest, it should be

the responsibility of Brighid and her family to make it right. Brighid, on the other hand, contended that Jake's bulls were the main problem, crossing the fence and knocking it down to get at some of her yearling heifers. As a result, she maintained that Jake not only needed to stand the fence up but, because he owned one of the oldest ranches in the county, he should replace the fence. Brighid's lawyer had a similar opinion.

Everyone up and down the valley had already heard each of them carry-on about the other on multiple occasions, sometimes they even made a scene at community events. No one had yet pulled a gun, but there was a fist fight that had erupted after the dance at the county fair last year. It seemed that a court somewhere would be needed to resolve the conflict. Do Jake and Brighid have other alternatives?

Negotiation is a technique for resolving conflict. Conflicts comes in all sizes: big, medium, and small. In addition, there are many approaches to conflict (dispute) resolution:

1. Fight, compete –Focus is on self or only one party with a diminished focus on others and their needs. This may be an appropriate approach in an emergency, a life-threatening situation, or where a quick response is of great importance.
2. Collaborate – Here, great emphasis is placed on the concerns expressed by all parties. Resolution following this approach is often referred to as a win-win. Trust, time, and commitment are required elements to find solutions in this space.
3. Compromise – Emphasis is placed on finding a solution that works for all parties, but may not be the preferred outcome. It works better when trust and time are not abundant but the parties are willing to consider alternatives.
4. Avoid, deny – Concern for the outcome is low for those involved. The issue is not pressing enough to warrant spending more time or effort to resolve or other more pressing issues demand immediate attention.



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Based on Floyd, K (2009) Interpersonal Communication: The Whole Story

5. Accommodating, smooth-over the problem – Focus is on the concerns expressed by the other parties. The relationship with the others is more important. May be appropriate to delay a response, when the issues involved are less important. This approach may give the appearance of harmony on the surface, however, underneath the conflict remains.

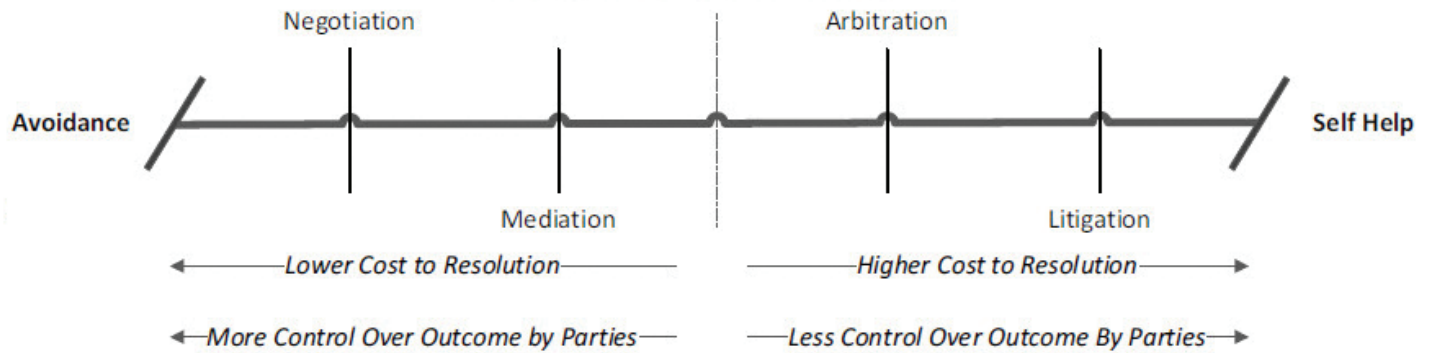
Conflict Continuum

Considering how perspectives and levels of concern influence the parties involved can lead to a better understanding of how conflict can escalate. A similar escalation of responses are required as issues increase in importance, with increasing values of financial or reputation-changing consequences. The Conflict Continuum is a visual representation of the resolution processes available to parties involved in a dispute resolution.

The Continuum includes Avoidance at the far left and Self-Help at the far right. (Self-Help represents an action taken by only one party intended to bring about a change.) In between are the four common processes for addressing conflict: litigation, arbitration, mediation, and negotiation. In addition, the diagram describes the increasing cost and reduced control over the outcomes (by the parties), moving from left to right. Additional processes can be described. The American Bar Association lists no fewer than 22 different forms of the most common dispute resolution processes. However, most forms will condense into these four basic processes.



Conflict Continuum



Litigation

As most will already understand, under litigation a defendant and a plaintiff make their opposing arguments before either a judge or a judge and jury, who weigh the evidence and make a ruling. Data, information, and testimony presented in any hearing or trial is usually entered into the public record. Lawyers typically dominate litigation, the overriding idea behind the adversary system being that the truth will emerge when opposing sides present their cases as aggressively as possible. However, this is often the most costly method for finding a resolution in more ways than simply financial. In addition, it may not achieve the objectives of any of the parties involved.

Arbitration

This process is basically adversarial in nature and results in a binding decision made by a third party. In theory, arbitration rules are up to disputants to decide but in practice most arbitrations adopt procedures recommended by the American Arbitration Association. The parties choose either a single arbitrator or a panel of arbitrators (usually three), who then hears the evidence and arguments and render a legally binding decision.

Mediation

Mediation is used when parties are still willing to communicate. The parties engage a trained, neutral, third-party to assist them come to consensus. Essentially, the mediator helps the parties resolve their own dispute. Rather than imposing a solution, the professional mediator encourages parties to explore the interests underlying their positions. Working with parties together and separately, the mediator seeks to help discover a resolution that is sustainable, voluntary, and nonbinding. Similar to this, facilitation is a process where a trained individual assists a two or more parties discuss issues to be addressed by the group as whole.

Negotiation

Negotiation is a voluntary and usually informal process where the parties identify issues of concern, explore options for resolution of the issues, and explore a mutually-acceptable agreement to resolve the issues of concern. Negotiation does not involve any other neutral individuals in the process. In essence, negotiation is part of any sort of joint action, problem solving, or dispute resolution. It may be verbal, nonverbal, explicit, implicit, direct, or transacted through intermediaries.

Why Negotiate?

If we return to our initial question, “why negotiate?” we might list several reasons why negotiation could be the preferred approach to conflict resolution:

1. It is likely the lowest cost process in terms of financial requirements,
2. Parties retain the greatest control over the process,
3. The time required to find a solution may be shortened,
4. The information, data, and details of the discussions are kept private and will not become part of any record,
5. A third party is not required, nor do the parties need to reach an agreement on which third party is acceptable, and
6. Agreements reached may be only temporary in nature, but do not prevent the parties from seeking more satisfying win-win resolutions.

There can be drawbacks to negotiation. However, there are drawbacks to every other process for resolving a conflict, some more than others.

Many people hold the basic misconception that negotiation is a zero-sum game. That the goal is to get as much as you can, and leave the other party with as little as possible. This just isn't true. Negotiation is founded on the premise that parties who understand the basics of negotiation, who understand the details of the issue at hand, and who are prepared to negotiate, will reach a better outcome than had they done neither.

Perhaps Jake and Brigid should consider negotiation: It would save both ranches a bunch of money, especially considering the lawyer fees. They would have control over the process, and could even revisit the issue later if the agreement didn't work out the way they planned. And they could avoid spending months or even years visiting a courtroom, only to have someone who little understands their situation hand-down judgements that likely would be second-best and disagreeable.

RESOURCES:

An Introduction to Conflict Resolution. Skills You Need. <https://www.skillsyouneed.com>. Accessed May 2020.

Conflict Management Techniques. HRPersonality™. <https://www.hrpersonality.com/resources/conflict-management-techniques>. Accessed May 2020.

Dispute Resolution Processes. The American Bar Association. https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses. Accessed May 2020.

Negotiation in Agriculture | Western Extension Committee. [Negotiation.FarmManagement.org](https://www.negotiation.farmmanagement.org).

Smutko, S. *Negotiation Skills in Natural Resources Management.* Collaboration Program in Natural Resources. The Ruckelshaus Institute | University of Wyoming. 2016.

The Conflict Continuum. This version of the continuum was derived from material published by Pepperdine University's Straus Institute for Dispute Resolution. See: [VIACONFLICT - Collaborative Problem Solving](https://viaconflict.wordpress.com/2012/01/01/the-conflict-continuum). <https://viaconflict.wordpress.com/2012/01/01/the-conflict-continuum>. Accessed May 2020.

Negotiation in Agriculture offers a series of guides and other educational materials to assist those involved in agricultural operations find solutions where perspectives differ. Settings may include a diverse range of situations: working out the terms of a lease, establishing an agreement for a crop-share, or resolving a point of contention. Negotiation in Agriculture is a joint effort of the Western Extension Committee, an association of Extension professionals in the 13 western states.

For more information see: [Negotiation.FarmManagement.org](https://www.negotiation.farmmanagement.org).



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