The foundation and contemporary history of negotiation theory

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This article explores the foundations and recent historical developments in the theory of negotiation. The key issue discussed in this article is the difference between distributive and integrative negotiation. Within the context of this discussion, a historical basis for each model of negotiation is presented as well as key characteristics of each type of negotiation defined. Before exploring these issues, the article will begin with a general discussion of negotiation, including characteristics of negotiation, usage throughout history, the concept of interdependence of the parties. A general model of the negotiation process and the merging of the two models will then be examined.

INTRODUCTION

Even though distributive and integrative negotiation models are distinctly polarised within their respective characteristics, many commentators argue that undertaking negotiation based on only one of the models will lead to an imbalanced approach and that both models exist in any given set of negotiations. This merger between the two models of negotiation will be explored on three successive levels.

Understanding both distributive and integrative negotiation theories is important because negotiators basing themselves solely on the distributive model will miss opportunities for more efficient settlements. Negotiators basing themselves solely on integrative negotiation could be caught out and exploited if unable to recognise tactics that are associated with distributive bargaining.

Negotiation

Lewicki, Barry, Saunders and Minton describe negotiations as serving the dual purposes of (a) creating something new that requires participation of two or more parties; and (b) resolving a problem or dispute between two parties. Sourdin, citing the Oxford dictionary, similarly defines negotiation as "to confer with another for the purpose of arranging some matter by mutual agreement". Lax and Sebenius define it in a similar fashion:

"[W]e characterize negotiation as a process of potentially opportunistic interaction by which two or more parties, with some apparent conflict, seek to do better through jointly decided action than they could do otherwise."

Lewicki et al describe the process of negotiation to be fundamentally the same on a personal level as it is on a diplomatic or corporate level. They state that negotiation in general involves sharing and clarifying information about what both parties want as outcomes. Concessions are apparent in all types of negotiations and "give and take" will also occur in the integrative problem solving approach to negotiation, as discussed later in this article. Negotiators typically face the dilemma of whether to...

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be forthcoming in the giving of information, as well as whether or not to believe what the other party wants or is saying. Trust and honesty greatly aids the process of sharing information and concession making, and perceptions of outcomes and the process of negotiation builds or destroys trust between the parties.

Lewicki et al identify that negotiation is good for value creation and managing conflict. Value creating is defined as when there is a synergy between the two parties – where “the whole is greater than the sum of its parts”. These synergies can exist in differences between interests, opinions, risk aversion and time preference. Conflict is defined as:

1. a sharp disagreement or opposition of interests, ideas etc, (2) perceived divergence of interest or a belief that the parties current aspirations cannot be achieved simultaneously, (3) the interaction of interdependent people who perceived incompatible goals and interference from each other in achieving those goals.

Types of conflict include intrapersonal/intrapsychic, interpersonal, intragroup, and intergroup.

Negotiation exists when there is interdependence between parties. Interdependence simply means that both parties need each other within a given range and have an opportunity to influence each other within that range. Typical interdependent situations will have a mix of conflicting and mutual interests between the parties and the nature of the interdependent relationship will determine the type of negotiation strategy. Parties typically look for their best alternatives to negotiation in their attempt to draw strength in the interdependent relationship.

Parties to interdependent relationships are also influenced by their perceptions of the nature of the interdependence and this will impact on the negotiations. Differences in parties’ competition or coordination paradigms, fixed pie assumptions, win-win or win-lose assumptions will affect the negotiation process. During third-party intervention, eg mediation, identifying these perceptions is critical for the successful communication of the negotiation process.

Walton and McKersie describe the area of interdependency as being on a linear scale with limits at either end. Beyond these limits, any advantages to the relationship cease to exist and parties consider themselves in a better position by breaking off the negotiations. The limits to interdependence between the parties are determined by market rigidities and jointly created gains.

In explaining the interdependence between management and labour within a labour relations wage context, Walton and McKersie describe the lower limit of the interdependent relationship where the labour force would seek other work. At the upper limit, management would seek other alternatives to this labour force. In determining what that limit is, the labour force would investigate the disintegrated nature of the work force, lack of mobility of the workers, worker familiarity in their jobs, fringe benefits or seniority rights, whether or not there are other employers available in the local area and the current unemployment rates. If unemployment were high, the lower the interdependent limit would be. At the upper end of the interdependent relationship between labour and management, management would be setting that limit based on the costs of replacing that workforce. These costs include termination benefits, bad publicity, new workforce training and moving expenses. The upper limit would also be determined by market forces, such as the status of the national product market in the industry of participation, whether the company operates on a large scale, whether the company is a large multi-unit organisation, whether there is location stability, whether the organisation has a strong, diverse product base or a simple product structure, whether little or more competition exists, and whether or not there is intense bargaining within the industry.

Negotiation in general has been split up into two distinct forms – distributive and integrative. Literature abounds in describing the characteristics of each style of negotiation and this article will present a small sample of these descriptions. However, before proceeding into these descriptions in detail, a brief summary is presented here.

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4 Lewicki et al, n 1, p 16.
5 Lewicki et al, n 1, p 17.
6 Lewicki et al, n 1.
Menkel-Meadow\textsuperscript{8} describes a model of negotiation that takes into account both styles of negotiation. First, parties have an inherent disposition to either an adversarial or problem-solving orientation to negotiation. This orientation will lead to a mindset of either maximising personal gain or satisfying mutual needs. This mindset will lead to either competitive or cooperative behaviour of the parties. This behaviour will lead to either compromises or solutions as the results of the negotiations. This model can be visually described as below:

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<th>Orientation</th>
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\textbf{DISTRIBUTIVE BARGAINING}

\textbf{History}

Authors dating back to the 1930s have described the distributive bargaining model of negotiation. Zeuthen’s \textit{Problems of Monopoly and Economic Warfare}, Hicks’ \textit{The Theory of Wages}, von Neumann and Morgenstern’s \textit{Theory of Games and Economic Behaviour}, and Nash’s \textit{The Bargaining Problem}\textsuperscript{9} are all early sources of the distributive bargaining model rooted in economic and game theories, as cited by Harsanyi.\textsuperscript{10} Characteristics of these early theories include that agreements must fall in the range of practical bargains and that this range was affected by two properties: (1) every gain by one party is the loss of the other party; and (2) the two limits of maximum concession points which are determined by a position worse than the status quo. Zeuthen and Nash’s contribution to this theory was the actual prediction of where within the range of practical bargains the agreement would fall, ie this agreement point was determined by two variables being: (1) propensity to risk; and (2) conditions of transfer of economic values.\textsuperscript{11}

Historically, distributive bargaining has been adopted throughout the legal institutions of the modern era.\textsuperscript{12} While integrative negotiation has existed since ancient and medieval times, it was not adopted throughout modern history as the main process of negotiation. It has been argued that early society revolved around tribes and families who were concerned about their long-term relationships. Courts and tribunals did not exist. As communities grew, dishonesty and coercion became prevalent, so to counteract this inequality, courts of law and other institutions were established.\textsuperscript{13} These courts and institutions made determinations of who was right and who was wrong and hence, parties to disputes became adversarial in their approach to prove himself or herself the victor. As time went on, negotiation between parties before they reached the courts reached all time highs. Over 90% of modern litigation disputes are settled outside of court through the process of negotiation. However, as lawyers commonly negotiate “in the shadow” of the courts, the process that was adopted for negotiation has been distributive bargaining.

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\textsuperscript{10} Harsanyi JC, “Approaches to the Bargaining Problem Before and After the Theory of Games: A Critical Discussion of Zeuthen’s, Hicks’ and Nash’s Theories” (1956) 24(2) \textit{Econometrica} at 144.
\textsuperscript{11} Harsanyi, n 10 at 155.
\textsuperscript{12} Menkel-Meadow, n 8.
\textsuperscript{13} Sourdin, n 2, p 5.
Assumptions
Distributive bargaining is based on two assumptions. These assumptions are: (1) negotiation is a zero-sum game where parties desire the same goals, items and values; and (2) that the parties must be in conflict and that the items must be divided.\(^\text{14}\) Zero-sum bargaining, or constant-sum bargaining, was coined in von Neumann and Morgenstern’s *Theory of Games Economic and Behaviour* and is defined as a situation where the total winnings of one party minus the loss of the other party equals zero. Alternatively, the total sum of both parties’ money or items is constant and the purpose is to redistribute this amount among the parties. Both assumptions inhibit creative problem solving.\(^\text{15}\) These assumptions are what lead parties or negotiators to the adversarial orientation to negotiation, which in turn will lead to the mindset of maximising gain and competitive behaviour that results in a compromise agreement.

Characteristics
According to Walton and McKersie,\(^\text{16}\) distributive bargaining occurs due to scarce resources that cause a conflict of interest. Distributive bargaining is seen to be a joint decision process to determine how to distribute these scarce resources. The opposition of objectives between the parties underpins the distributive bargaining process. Distributive bargaining is concerned with: (1) the total share available, being a fixed sum; and (2) the share of that total fixed sum. The objective in distributive bargaining is maximising your share of that fixed sum and its technical term of reference is fixed sum/variable share.

Lewicki et al describe characteristics of the distributive negotiation model. This model of negotiation can be also called competitive bargaining or win-lose bargaining, where the goal of one party is in direct competition to the goals of the other party. Resources are fixed and both parties want to maximise their share. Hiding information about oneself while learning as much information about the other party is commonplace.

At this point, it can be seen that the adversarial orientation toward bargaining has led to the characteristic of maximising personal gain in the negotiation. This will, of necessity, lead to competitive behaviour as outlined below.

Process
Lewicki et al describe the process of distributive bargaining in detail.\(^\text{17}\) Parties come to the negotiating table with targets, eg in relation to price, of what they want to pay or receive for a given transaction. These targets are called the target points of the parties. Each party also comes to the table with resistance points. These are the prices where the buyer will pay no more and the seller will accept no less. The space in between the buyer and seller’s resistance points is called the bargaining range. One of the parties usually will make an opening offer that will lead to counter offers and concessions until a compromise agreement is reached. This compromise agreement is seen to be a joint gain for both parties.\(^\text{18}\)

Drawing heavily from game theory, Raiffa\(^\text{19}\) describes the process of distributive bargaining and uses scientific analysis to understand the other parties’ situation in the negotiation. According to Raiffa, distributive bargaining takes place over four stages: (1) preparation for negotiation, ie knowing yourself and your adversary etc; (2) opening gambits – who makes first offer etc; (3) the negotiation dance – pattern of offers and concessions; and (4) end play – agreement making or introducing an intervenor.

Within this process of negotiation, competitive behaviour is typical and commonplace. These include tasks such as discovering the other party’s resistance points, influencing the other party’s

\(^{14}\) Menkel-Meadow, n 8 at 765.  
^{15}\) Menkel-Meadow, n 8 at 765.  
^{16}\) Walton and McKersie, n 7, p 11.  
^{17}\) Lewicki et al, n 1, p 74.  
^{18}\) Menkel-Meadow, n 8 at 767.  
resistance points, managing the other party’s impressions, modifying the other party’s perceptions, or manipulating the actual costs of delay or termination. Pruitt describes tactics of this process as extreme demands, commitments to unalterable positions, persuasive arguments to convince the other party to make concessions, threats to withdraw from the negotiation, or making punishments for not giving concessions. Seeking information from the other party while hiding information from them is typical. Lax and Sebenius add that other competitive tactics include making the other party feel that he or she needs you, making the other party feel that you have more time, starting with extreme demands, exaggerating the value of concessions, and minimising the benefits of the other parties concessions. All of these competitive behaviours are clearly the outcome of the zero-sum and conflict assumptions underpinning the adversarial orientation that led to the maximising personal gain mindset of the negotiator.

Criticisms
Fisher and Ury coined the term positional bargaining in 1981, referring to the distributive bargaining process. They were highly critical of this bargaining process and argued that: (a) it would cause unwise agreements, ie when parties lock into positions and are paralysed from changing that position in order to save face and embarrassment; (b) were highly inefficient because agreements take much longer due to starting at extreme positions in the bargaining range, as well as complicating decision-making; and (c) detrimental to the ongoing relationship because the will of one party would always be asserted over the will of another and the concession-maker would always bear resentment.

Pruitt termed distributive bargaining as “contending” and described it as a process where one party would try to persuade the other in accepting alternatives that would favour their own interests. He added that agreements are sometimes not reached because parties become rigid in their positions, and when agreements are reached, they are “low level compromises because the parties have not been able to do any creative thinking.”

Lax and Sebenius describe distributive bargaining as a process of claiming value. Claiming value, or maximising value tactics were seen to impede creative solutions and any claiming of value has the potential to destroy or drive out moves to create more value. Two parties both trying to claim value will miss out on a mutually beneficial agreement.

Hence, the results of the distributive bargaining process have attracted much criticism. Unwise, inefficient, relationship-destroying, low-level compromises, lack of creativity and lack of mutually beneficial outcomes are examples of how the distributive bargaining process has been characterised.

Comment
This type of bargaining is viewed by some people as the epitome of negotiation. Others claim that it is old fashioned and destructive for the reasons outlined above. However, Lewicki et al maintain that all negotiators must be familiar with distributive bargaining because, in reality, some interdependent situations are distributive and because most people do use this strategy. This approach to negotiation is most useful when a negotiator wants to maximise the value obtained in a single deal and when the relationship with the other party is not that important.

Implicit within Raiffa is the fact that sometimes parties are foolish not to use distributive bargaining tactics. This may include, eg a situation where a buyer of land may be willing to purchase at a higher than market rate due to high profits that would eventuate from redevelopment. It would be naïve of the seller to stick to the market value of the land.

20 Lewicki et al, n 1, p 80.
22 Lax and Sebenius, n 3, p 32.
24 Pruitt, n 21, p 170.
25 Lewicki et al, n 1, p 75.
26 Raiffa, n 19, pp 35-43.
INTEGRATIVE NEGOTIATION

History

It has been argued that integrative negotiation has its roots in the early works of Mary Parker Follett. It has been argued that integrative negotiation has its roots in the early works of Mary Parker Follett.27 Famous for her political philosophies, Follett believed in the collective nature of people; each person only being able to develop their full potential within group environments. Among a group and through interaction, new ideas and deeper individual powers become manifest. Quoting from Follett’s The New State, Wren sums up Follett’s philosophy as:

[W]e find the true man only through group organisation. The potentialities of the individual remain potentialities until they are realised by group life. Man discovers his true nature, gains his true freedom only through the group.29

This philosophy was taken to its extreme spiritual connotation, to the point of there being a one-world state with democracy, as a spiritual manifestation of the collective will. Additionally, it is important to remember that within this philosophy was Follett’s belief in Gestalt psychology theory which stated:

[E]very psychological situation has a specific character apart from the absolute nature of the component parts, that is, the whole is a configuration greater than the sum of the parts.30

Follett’s The New State was seen as a philosophical ideology of peace that did not take into account the nature of conflicts within group life. Her later volume, Creative Experience, however, discussed the nature of conflicts within groups and how they can become resolved. Follett described four methods of resolving conflicts:

(1) voluntary submission of one side; (2) struggle and victory of one side over the other; (3) compromise; or (4) integration.32

She described the first two options as unacceptable because they involved the use of force or power – clearly the distributive bargaining process. The third option was seen as avoiding issues. The fourth option, integration, was Follett’s technique that involved conference, discussion and cooperation among members of the group. Through this process, argued Follett:

people could evoke each others latent ideas and make manifest their unity in the pursuit of common goals … The goal of group effort was an integrative unity that transcended the parts … Integration involved finding a solution that satisfied both sides without compromise and domination.33

Assumptions

According to Menkel-Meadow, the principle underpinning integrative negotiation, as it has been developed over time, is to find the underlying needs and objectives of parties to a dispute, and to satisfy them without causing loss to the other party. Objectives of the parties include the original intentions of their engagement into a relationship, as well as what has led to their dispute. Needs and objectives can also be defined as what the parties hope to achieve, accomplish, and/or be compensated for, as a result of the dispute or transaction. These needs and objectives can be complementarily different for each of the parties and can therefore be a source of possible solutions. Focusing on the needs and objectives of the parties causes negotiators to have a problem-solving orientation to negotiation.34

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27 Spegal, Rogers and Buckley, cited in Sourdin, n 2, p 7.
30 Wren, n 29, p 258.
32 Follett, cited in Wren, n 29, p 258.
33 Follett, cited in Wren, n 29, p 258.
34 Menkel-Meadow, n 8 at 795.
Characteristics

According to integrative theory, no party will experience loss. Walton and McKersie state that solutions that result from the integrative process are creative as opposed to compromisory. The difference between compromises and creative solutions are that compromises do not create; they only deal with what already exists. Integrative negotiation, on the other hand, creates new possibilities of expanding existing resources. Additionally, within the compromise scenario, parties view the results of the negotiations as perceived losses or gains. Integration creates new options that make it difficult to see what concessions have been made and what have been received. Lax and Sebenius use the term “creating value” to describe the creative problem-solving characteristic.

According to Lewicki et al, integrative negotiators must have characteristics such as honesty and integrity; an abundance mentality as opposed to small mindedness; maturity; systems orientation; and superior listening skills. These characteristics, along with the problem-solving characteristics described above, will lead negotiators to have a mindset of satisfying parties underlying needs.

Process

Many authors have set out processes to integrative negotiation that are basically equivalent. Lewicki et al, for instance, outlined a process of: (1) identifying the problem; (2) understanding the problem fully, ie identifying interests and needs; (3) generating alternative solutions and options; and (4) evaluation and selection of alternatives. Alternatively, Menkel-Meadow describes the process in two stages of planning and execution. Walton and McKersie describe the process as: (1) identifying the problem; (2) searching for alternative solutions and their consequences; and (3) preference ordering of solutions and selection. However, the most noted process for integrative negotiation has been the model of principled negotiations by Fisher, Ury and Patton.

Fisher et al present an entirely developed model of negotiation to be used as an alternative to distributive bargaining. Originally published in 1981, Getting To Yes – otherwise known as The Harvard Negotiation Project – proposes a theory for the best way for people to deal with their differences in an amicable way. Within this theory, four main elements are established as the process to negotiation: (1) separate the people from the problem; (2) focus on interests not positions; (3) invent options for mutual gain; and (4) insist on using objective criteria to settle differences in cases where the needs of the parties have not been met.

Although the model of principled negotiation has been the most acknowledged process to integrative negotiation, its ties to the early theories of Mary Parker Follett are not hard to trace. The clearest proof to assert this argument is that Fisher et al give thanks to Follett in their acknowledgements for providing the famous example of two people quarrelling in the library. Follett was in fact one of those two people in the library and indeed the one to come up with the solution of opening the window in the next room.

Accordingly, when comparing Fisher et al to Follett, it can be clearly seen that principled negotiation has been the foetal development of a structured negotiation model (which can be easily learned, transmitted and put into action) which came from the seminal idea of Follett’s integration theory. Furthermore, it can be argued that principled negotiation has not added any new content to the integrative negotiation model at all. This can be seen by arguing that when Fisher et al describe what they term as the two conventional models of negotiation, soft or hard bargaining, they are really referring to both aspects of the distributive bargaining model – concession or demand making. Therefore, principled negotiation is an alternative to distributive bargaining – nothing new within the established alternative process of integrative negotiation. Furthermore, when Fisher et al describe

35 Follett, cited in Walton and McKersie, n 7, p 128.
36 Lewicki et al, n 1, p 115.
37 See Lewicki et al, n 1, p 117; Menkel-Meadow, n 8 at 817; Walton and McKersie, n 7, p 137.
38 Fisher et al n 23, p 11.
their technique as hard on the facts and soft on the people, they are really describing the same process of the problem-solving technique that enables both parties to satisfy their needs without compromising on their interests. This principle was clearly articulated by Walton and McKersie. Hence, it could be suggested that Fisher et al simply popularised a well-established process of integrative negotiation.

The problem-solving orientation has clearly led to a mindset of satisfying underlying needs and objectives that now generates solution-searching behaviour as the process in integrative negotiation.

Results
Menkel-Meadow suggests that the primary way of evaluating a negotiation model is by seeing the outcomes.40 This assessment would include the evaluation of whether the parties’ total sets of real needs, goals and objectives have been met in the short and long term; whether the negotiation promoted or reduced the relationship; whether all possible solutions were explored; whether transaction costs remained as low as possible; whether the agreement was achievable; whether there was congruence with the other party’s needs; and whether the agreement was just and fair. If the answer is yes to these questions, it can be established that solutions have been reached as the result of the negotiation process, and not compromises.

DISTRIBUTIVE AND INTEGRATIVE NEGOTIATION – DIVERGENT OR CONVERGENT MODELS?
Up to this point, distributive and integrative negotiation have been viewed as two distinctly divergent models of negotiation polarised by different orientations, mindsets, behaviours and results – almost to the point of being two distinct cultures. Indeed, Lewicki et al, Menkel-Meadow and Fisher et al view the two negotiation models in this way.

However, other authors have taken different views, eg Walton, Cutcher-Gershenfeld and McKersie41 see both models of negotiation as important and usable together, or in alternating patterns within negotiation scenarios. They describe their theory of strategic negotiation as whether parties would like to adopt forcing or fostering strategies with their counterparts and identify that there are times when forcing strategies are required, and times when fostering strategies are required, or where forcing may be required first and fostering directly after that. Within the forcing strategy is the tactic of distributive bargaining. Within the fostering strategy is the integrative negotiation tactic. In other words, they adopt a contingency approach to the models.

However, on a deeper level, Lax and Sebenius maintain that distributive and integrative negotiations are bound with inescapable tension for joint value and individual gain. In what they term as “value creating and value claiming”,42 they explain that, even when resources are expanded and solutions created (value), this value must be claimed by either party. The more value that is created through joint problem solving, the more value there is to be claimed distributively by both parties. In other words, cooperative moves create value and competitive moves claim it. Indeed, it seems sensible to assume that sometimes parties to negotiations would find it difficult to maintain a distance from trying to achieve personal gain. One of the main criticisms of the integrative negotiation model is that adversarial parties can use cooperative techniques to achieve more than they could have through competing.43 Hence, according to Lax and Sebenius, integrative and distributive negotiation always exist in tandem.

Conclusion
This article has been an exploration of the foundation of contemporary negotiation theories. Initially, it examined negotiation in general, looking at the purpose of negotiation, its characteristics and

40 Menkel-Meadow, n 8 at 760.
42 Lax and Sebenius, n 3, p 33.
43 Menkel-Meadow, n 8, p 817.
outlining a model for understanding distributive and integrative negotiation. Both negotiation models were explored further, including their assumptions, characteristics, processes, results and criticisms. The idea of whether the models are divergent or convergent was also examined.

Underpinning the choice of whether parties choose to use distributive tactics or integrative negotiation is the view of the long-term relationship between the parties. Clearly, distributive bargaining has a tendency to create hostility between disputing parties due to the competitive behaviours that exist in attempts to achieve personal gain. Therefore, any situation where long-term relationships are important, parties to the dispute should adopt the integrative negotiation model. Hence, in assisting parties to negotiations, mediators must establish the long-term requirements of the relationship between the parties and try to shift the negotiations away from distributive bargaining and toward the integrative negotiation model.