

Bargaining enforcement and parties' behavior

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Keywords: Disputes resolution, Bargaining, Motivation-crowding theory.

As mentioned by Martin Osborne and Ariel Rubinstein (1990), “a bargaining theory is an exploration of the relation between the outcome of bargaining and the characteristics of the situation”. Following this definition, the wide-ranging and diverse literature on bargaining theory and its applications have aimed at analyzing the main forces that determine the bargaining behavior and outcome, and weighting the potential impact of each force (Muthoo, 1999). However, while this literature has provided fundamental results and insights explaining a variety of economic phenomena, it has been silent, to our knowledge, on an important issue concerning real-life negotiations: the potential link between the way the bargaining process is enforced and the outcome of this process. In common practice, bargaining may be either imposed to the conflicting parties or chosen by them, depending on the legal environment in place, and the question of whether this feature affects their bargaining behavior and the outcome of negotiations may have important policy implications for the evaluation and design of existing conflict resolution mechanisms. This issue is especially relevant when considering alternative dispute resolution systems, such as arbitration, mediation or conciliation, which may be either voluntary or compulsory, depending on countries. In US Major League Baseball, the labor contract between owners and players mention *ex-ante* that final-offer arbitration would be used to resolve salary disputes that may arise *ex-post*. The Ontario labor law related to collective disputes imposes to bargain before any strike or lock-out. In the same manner, following the French labor (civil) code, parties in individual labor disputes (divorces) must attempt to reach an amiable agreement before the case is eventually litigated by the court. Conversely, in many other cases, parties embedded in a dispute may decide freely to conciliate.

The potential link between the nature of conciliation (*i.e.* compulsory or voluntary)

and the bargaining outcome has not received much formal attention in economics certainly because, from a purely theoretical standpoint, the way the conciliation phase is enforced should not matter. Indeed, whatever the way the negotiations are implemented *ex-ante*, the strategic elements characterizing the bargaining relationship *ex-post* are identical and the parties' behavior should not be altered. However, such a conclusion abstracts from behavioral considerations which may have a considerable impact in real-world bargaining interactions. Following the motivation crowding theory, intrinsic motivation may be undermined by external interventions if agents perceive them as controlling, leading them to reduce their initial willingness to make efforts in order to fulfill a given task (Frey and Jegen, 2001). In our context, forcing parties to bargain might have a deterrent impact on their intrinsic motivation to reach an agreement and, hence, have the opposite effect than that expected. From this perspective, the parties' willingness to settle in voluntary conciliation would be higher comparatively to the case where conciliation is compulsory. However, in the same time, the fact that the parties are free to bargain in voluntary conciliation may create a perverse anchoring effect (Kahneman and Tversky, 1974), which can make compulsory bargaining more efficient. By choosing to negotiate, both players renounce to an immediate trial in which the sharing of the surplus would be decided by a third party. The expected amount that each player gave up by entering in negotiations might become a reference point driving his bargaining behavior and making him more demanding during negotiations. Such an effect should not appear in compulsory conciliation given that the parties do not have the choice to bargain *ex-ante* and, thus, do not abandon a possible positive payoff when entering in negotiations.

In this paper, we conduct an experimental analysis in order to investigate the impact of the bargaining constraint on the bargainers' behavior and on the result of bargaining. We build an environment in which players first choose whether to bargain. If both agree to bargain, then bargaining takes place for 3 periods and if no agreement is found at the end of these periods, then the remaining pie is shared through a random draw. If at least one refuses to bargain, then either bargaining does not occur or bargaining is imposed (probability 1/2 for each): thus, in this case, some individuals which had chosen not to bargain are forced to do so. Through this experimental set-up, we intend to answer several questions:

- Do the agents behave as the theoretical equilibrium predicts?

- Which are the determinants of the individuals' decision whether to bargain?
Does there exist a type of individuals (depending on the degree of risk aversion, gender, ...) who always choose to bargain or always choose not to bargain?
- When individuals are constrained to bargain, do they behave in a different manner than when they have chosen to do so?
- Which is the best alternative (in terms of agreement rate and social gain) between leaving people decide freely whether to bargain (and not constraining them at all) and constraining them do bargain?