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# Using the Terms Integrative and Distributive Bargaining in the Classroom: Time for Change?

Rishi Batra\*

## I. INTRODUCTION

The terms “integrative bargaining” and “distributive bargaining” have been with us in the dispute resolution literature since at least the 1960s, when *A Behavioral Theory of Labor Negotiations* was first published in 1965 by Richard Walton and Robert McKersie.<sup>1</sup> While the terms were popularized by these two authors, the authors themselves acknowledged the long line of predecessors, including Mary Parker Follett, who led them to promote these categories.<sup>2</sup> Since that time, “integrative” and “distributive” have been with us, and have captured the imagination of scholars, trainers, and practitioners, while remaining popular in the dispute resolution literature today.<sup>3</sup> Despite the proliferation of terms such as “win-win” vs “win-lose”, “competitive” vs “cooperative”, and many others, this nomenclature has persisted, and divides the world of negotiation into two supposedly different hemispheres, with different negotiators or negotiations occupying one or the other.

At the recent “Moving Negotiation Theory from the Tower of Babel Toward a World of Mutual Understanding” symposium at the University of Missouri School of Law, we were asked to comment on whether these terms still have relevance, and if they should be taught as part of our negotiation courses and trainings. I was initially reluctant to criticize the use of terms with both a long history as well as a popular pedigree. However, as I reflected on the question of categorization before, during, and quite a bit after the symposium, I realized that I myself have moved away from emphasizing these terms in my own negotiation classes. While I assign the very useful *Getting to Yes*<sup>4</sup> as part of my own course, I have found myself deemphasizing the “principled negotiation” categorization and the “win-win” vs “win-lose” dichotomy that is present in the book. I don’t teach it as part of lectures, and will only briefly discuss it if asked about it by a student, which truthfully, happens very little.

In trying to understand why I have moved away from these terms (as part of my introductory course on negotiation), I have found others who have examined the question beforehand, such as James K. Sebenius, who believed the terms should be

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1. RICHARD E. WALTON & ROBERT B. MCKERSIE, *A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS* (1965).

2. Mary Parker Follett, *Constructive Conflict*, in *PROPHET OF MANAGEMENT: A CELEBRATION OF WRITINGS FROM THE 1920s* 67, 68 (Pauline Graham ed., Beard Books 2003).

3. Joel Cutcher-Gershenfeld & Thomas A. Kochan, Book Review, *Editorial Essay on the 50th Anniversary of Richard E. Walton and Robert B. McKersie’s A Behavioral Theory of Labor Negotiations*, 68 *INDUS. & LAB. REL. REV.* 955, 955–56 (2015).

4. ROGER FISHER & WILLIAM URY, *GETTING TO YES* (Bruce Patton ed., 3d ed. 2011).

“retired”.<sup>5</sup> Andrea Schneider examined the different labels used for negotiation categories, and while finding some advantages to using labels generally, found many drawbacks to using these terms for negotiation and therefore proposed “a new negotiation skills paradigm.”<sup>6</sup> John Lande has examined and summarized issues with a dual model approach and believes it is not be reflective of real negotiations.<sup>7</sup> These examinations by scholars have given me confidence that others struggle with the same questions and find the terms, if not lacking, at least problematic.

The question this raises for me is: to what extent should a new teacher of negotiation, who is considering creating or perhaps reimagining their course on negotiation training, add the concepts of integrative and distributive negotiation to the course materials and syllabi? What follows are some reasons why I find these terms difficult to use in the classroom, not from a theoretical perspective (although theory plays a role), but from a teaching perspective. Having raised some of these difficulties, I then consider how negotiation professors can and should discuss these terms in the classroom, and if they do so, how can they best integrate them to help students apply the terms in a useful way. I conclude that these terms can be used in a limited fashion, and, in the future, be informed by more research in the area.

## II. PROBLEMS WITH THE USE OF INTEGRATIVE AND DISTRIBUTIVE NEGOTIATION IN THE CLASSROOM

As I tell my students each year, I love teaching my course on negotiation. In addition to teaching being (at least for me) the best job in the world, teaching negotiation offers special thrills that very few other courses can offer. One sees students develop real world, practical skills that they will go on to use to help both themselves and their clients. The students change and grow each class, and report gaining insights about themselves and other people. Each semester, I have students who use the skills we discuss in the classroom to help with conflict in their professional lives, their interactions at the school, and even in their personal lives, improving their relationships with spouses, family members, and children. Plus, the course is fun, with each simulated negotiation a little game-like challenge that the students take on.<sup>8</sup>

Teaching negotiation also comes with the extra work of running an experiential course, including pairing students (while accounting for absences), copying and handing out roleplay instructions, debriefing exercises, reading journals, and giving individualized feedback. It also comes with the routine challenges of every law school course, such as creating and modifying syllabi, determining reading assignments, and most relevant for this discussion, deciding what to include and what to exclude, and in what order. While it would be wonderful for all students to be able

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5. James K. Sebenius, *Why A Behavioral Theory of Labor Negotiations Remains a Triumph at Fifty but the Labels “Distributive” and “Integrative” Should Be Retired*, 31 NEGOT. J. 335, 335 (2015).

6. Andrea Kupfer Schneider, *Teaching a New Negotiation Skills Paradigm*, 39 WASH. U. J. L. & POL’Y 13, 13 (2012).

7. JOHN LANDE, *LAWYERING WITH PLANNED EARLY NEGOTIATION: HOW YOU CAN GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY* 67-86 (2d ed. 2015).

8. For a list of reasons that students may report satisfaction with their negotiation courses, see Roy J. Lewicki, *Teaching Negotiation: The State of the Practice*, in *HANDBOOK OF CONFLICT MANAGEMENT RESEARCH*, 493, 497 (Oluremi B. Ayoko et al. eds., 2014).

to take an unlimited number of courses in law school at no cost to them, unfortunately the constraints of the time limited semester, the cost of tuition, and instructor availability make it imperative that every teacher make strategic and effective choices about what they can and cannot include in each course.

It is in this context that the instructor must consider how much time and emphasis to put on the terms *integrative* and *distributive* in teaching negotiation. For many instructors, the concepts of integrative and distributive bargaining are at the heart of what a negotiation course is about. In fact, a study by Honeyman and Schneider in 2004 discovered six subjects that seemed to be part of the interdisciplinary “canon” of negotiation,<sup>9</sup> and the “concepts of integrative and distributive negotiation” were among them.<sup>10</sup> In light of both the popularity of these terms, and their widespread adoption, are there reasons to think that these terms should *not* be taught in basic negotiation courses? I suggest that there are several reasons to be at least skeptical of these terms as a teaching tool for students, some of which follow below.

#### A. *The Terms Integrative and Distributive Are Unclear*

Part of the difficulty I personally have found in using *integrative* and *distributive* terms in my own classes has been the lack of clarity about what the terms themselves refer to. In writing a piece for another publication that was a primer on these terms, I believed that I would be able to, in the words of one of the co-editors, “write it in my sleep.” But to my surprise, it was very difficult to actually define what I originally thought of as fairly straightforward terms that are understood to be part of the negotiation literature. I found, as had others before me, that these terms (whatever their original meaning) have come to refer to several different aspects of the negotiation itself.<sup>11</sup>

First, many scholars and instructors use the terms “integrative” and “distributive” to refer to the *mindset* that one should have to a negotiation.<sup>12</sup> The idea that many negotiations have the potential for mutual gain for both sides – i.e. that negotiations are not all zero-sum affairs without opportunity for “expanding the pie” – while seemingly obvious to most professors of negotiation, can be a true mindset shift for students who hear the terms for the first time. In this sense, the terms are used not to describe how the negotiation is done, but as a view from which to approach the negotiation. We want students to make this mindset shift to change how they approach the negotiation to allow them, ideally, to see or create opportunities for joint gains when they occur or are possible. But this is not a given just by using these terms. Even with the appropriate mindset shift, students (and many other negotiators) may not be able find joint gains in a negotiation, even if they recognize that such gains are possible. In this sense, the terms do not help change how negotiation is performed (as you can have an integrative mindset without, say, doing any work to create joint gains), but rather how the negotiation is conceptualized.

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9. Christopher Honeyman & Andrea Kupfer Schneider, *Catching Up With the Major-General: The Need for a “Canon of Negotiation”*, 87 MARQ. L. REV. 637, 637–48 (2004).

10. *Id.*

11. See, e.g., Schneider, *supra* note 6, at 19–20.

12. *Id.* at 19.

Others use the terms not to describe mindset, but to differentiate between types of *actions* taken by the negotiators.<sup>13</sup> Integrative actions advance the possibility of joint gains, such as brainstorming or asking about interests. Distributive actions focus on claiming any surplus, such as using threats or time pressure to exact concessions when “dividing the pie.” However, any negotiator can and often does take both value-creating and value-claiming actions within negotiations at different times or even at the same time, and skilled negotiators go back and forth between creating value and dividing it up, often without making explicit what they are doing. In addition, it can be difficult to categorize any particular action as advancing value-creating or value-claiming goals, since the same action can often be taken for different ends depending on the situation and the negotiator.

The terms integrative and distributive are also used to describe the type of *negotiator* involved in the negotiation. Integrative negotiators are seen as being “nice” or “accommodating” while “distributive” negotiators are considered “hard bargainers” who are unpleasant or difficult to deal with.<sup>14</sup> Integrative is even often used synonymously with “friendly” or “pleasant” and distributive with the opposite classifications. In this sense, the terms are value laden (about which more later), and so there is a “right” and a “wrong” way to negotiate in the way negotiation is taught.

In the classic *A Behavioral Theory of Labor Negotiations* mentioned above, Walton and McKersie, in addition to using the terms to refer to negotiation behavior, also use the terms integrative and distributive to refer to the nature of individual negotiation *issues*, that is, the different agenda items to be negotiated.<sup>15</sup> Particular issues are said to have integrative and distributive potential (or “mixed” potential, to further add to the confusion). However, they classify some items, such as “money” as purely “distributive” issues in which joint gains would not be possible. Of course, as others have discussed, by combining two distributive issues and trading off between them, there could still be joint gains for both sides, as one side may value, say, money more than they value the time that it takes to get it.<sup>16</sup>

Another way that these terms are used is to refer to the classification of the *negotiation* as a whole. Negotiations themselves are referred to as “distributive”, which is a negotiation generally limited to one item in a zero-sum, “more for you is less for me” type of interaction,<sup>17</sup> or as “integrative”, with the structure of the negotiation such that there are opportunities to add different elements to a negotiation and create a more mutually beneficial outcomes.<sup>18</sup>

The above list of the different ways *integrative* and *distributive* have been used is not exhaustive. These same terms have been used to differentiate between other aspects of negotiation, such as the distinction between “approach” and “style” or “style” and “structure.”<sup>19</sup> With these same terms referring to many related, but distinct, aspects of the negotiation – from mindset, actions, negotiators, issues, and the

13. *Id.* at 19–20.

14. Sebenius, *supra* note 5, at 339–40.

15. WALTON & MCKERSIE, *supra* note 1, at 127–29.

16. Sebenius, *supra* note 5, at 337–38.

17. Schneider, *supra* note 6, at 15 (citing THOMAS C. SCHELLING, THE STRATEGY OF CONFLICT (1960), and HOWARD RAIFFA, NEGOTIATION ANALYSIS: THE SCIENCE AND ART OF COLLABORATIVE DECISION MAKING 97–98 (2002)).

18. *Id.* at 15–16 (citing CARRIE MENKEL-MEADOW ET AL., DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL 99–100 (2d ed. 2011)).

19. *Id.* at 19–20 (distinguishing between “approach” and “style”, which she also admits is confusing); Sebenius, *supra* note 5, at 339 (differentiating between integrative “style” and “structure”).

negotiation itself (as well as others) it is no wonder that these terms may be confusing for students and practitioners alike.

*B. Using The Terms Does Not Express What We Are Looking To Do With This Information*

Given the lack of clarity about what the terms *integrative* and *distributive* actually refer to in negotiations, one can see the difficulty of using them in the classroom, particularly with students who are encountering the terms for the first time. However, even if we were able to define the terms with precision, and come to some agreement that the terms should only be used to refer to, say, mindset, it is difficult to see how the terms, which are descriptive, can be used to prescriptively impact the behavior of negotiators in the actual practice of negotiation.<sup>20</sup>

When engaging in any given negotiation, each party faces a myriad of choices. How to begin the negotiation, what questions to ask, if and when to make the first offer, the items and amounts to offer and counteroffer, and when to walk away or threaten to walk away are all strategic choices that every negotiator must consider. When my negotiation students start their class, many are unaware that these are even choices to be made, and have even less knowledge about how these choices may impact the negotiation. Occasionally the question “should I make the first offer?” is asked, which is a salient strategic choice in almost any negotiation. However, when I am asked this question, answering with the language of integrative or distributive bargaining is not helpful for the person asking the question. As these are descriptive terms (unclear as they may be in describing the negotiation) they do not help us decide *what* strategic choices to make in a given situation. One reason is that many choices one can make can be used in both an integrative and distributive approach.

Take, for example, the classic *Getting to Yes* suggestion to “ask about interests” as part of a principled negotiation approach.<sup>21</sup> It is true that a negotiator having a mindset where she would like to increase joint gains for all parties should use this technique to propose options that meet the interests of the other side as well as the interests of her own side, and thereby create value in the negotiation. It is *also* true that a negotiator having a mindset where she would like to only maximize gains for herself can also ask about interests to *exploit* information about the other side’s priorities, and use this to propose options that will be minimally acceptable to the other side at best, and exploitative of the other side’s needs at worst. A negotiator who has absorbed the terms *integrative* and *distributive* is not in a better position to decide whether to ask about interests, or more importantly, decide whether to respond openly to a question about their interests, even though they have a solid grasp of the terms and the distinctions. It is possible, in fact, that a naïve student, hearing about an integrative negotiation style for the first time, will give away too much information about interests rather than recognizing the issue and making a strategic decision about how much information to give to the other side.

Ideally, a set of negotiation terminology taught in a classroom will allow students to better perform the skills of negotiation. Even if one believes that the terms

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20. Schneider, *supra* note 6, at 22–23 (distinguishing between the labels and the skills needed in negotiation).

21. FISHER & URY, *supra* note 4, at 42–57.

have good explanatory power (which as noted above may be in question), it is less clear whether they have any particular predictive or prescriptive power, especially for students of negotiation who may be new to the field. Given that many negotiation classes are based on teaching and refining students' skills, a set of terms that are primarily descriptive, rather than providing insight in to what students should be doing at key decision points in negotiation, seems like the wrong focus.

C. *The Terms Themselves Are Value Laden – Suggesting A “Right” Way To Negotiate*

One of the dangers in teaching negotiation to new students is that in our effort to get them away from having a purely distributive mindset, we can overemphasize the value or even the “rightness” or “goodness” of the integrative mindset. Integrative negotiators are described as collaborative and using creativity to solve what seem like intractable problems. They are held up as the example of the preferred way to approach all negotiations.<sup>22</sup> Distributive bargainers, in contrast, are considered old school, greedy, and unenlightened.<sup>23</sup>

However, this value laden distinction does not reflect the fact that there is not one necessarily right way to negotiate. Despite some studies that show that an integrative approach is associated with better outcomes,<sup>24</sup> we do not want to suggest to our students that if they use a distributive approach in a negotiation they should be chastised, or that they are doing negotiation “wrong.” There are many reasons that taking distributive actions may be appropriate in a negotiation: there is only one issue to negotiate and it does not have integrative possibilities; one's BATNA is quite strong and there is no interest in a relationship with this negotiation counterpart; one has tried an integrative approach with this negotiator to no avail; one wants to get a reputation as a “hard bargainer” in order to make future negotiations easier; or the significance of the outcome is not worth the effort or time that using integrative techniques will entail. In addition, to suggest to students that there will not be times when they should use techniques that help them gain the lion's share of the value in a negotiation (which could be called distributive actions) gives them a flawed view of negotiations.<sup>25</sup>

D. *The Terms Do Not Reflect The Reality Of What Negotiators Do – Or May Not*

At the symposium for which this paper is a part, it was pointed out by several individuals that we have very little information about what real negotiators of all kinds – legal, political, or otherwise – actually do during their negotiations. This is true for several reasons. Negotiations are usually conducted in private, to preserve the secrecy of discussions and often outcomes as well. Negotiations do not take

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22. Sebenius, *supra* note 5, at 340.

23. *Id.*

24. See Andrea Kupfer Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143 (2002).

25. To be fair, most negotiation teachers would probably not say that they *never* advise distributive tactics in a negotiation, but since distributive bargaining has become associated in the literature with a behavioral style that is contentious and perhaps unenlightened, it seems inevitable that students will eventually pick up on the “right” way to negotiate among the two terms.

place systematically or at a regular location that can be observed and cataloged. It is also unclear what sort of things even count as “real” negotiations for the purpose of study<sup>26</sup> – settlement negotiations between lawyers, treaty negotiations between countries, and business deal-making each come under the category of negotiation, but it is unclear how much these negotiations all have in common across their different contexts. And conceptions of negotiation often do not consider the many “micro-negotiations” which occur every day, that may be considered negotiations. Is it negotiation if I ask for a favor and it is immediately granted? Is it a negotiation if I and a friend are deciding where to eat? If so, what do these negotiations have in common with the other, more formalized negotiation practices that the labels *integrative* and *distributive* were originally meant to capture? Do the labels apply to these sorts of interactions?

Even prototypical negotiations that have been studied do not seem to break down in to the typical integrative and distributive categories. John Lande’s study of legal negotiators shows that “ordinary legal negotiation” is rarely a purely integrative or distributive affair.<sup>27</sup> Rather, negotiators settle around mutually agreed criteria, giving little thought to value creating or value claiming behavior. Similarly, Andrea Schneider’s study of lawyers in the Milwaukee area shows that while the categories do have some salience in describing negotiating behavior, there is some overlap between “problem solving” and “cooperative”, but there also seems to be a middle ground that clusters with other types of behavior.<sup>28</sup> A previous study on which hers was based shows a similar outcome.<sup>29</sup>

The dearth of what we know about real negotiation behavior, combined with the few studies we do have which seem to show that the categories of integrative and distributive negotiation don’t completely map on to the real world of what negotiators do, should give us the most pause in our use of these terms in the classroom. To the extent that we want our classroom teaching to reflect real negotiating, as opposed to theoretical models, it seems that continuing to use labels for behaviors we don’t have proof exist in the world is at least troubling.<sup>30</sup>

### III. USING LABELS, OR NOT, AS TEACHING TOOLS

Given the multiple issues identified already regarding the terms *integrative* and *distributive*, what is a negotiation teacher to do with these labels? Above, I suggested that given the limited amount of time available in a negotiation course, one could choose to skip discussion of these terms altogether. However, other approaches may be warranted, such as using alternative terms, being precise with the meaning of these terms, including them in historical or theoretical parts of the course, or introducing them in more advanced courses. Each of these approaches is discussed below.

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26. Andrea Kupfer Schneider et al., *The Definition of Negotiation: A Play in Three Acts*, 2017 J. DISP. RESOL. (forthcoming 2017).

27. John Lande, *A Framework for Advancing Negotiation Theory: Implications from a Study of How Lawyers Reach Agreement in Pretrial Litigation*, 16 CARDOZO J. CONFLICT RESOL. 1, 36–46 (2014).

28. Schneider, *supra* note 24.

29. *Id.*

30. See John Lande, *Building Negotiation Theory from Real-Life Negotiations*, 2017 J. DISP. RESOL. (forthcoming 2017).



### A. Not Using The Terms

One option for teachers of negotiation is to no longer use the terms *integrative* and *distributive*, and to gradually or immediately “retire” these terms as one commentator has suggested.<sup>31</sup> Instead of using the terms with all of their associated confusion and baggage, an instructor can just focus on the mindset that the teacher feels is appropriate for the students to have, the skills that he or she would like the students to develop, and the different choices available to negotiators before, during, and after a negotiation, without trying to label them as part of any category. This approach has several advantages. First, it avoids the problems with the terms discussed above, including the confusion the terms can cause and the value judgments that may be associated with them. Importantly, this approach can save time during the course, allowing coverage of other important concepts without getting bogged down in the integrative / distributive dichotomy.

A final advantage for a teacher who believes these terms have outlived their usefulness is that by removing them from the course, it may lead to the fading away of the terms over time. By using this approach, an instructor can suggest to students who ask about these terms that they were once used extensively in the literature, but are no longer relevant in analyzing the negotiations that are done in the class or otherwise. If this approach becomes widespread, future students may not hear these terms at all, finally retiring them once and for all.

### B. Using Different Terms

The negotiation teacher taking the above approach, however, may find themselves reaching for appropriate terminology, or finding they must use many words to describe a concept, whereas in the past they had used only one. This, of course, is the advantage of labels: they allow us to conceptualize and communicate complex ideas in a single word or phrase.<sup>32</sup> Theory is built around categorization and labels, and it may not even be possible for a negotiation professor to operate without some conceptual framework from which to discuss different possible approaches and actions. In addition, using labels allows us to contrast different behavior patterns in negotiation, and can help students identify the types of behavior they are exhibiting and the types of choices they are or others are making, and thereby improve their decisions in the future.

For the instructor that wants to use alternatives, the options for labels other than *integrative* and *distributive* are numerous. James Sebenius and David Lax have proposed the alternative terms “creating value” and “claiming value”<sup>33</sup> as they feel that those terms are more accurate and evocative, and consistent with standard usage in other fields.<sup>34</sup> From early literature, we have Follett’s choices of domination, compromise, and integration.<sup>35</sup> Similarly, Fisher and Ury talk about hard, soft, and principled negotiation in *Getting to Yes*.<sup>36</sup> The framework of five, rather than two

31. Sebenius, *supra* note 5. Although he suggests using alternative terms, more about which below.

32. Schneider, *supra* note 6, at 15–16.

33. DAVID A. LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN* (1986).

34. Sebenius, *supra* note 5, at 343–44.

35. Follett, *supra* note 2.

36. FISHER & URY, *supra* note 4.

or three conflict modes – competitive, collaborative, avoidant, accommodative, and compromising - comes to us from Kenneth Thomas,<sup>37</sup> but is also replicated in other literature.<sup>38</sup> Additional dichotomies include adversarial vs. problem-solving<sup>39</sup> and cooperative vs. competitive.<sup>40</sup> There are, of course, many others.

Of course, using alternative terms can introduce many of the same issues that exist with the original integrative / distributive dichotomy. The terms value claiming and value creating can also be used to refer to multiple aspects of the negotiation (including negotiators, actions, approach, etc.) if we are not precise with our terminology. Also, from a values perspective, is there any student that would want to claim that they are not a “principled” negotiator? Who would say they were “unprincipled”, especially if they are taking the course for a grade? Any new labelling that we use, whether there are two, three, or five terms, will suffer from many of the same problems that using the old labels does.

### C. *Using The Same Terms, But Being Precise With Them*

Despite the plethora of other terms that exist in the literature that may be more precise or more appropriate, they suffer from the same deficiencies as all attempts at categorization. Is there reason then, to stay with the integrative / distributive terminology that has so far been both pervasive and enduring? I believe that many negotiation teachers would say yes, for several reasons. First, the integrative / distributive dichotomy was (for many of us) part of our own negotiation education. These terms were used in classes that we took, and we believe they have helped us understand the world of negotiation, as imperfect as our understanding may be. It is difficult for someone to teach a subject vastly differently than they themselves understand it. More importantly, our students may need to use these terms, if not to hone their skills, then at least to communicate with others about negotiation. It is my hope that my course is not the end of students’ study of negotiation. If they are likely to see these terms in other courses, read them in other literature, or hear them from other negotiators, we want our students to be prepared to engage in that conversation, regardless of whether we think that the conversation needs to happen using exactly these terms.

Finally, there are those professors that wish to include the discussion of integrative and distributive concepts in a negotiation course as their own pedagogical choice to include theory in the study of dispute resolution. For these professors, teaching these concepts, which have been suggested to be part of the core ‘canon’ of negotiation, can and should be done for its own sake so that students are aware of these concepts and get a more complete understanding of negotiation theory. Regardless of the problematic nature of these terms, understanding the conceptual distinction is fundamental to these professors’ understanding of what negotiation should entail, and should then be included as part of our historical and theoretical understanding of negotiation.

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37. Kenneth Thomas, *Conflict and Conflict Management*, in HANDBOOK OF INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGY 900–02 (Marvin Dunnette ed., 1976).

38. G. RICHARD SHELL, BARGAINING FOR ADVANTAGE (2d. ed. 2006).

39. Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984).

40. GERALD WILLIAMS, LEGAL NEGOTIATION AND SETTLEMENT 18–42 (1983)

One idea for the instructor who wishes to include these terms to help students understand the terms' place in negotiation theory is to include them in a more advanced negotiation course. Throughout this piece, I have considered the use of these terms in the context of a basic negotiation course, partly because that is what I am most familiar with as a teacher, but more importantly because that is the only level to which most students will be exposed to negotiation training, if at all. In an online discussion associated with the symposium, John Lande and David Matz considered the possibility that we should differentiate between three different types of negotiation instruction: introductory teaching and training, advanced teaching and training, and advanced understanding of what a negotiation is.<sup>41</sup> For those instructors that wish to address the terms as a part of negotiation theory, placing the terms in the context of a more advanced course, or one that emphasizes theory, may be appropriate.

Regardless of the course level at which these terms are introduced, I would suggest that a professor adding these terms to their courses do so with transparency around the problems that scholars have identified. A negotiation professor using this approach can let students know about the lack of clarity and precision in employing these terms, and note that people tend to use the terms to refer to different concepts depending on their understanding and the context. Additional history on the development of integrative and distributive categories may be appropriate. Some discussion is warranted on the applicability of these terms to the behavior of real negotiators. In addition, instructors can add clarity for students by being very precise about their usage when the terms do come up. When using the terms *integrative* and *distributive*, in each context, are they being used to refer to mindset, actions, negotiators, negotiation structure, issues, or something else? When warranted, instead of using these broad terms, instructors can use more precise terms themselves. The mindset of someone who is integrative can be described as "a person interested in looking for joint gains in a negotiation." Actions can be described as furthering those goals or impeding those goals. Negotiators can be described in the actual terms that they are looking for – negotiators can be friendly, cooperative, open, etc. while not being interested in joint gains, or can be unpleasant, uncooperative, etc., but still may be interested in coming to a solution that is better for both parties. In this way, an instructor who is looking to add understanding of these terms can use them in a way that maximizes their effectiveness while addressing some of the issues that they create.

#### IV. A CALL FOR NEW RESEARCH

Finally, as mentioned above, there is scant evidence for the reality of these terms as truly descriptive of what negotiators actually do during their negotiation work. The few studies cited do not seem to completely reflect the theoretical distinction that is captured by the integrative / distributive dichotomy. A more robust answer to the question of whether to use the integrative / distributive dichotomy in the classroom is "first, find out if it works."

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41. John Lande, *Symposium Book Club - Conversation With David Matz About Lande's Framework for Advancing Negotiation Theory*, INDISPUTABLY BLOG (July 26, 2016), <http://www.indisputably.org/?p=9450>.

As negotiation professors, we should call for, and perhaps even conduct, our own research on what real negotiators actually do. This research could take several forms. One that is already occurring is post-negotiation qualitative work, interviewing subjects about their own negotiation experiences.<sup>42</sup> In addition, survey work, which asks a series of standardized questions regarding how negotiators perceive each other, has had success as well.<sup>43</sup> Others suggest learning from books that give full length accounts of negotiations.<sup>44</sup>

However, what we don't yet have, and will probably need, is the type of observational research that allows us to code what is happening in real time with actual negotiations. Ideally, this would be done with parties all negotiating the same type of cases to minimize variation. In the legal field, a type of case that occurs frequently but is fairly standardized would be appropriate, such as child custody or child support cases in family law, or workers' compensation cases in employment law. Again ideally, standard structured observational coding would be applied to video recordings of these negotiations, with independent observers coding for different negotiation events and counting different actions.<sup>45</sup> This coding would give us a very rich set of data from which to break down and compare negotiation approaches, at least in the context of one type of negotiation. The method could then be extended and applied to other types of negotiations, including ones outside of our traditional conception of negotiation.

While there are obviously several obstacles to producing this sort of research in the negotiation setting, we are already seeing this type of work in the mediation context,<sup>46</sup> a comparable private dispute resolution process that has been considered confidential. By better understanding what goes on in the negotiation room, we may find that our conceptual labels do have salience in the way negotiation is actually practiced, or they may need updating. Further study could then be done comparing those negotiators with training to those without, and see if there is a change in negotiating behavior or outcomes for those utilizing the training.<sup>47</sup> Hopefully, over time we can find newer, more accurate labels that we can use in place of the integrative / distributive dichotomy.<sup>48</sup>

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42. Lande, *supra* note 30.

43. Schneider, *supra* note 24.

44. David Matz & Adrian Borbély, *Learning from Book-length Accounts of Historical Negotiations*, 2017 J. DISP. RESOL. (forthcoming 2017).

45. Martin D. Lampert & Susan M. Ervin-Tripp, *Structured Coding for the Study of Language and Social Interaction*, in TALKING DATA: TRANSCRIPTION AND CODING IN DISCOURSE RESEARCH 169 (Jane A. Edwards & Martin Lampert eds., 1993).

46. MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS, WHAT WORKS IN CHILD ACCESS MEDIATION: EFFECTIVENESS OF VARIOUS MEDIATION STRATEGIES ON CUSTODY CASES AND PARENTS' ABILITY TO WORK TOGETHER (2014), <http://www.courts.state.md.us/macro/pdfs/reports/whatworksinchildaccessmediation201409report.pdf>. Mediation has also been studied through simulated experiments. Vairam Arunachalam et al., *An Evaluation of Two Mediation Techniques, Negotiator Power, and Culture in Negotiation*, 31 J. APPLIED SOC. PSYCHOL. 951 (2001). For a summary of mediation research, see James Wall & Kenneth Kressel, *Research on Mediator Style: A Summary and Some Research Suggestions*, 5 NEGOT. & CONFLICT MGMT. RES. 403 (2012).

47. See Lewicki, *supra* note 8, at 502-04 (asking if negotiation training improves negotiation practice); see also Christopher Honeyman et al., *How Can We Teach So It Takes?*, 20 CONFLICT RESOL. Q. 429, 429-32 (2003).

48. I would predict that the integrative / distributive dichotomy will be reflected in real world negotiations, at least in part, and will not be wholly falsified. The use of value claiming vs. value creating behavior (to use the Lax / Sebenius terms) is consistent with my own observations of negotiations.

V. CONCLUSION

One of the opportunities afforded by the recent “Tower of Babel” symposium was the chance to step back and ask fundamental questions about the structure of negotiation, and how it is taught. The integrative / distributive framework, now at least 50 years old, is ripe for this kind of examination. While pervasive in the literature and part of most negotiation courses, there are several issues with the framework that make it problematic as a teaching tool, regardless of its pedigree as a theoretical model. It may be time to remove the terms *integrative* and *distributive* from the basic negotiation classes, or at least deemphasize their use. Ideally, new research will ground new theoretical frameworks that we can teach in their place.