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# The negotiation of contractual agreements

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**Edward C Tomlinson**

College of Business and Economics, West Virginia University, USA

**Roy J Lewicki**

Department of Management and Human Resources, Fisher College of Business,  
The Ohio State University, USA

## Abstract

We provide a focused review of the extant negotiation literature to address four highly salient objectives for contract negotiations: how to maximize the likelihood of reaching a [good] agreement; how to reach an agreement that will fulfill its intended purpose; how to reach an agreement that will last; and how to reach an agreement that will lead to subsequent negotiations. Throughout the article, we rely on integrative negotiation as the key strategy to achieve these objectives and review work that has highlighted the specific tactics involved.

## Keywords

Contracts, conflict, negotiation, integrative negotiation, joint gain

## Disciplinary areas

Organizational behavior, social psychology

## Introduction

A contract is a voluntary agreement between parties whereby a promise (or set of promises) is granted in exchange for consideration (i.e. something of legal value), and negotiation is the process that leads to this voluntary agreement (Mallor et al., 2013). More precisely, negotiation refers to “a form of decision making in which two or more parties talk with one another in an effort to resolve their opposing interests” (Pruitt, 1981: xi). As the product of joint decision making, negotiated contracts are peculiar insofar as both parties voluntarily surrender some measure of freedom to each other and yet this sacrifice enables both to gain more than what would otherwise be possible

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### Corresponding author:

Edward C Tomlinson, College of Business and Economics, West Virginia University, Morgantown, WV 26506, USA.

Email: edward.tomlinson@mail.wvu.edu

(Rousseau, 1995). Because contracts can only exist by voluntary agreement, we will review the body of negotiation research to determine how this voluntary agreement is produced. We structure our review to address four specific – and highly practical – objectives for the contracting process: (1) how to maximize the likelihood of reaching an agreement; (2) how to reach an agreement that will fulfill its purpose; (3) how to reach an agreement that will last; and (4) how to reach an agreement that will pave the way for subsequent agreements. We draw on our over three decades of research and consulting to make recommendations on negotiating contracts.

We will mention at the outset that we believe these four objectives are most fruitfully achieved through the use of *integrative negotiation*. Integrative negotiation refers to an over-arching negotiation strategy whereby both parties seek to maximize *joint* gain. This process stands in marked contrast to distributive negotiation, where the aim of the process is to reach an agreement to distribute resources such that the value achieved by one negotiator comes at the other's expense. In integrative negotiation, however, the goals of the parties are not judged to be mutually exclusive (although they may sometimes appear that way initially). As we will explain in the sections that follow, we believe that an integrative strategy is the best suited for not only reaching an agreement (as opposed to impasse), but also for ensuring that the resulting agreement will fulfill its purpose, continue in force, and facilitate subsequent agreements.<sup>1</sup>

## How to maximize the likelihood of reaching an agreement

Because negotiations are – by definition – voluntary agreements, there is no guarantee at the outset that an agreement will result. In other words, there is no contractual agreement without mutual consent. If negotiators are to benefit from an interdependent relationship, they must avoid reaching impasse. Integrative negotiation tactics are helpful in avoiding or resolving impasses (Lewicki and Tomlinson, 2014a). Of course, it is also important to note that negotiators should never negotiate merely to have an agreement; rather, negotiators should strive to achieve a *good* agreement. In specifying a “good” agreement, we mean an agreement that optimizes the value both negotiators derive. Integrative negotiation is well suited for this purpose as well.

However, while the concept of integrative negotiation (often referred to as “win-win” or “mutual gains” or “creating value” negotiating) has gained popularity in recent years, our experience with teaching negotiation indicates that few people truly understand what constitutes an integrative agreement or the process and tactics involved in creating one. Because we view integrative negotiation as the best way to maximize the likelihood of reaching a good agreement, we proceed to describe the major stages that are required. The five major stages are: preparation; building the relationship with the other negotiator; exchanging information; inventing and exploring options for mutual gain; and reaching an agreement (Lewicki and Tomlinson, 2014a; Lewicki et al., 2015).

### Preparation

We and others have argued that preparation is essential to negotiation success (Fisher and Ertel, 1995; Lewicki and Tomlinson, 2014a; Lewicki et al., 2015; Simons and Tripp, 1997). As we mentioned above, the objective of any negotiation is not only to obtain an agreement, but to obtain a *good* agreement. Preparation involves a set of conceptual tools that helps a negotiator define in advance what a good agreement would look like, and to develop specific plans to achieve it.

**Defining interests.** The purpose of negotiation is to create agreements that satisfy the negotiators' interests – their ultimate needs, desires, and concerns (Fisher et al., 1991). Yet many negotiators fixate so heavily on arguing for a specific way of quantifying their interests (by stating specific positions) that they lose focus on the larger interests themselves. This creates problems in several ways. First, a focus on positions rather than interests risks negotiating a contract that fails to address the interests that gave rise to the negotiation. It is imperative that negotiators clearly articulate their interests before the negotiation. For example, a large company may approach an individual who started a successful small business with an offer to purchase that business. The founder, having made a tremendous investment of time, money and personal creativity in building the business, may be reluctant to sell the business, fearing that the sale would effectively separate him from something he created and sees as an integral part of his identity. So, he offers to sell the business only for an exorbitant amount of money (implying that the only way to separate him from his business is for the large company to pay a large premium to buy it). Ultimately, however, it is not a large amount of money that the small business owner really wants. Rather, he wants to continue his involvement in a business he created (and indeed, the large company may very well have no objection to this at all). Therefore, even if he sells the company for the exorbitant price, he will have failed to achieve his true interests – retaining some personal involvement and control over it – because that is not how he reasoned through the agreement and what would happen if the buyer actually paid the extreme price. What we see in this example is a fundamental mismatch between the position (the amount of money the small business owner demanded) and the interest it was supposed to represent (what the small business owner ultimately wanted).

Second, positions are rigid statements that negotiators make in order to narrow the range of possibilities for settlement; however, this narrowing can inhibit the chances of reaching a good agreement because it ignores the larger interests. Focusing on interests enhances the likelihood of reaching a good agreement because of greater flexibility: in short, there are often multiple ways to achieve a given interest in a negotiation, as opposed to very limited way of satisfying a position. For example, a job applicant may state that a US\$60,000 salary is necessary for her to accept an offer, whereas the hiring manager may respond that the most they can pay for the position is US\$50,000. All that has been communicated so far are positions (what the negotiators say they want); what has been omitted is their interests (*why* they want what they say they want). If the candidate is ultimately concerned with having enough money to live off while pursuing a master's degree, and the employer has a tuition reimbursement program that the candidate does not know about, it becomes possible to see another way for the candidate to satisfy her fundamental interest.

**Defining the BATNA.** Another critically important step in preparing for a negotiation is for the negotiator to consider what can be done to satisfy his/her interests if an agreement is not reached. If the focal negotiation fails, there are usually several alternative courses of action that may serve the negotiator's interests. Among these alternatives, the negotiator should identify what is the best alternative to a negotiated agreement (BATNA) (Fisher et al., 1991). A job candidate with two offers still has one to fall back on if agreement cannot be reached on the other, and therefore has more "leverage" to negotiate the first offer. Identifying and strengthening one's BATNA before a negotiation, and communicating that BATNA during a negotiation, can help maximize the likelihood of reaching an agreement because it encourages the counterpart to cooperate and keep the other from deferring to his BATNA (Pinkley, 1995; Ury, 1991). It also helps to ensure a *good* agreement, because the final settlement should at a minimum exceed what is available from the BATNA.

**Defining issues.** An issue is an agenda item on which the negotiators will strive to reach a settlement. Sale price, amount of down payment, and financing terms would be examples of negotiable issues for the private sale of a used car. On the other hand, mileage, the color of the car, and whether it has air conditioning are not likely to be issues because they cannot be changed through a negotiation. For example, no amount of negotiating will change the mileage of the vehicle; rather, this information can be considered when negotiating over the appropriate sales price.

Because negotiators often have different preferences among their group of issues, it is helpful to identify as many of these issues as possible in advance. For example, in a two-issue negotiation, one negotiator may place high value on the first issue and little on the second. The second negotiator may place little value on the first issue and high value on the second. Identifying multiple issues and relative priorities among them allows the negotiators to reach an agreement where they both achieve their most valued outcome and concede the other issue to the opponent. This type of agreement is referred to as logrolling (Pruitt, 1981).

**Defining targets and walkaways.** A target is the goal a negotiator sets for the final agreement; targets can be established for each issue and/or for the entire set of issues as a package (Simons and Tripp, 1997). Setting a target before the negotiation provides a benchmark by which the negotiator can gauge his performance. Meeting or exceeding one's target indicates that a good agreement has been reached. Similarly, a walkaway (or resistance point or reservation price) is defined as the least acceptable settlement for an issue or the entire set of issues. Establishing this minimum threshold prior to negotiation helps ensure that one does not achieve an agreement merely for the sake of having one. In other words, it prevents negotiators from voluntarily agreeing to terms that amount to a bad agreement. If the negotiator cannot reach an agreement that exceeds the walkaway point, she should pursue her BATNA instead.

**Understanding the other party.** Once one's own interests, BATNA, issues, targets, and walkaways are defined, similar care should be taken to understand what the other negotiator's point of view is likely to be. This might be done by referring to past negotiations with that party, conversing with others who have negotiated with that party before, holding preliminary meetings, or even exchanging an agenda prior to the negotiation. Regardless of how this insight is gained, considering the conflict from the other's point of view can be very useful for crafting an integrative agreement (Galinsky et al., 2008; Richardson et al., 1994). As we suggested earlier, the other party might have different priorities among issues that allow for a logrolling solution. It is also possible that both negotiators might have commonalities that can be exploited. For example, a father and son might share a highly valued superordinate goal of spending more time together (even though the father dislikes playing video games and the son dislikes watching football on television). The pleasure of spending time together fuels their search for an activity they both enjoy.

### ***Building the relationship with the other negotiator***

Negotiators often view their counterparts as obstacles standing in the way of them getting what they want, and regard them as opponents to be defeated (Hocker and Wilmot, 1995). This mindset predisposes them to perceive the negotiation in "fixed-pie" terms, such that one person's gain necessarily entails the other person's loss, and that the other party stands in the way of achieving one's objectives (Thompson, 1990). This perception leads to lower trust among negotiators, and as a result, information is carefully guarded to prevent exploitation by the other (Lewicki et al., 2015).

However, the integrative negotiation process is based on a different mindset, where negotiators mentally separate the other person (i.e. the other negotiator) from the problem at hand (the actual issues to be resolved by mutual agreement) (Fisher et al., 1991). In this case, the other negotiator is viewed as a partner who assists in solving a joint problem. When both parties to a negotiation view each other this way, they are more likely to engage in efforts to build a relationship with each other. This relationship building involves establishing the trust necessary to openly and accurately share information about their respective preferences and priorities, and to believe what the other tells them (Butler, 1999; Lewicki and Tomlinson, 2014b; Tenbrunsel, 1999). This information exchange, in turn, enables collaborative processes that results in higher joint gain (Olekalns et al., 1996). We wish to stress, however, that building a relationship with the other negotiator does not require the negotiators to abandon their self-interests, simply to attend to the desires of the other. Rather, negotiators should actively strive to achieve their interests while being mindful of the collaborative relationship they have established with the other party, and attentive to that party's interests as well (Kelley and Schenitzki, 1972).

We also realize that some relationships may become strained by actual or perceived trust violations by one or both negotiators. If this is the case, special attention needs to be directed to repairing damaged trust (Lewicki and Tomlinson, 2014b). One method of doing so is to minimize the likelihood of future violations by creating contractual agreements that codify expected behavior, and detect and sanction violations (Kramer and Lewicki, 2010).

### *Exchanging information*

As we discussed above, negotiators should work to build a relationship with each other so they will feel comfortable sharing information with each other. This freer flow of information should allow each party to reveal their interests and relative priority among issues. In this way, negotiators may find some issues where their preferences are common (i.e. both parties have the same superordinate goal), compatible (i.e. both generally prefer the same settlement value), different (e.g. across two issues, one party strongly prefers a high value on the first issue and places no value on the second, whereas the second party prefers a high value on the second issue and places no value on the first), and opposed (i.e. the parties have inverse priorities, such as when a job candidate prefers a higher salary and the employer prefers to pay a lower salary). Integrative negotiation is ideally suited to dealing with the first three categories.

To set the stage for this information exchange, the parties should establish that the first thing they will negotiate is *how* they will conduct the remainder of the negotiation – that is, to discuss the process they will use before they begin to put specific issues on the table. In other words, both parties should commit at the outset to work toward joint (rather than individual) gain, share information on their respective interests, and explore all viable options in order to maximize a win–win agreement. They should also agree that as the negotiation proceeds through a discussion of the various issues, any agreement on a particular issue should be considered tentative until all issues have been discussed (to allow for any final tradeoffs that can maximize joint gain). Finally, we advise negotiators to establish ground rules such as following a pre-determined agenda, being polite and respectful during the negotiation, dealing with easier-to-resolve issues first, and taking breaks when negotiations become difficult (Lewicki and Tomlinson, 2014a). These are only some of the elements of what experts have called the “shadow negotiation” (how we negotiate, where and when we negotiate, etc.) that may be as important as how we address the substantive issues (Kolb and Williams, 2000).

As the negotiation continues, both negotiators should take care to express their interests, as well as their particular priorities among these interests. This exchange of information makes it much more likely to achieve an integrative agreement (Thompson, 1991). As obvious as this advice may seem, research has shown that very few negotiators actually do this (Thompson, 1991). Yet merely asking *why* a negotiator has taken a certain position on an issue can provide the insight that allows it to be resolved (Malhotra and Bazerman, 2007).

When the negotiators begin to discuss specific issues, they should state their opening offer for each one, and this opening offer should be no more (or less) than they can plausibly justify. (This step is in direct contrast to the distributive bargaining process, where parties are encouraged to make extreme opening offers). The rationale for this offer should also be explained when that opening offer is made, taking care to show how it relates to the interests that have already been discussed. It might seem at first that asking for as much as one can justify is incompatible with integrative negotiation. However, the interests tied to this issue may be compatible (such that both negotiators reap high value for that settlement point) or differential (such that the other negotiator has no objection to that settlement point because that issue has little value to him). Essentially, asking for the most that can be plausibly justified avoids the “myth of the fixed pie” which assumes that the goals of the negotiators are opposed on every issue. Some research also shows that making a concession to a more moderate offer on an issue is more likely to be accepted compared to the same (moderate) offer without the more ambitious offer preceding it (Cialdini, 1993).

Finally, we note that the other negotiator is most likely to share information with you if you share information with her first. When you state a willingness to share information, and then proceed to do so, you make it more likely that the other negotiator will reciprocate in kind (Malhotra, 2004; Malhotra and Bazerman, 2007). Even if the other party is not as forthcoming as you would prefer, you can make offers across issues that are of equivalent value to you, and use the other party’s reaction to infer his relative priority among the issues (Bazerman and Neale, 1992; Malhotra and Bazerman, 2007). Again, this process is in contrast to the more traditional negotiating strategy of beginning with extreme opening offers and minimally sharing information, both of which inhibit trust development.

### *Inventing and exploring options*

Once the opening offers (and their underlying interests) are stated by both negotiators, they will be able to see if there are any compatible issues (i.e. both parties prefer the same settlement point), and these can be quickly settled.

To address the differences that remain, negotiators should propose and discuss options (i.e. different possible settlements on each issue). The more issues that are being negotiated allows for more ways to package them in different ways; this makes it more likely to reach a settlement that maximizes joint gain. Therefore, the parties should proceed to brainstorm over options they think will satisfy both sets of interests. The objective is to generate as many options as possible, taking care not to criticize or evaluate any of the options until a complete list is generated. (Criticizing options is likely to make the other party defensive, which usually leads the other party to “dig in” and defend their preferences rather than generate more options.) It is critical to understand that this part of the process must not be construed as making proposals or offers. Once a full list of options is generated, each one will be examined to see which ones more fully satisfy both parties’ interests. This also

means that each negotiator should demonstrate *firm flexibility* (i.e. insisting on achieving one's interests, but being flexible on the manner in which this is accomplished) (Fisher et al., 1991).

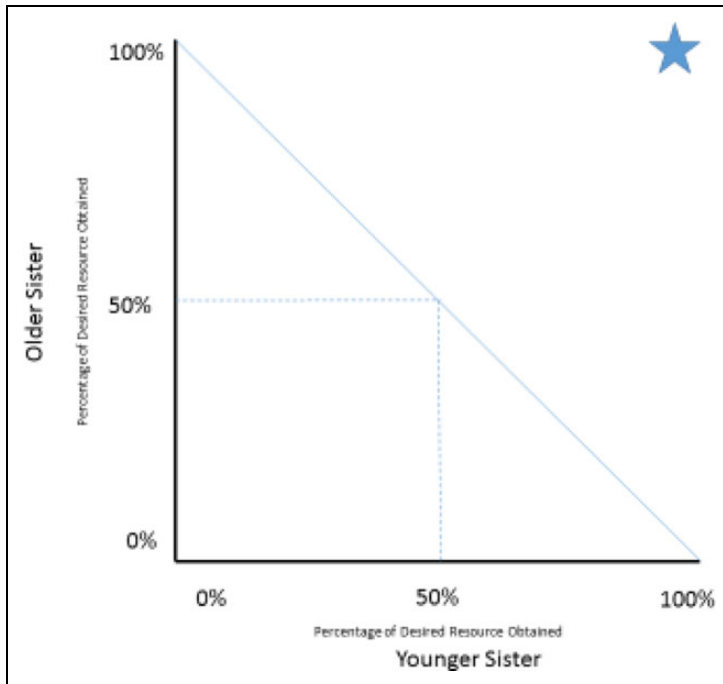
One way of generating options is to consider whether what initially appears to be a single issue negotiation can actually be dealt with as two or more separate issues. As we discussed earlier, this creates the potential for logrolling (Lax and Sebenius, 1986; Pruitt, 1983). Consider the classic negotiation example of two sisters in a dispute over the last orange in the house. One sister wants this orange for a cake recipe, while the other wants it to make a glass of orange juice. Since there is only one orange, it appears that either: (1) one sister will get the orange while the other will not (meaning there will be one winner and one loser); or (2) they will divide the orange, perhaps by cutting it in half (in which case both sisters reach a compromise where neither gets enough to be satisfied). Because a negotiated agreement is one that requires mutual agreement, the first option is somewhat unlikely. In any event, these possibilities are depicted in the "zero-sum" line in Figure 1 and shows that when one sister gets more of the orange, the other gets less.

However, exchanging information on interests will reveal that one sister wants the rind for her cake recipe and has no use for the pulp; she would just discard it anyway. The other sister wants the pulp for the juice and would throw out the rind. What initially appears to be one issue (how to distribute the orange) is really two separate issues: who gets the rind of the orange and who gets the pulp of the orange. Now the task at hand is to determine how much of the *desirable part* of the orange each sister will receive, and it becomes clear that both sisters can get 100% of what they want (refer to the star in Figure 1, which is far from the zero-sum line). Conversely, large problems with many issues can be fractionated or logrolled into smaller, more easily solved parts.

Other strategies for generating options could include expanding the pie (finding a creative way to add more resources to a fixed-pie issue which would allow both negotiators to be satisfied), nonspecific compensation (paying the other negotiator in a completely different currency in exchange for getting what one wants), cost cutting (reducing the burden the other negotiator endures by agreement), and finding a bridge solution (creating new possibilities that neither side had earlier envisioned) (Carnevale, 2014; Pruitt, 1983). The parties can also create contingent contracts, which are useful when there are unresolved differences over how future events are predicted to unfold. Specifically, the parties spell out different future scenarios (e.g. the future improves vs. the future deteriorates), and then decide how different contract terms will apply based on these different future scenarios (Bazerman and Gillespie, 1999; Lax and Sebenius, 2002; Lewicki et al., 2015; Pruitt, 1981).

### Reaching agreement

Once the process of inventing options has been completed, the negotiators can proceed to evaluate each one and select the one that maximizes joint gain. Evaluating options should be done using "objective criteria" – that is, established indicators such as market rates, industry practice, or past precedent (Fisher et al., 1991). This helps to justify the solution as fair, and avoid the perception that the emerging agreement is unfairly biased toward one negotiator or the other. Embracing these objective criteria also serves as a meaningful benchmark for evaluating the extent to which the settlement satisfies the parties' interests. The ultimate objective is to reach the Pareto efficient frontier, where "there is no agreement that would



**Figure 1.** An example of a logrolling solution. The star indicates the ideal position, in which both parties gain what they want.

make any party better off without decreasing the outcomes to any other party” (Neale and Bazerman, 1991: 23).

Once the parties agree on the objective criteria to be used, they may proceed to apply the criteria to each option. The option scoring the highest along the chosen criteria is selected as the optimal solution. The negotiators can also “leave the door open” for the possibility of a post-settlement settlement (Bazerman et al., 1987). In this case, the current agreement becomes the parties’ new BATNA, while they continue to explore additional ways to further enhance joint gain. This process can be initiated soon after the initial agreement is reached, or even weeks or months later, to account for a change in the context or circumstances.

### How to reach an agreement that fulfills its purpose

Unfortunately, as many negotiators have learned from prior experience, it is possible to reach a contractual agreement that seems ideal when it is reached, but clearly falls short not long after the ink is dry. This may happen when the negotiators have fixated over the economic terms of the agreement such as price, and ignored the other contractual elements. When so much attention is devoted to solely economic issues, the “spirit” or scope of the agreement tends to get neglected. The parties simply assume that they are on the same wavelength when it comes to the actual



purpose of the agreement because they have reached a narrow agreement on price. As a result, the contract that both parties signed fails to adequately capture what each may expect to occur in practice. When these discrepancies inevitably surface, it becomes apparent that such a contract will fail to fulfill its purpose.

For example, Fortgang et al. (2003) describe a joint venture between a national hospital organization and a regional health care provider. These organizations realized that they each had a hospital in the same area, and they did not want to cannibalize each other. They carefully created an agreement that would (theoretically) maximize the joint venture's profits through a new governance system and management incentives. In hindsight, the agreement did not fulfill the ultimate (yet unstated) objectives of either party. The national chain wanted to retain full service capability at their hospital (even though this was redundant with the regional provider's hospital) in case the joint venture eventually failed, so they resisted the elimination of redundant departments. In contrast, the regional provider wanted to make their own operation more efficient, so they were not concentrating on maximizing the joint venture's profits either. In sum, both sides engaged in behaviors that were both contrary to the actual agreement they signed, and to the organization's other underlying purpose in signing the agreement. Ultimately, the culprit was the opposing yet unspoken (hence unreconciled) assumptions of each side.

The sharing of interests in an integrative negotiation enhances the likelihood of creating an agreement that will fulfill its purpose. After all, the ultimate purpose of a negotiation is not to achieve a position (i.e. certain economic terms) per se, but to satisfy a set of underlying interests. Once an agreement is reached, it creates an expectation that those interests will be fulfilled. However, if the parties never explicitly articulate what those expectations are (e.g. what is the true objective of this negotiation, how will the agreement be implemented once it goes into effect?), the agreement is unlikely to capture those expectations. On the other hand, sharing interests requires the negotiators to delve into their expectations regarding the purpose and implementation and long-term benefits of the agreement. The contract simply cannot fulfill its purpose until the parties have reached a shared understanding of what that purpose is – even if negotiators on both sides have signed the same document.

We close this section by observing that the end of the negotiation process (after the verbal agreement has been reached but before the final contractual language is finalized and signed) calls for special vigilance. Because no contract can specify all contingencies in advance (Arrow, 1973) and because the actual language of the contract will govern how a court or arbitrator will settle a subsequent dispute should one arise (e.g. Snow, 2005), whichever party takes responsibility for reducing the verbal agreement into its final written form has considerable power to shape the document's language in ways that prefer his side of the agreement (Karrass, 1985). If both parties are needed to come to mutual agreement, then both are needed to participate in crafting the document that records that agreement. But it is advised that parties build in contract language to allow for post-settlement settlements, contract modification, and methods of resolution for contract disputes such as arbitration or mediation.

## **How to reach an agreement that will last**

Ultimately, for the contract to be a success, both parties must commit to its implementation, and this commitment must endure for the full term of the contract. As Mislin and her colleagues note, "... it is when those promises [in a contract] are actually kept that the parties anticipate that truly meaningful consequences will follow" (Mislin et al., 2011: 66). Another reason we have adopted a focus on integrative negotiation is that high pressure tactics that tend to arise in distributive

negotiation are likely to dampen the commitment of the party that got less out of the agreement. If there is a clear “loser” in the negotiation, that party will actively search for a way out of the contract, push the boundaries of acceptable behavior within the contract, or look for other ways to recoup the loss (Lewicki et al., 2015; Wagner and Druckman, 2012). This is especially true if the losing party comes to see the outcome as one that was produced by unethical or illegal (i.e. fraudulent) means. In this kind of situation, that party may turn to the legal system to have the contract annulled, or to initiate some other kind of action against the other. So, it is important that both parties conclude the negotiation with a sense that the agreement that was reached was the best they could attain.

Negotiation research suggests that when the parties perceive a high level of procedural justice (i.e. both parties are actively involved in the bargaining process that generates the outcomes specified in the contract and see the process as fair), they are more committed to enacting that agreement (Jones and Worschel, 1992). Procedural justice is associated with better problem-solving techniques and integrative agreements (Wagner and Druckman, 2012). While many negotiations involve parties with asymmetric (unequal) power, the more powerful party can facilitate the less powerful party’s commitment to the agreement by sharing power when it comes to creating and shaping the agreement (De Rue et al., 2009).

## **How to maximize the likelihood of future agreements**

A final reason we have focused on integrative negotiation is that it is a more appropriate strategy when there is a “shadow of the future” (Axelrod, 1984). That is, when an ongoing relationship is anticipated or desired, maximizing joint gain is a more suitable strategic objective than striving for personal victory at the other’s expense. Negotiators do not want to work with other parties again in subsequent negotiations when they hold those parties responsible for their own negative bargaining outcomes (Reb, 2010). On the other hand, when a future relationship is envisioned, it affects current negotiating behavior such that the parties are less likely to pursue a distributive strategy (Patton and Balakrishnan, 2010). Furthermore, a negotiator’s subjective value derived from the negotiation (i.e. their perceptions regarding their instrumental outcome, their personal performance, procedural justice, and the relationship they have established with their counterpart) more strongly predicts the desire to negotiate with that counterpart again in the future than economic value (Curhan et al., 2010). We speculate that perceptions of subjective value are likely to be higher when using an integrative approach instead of a distributive approach.

## **Conclusion**

In this article, we have reviewed research on integrative negotiation to highlight its role in negotiating contractual agreements. We have observed that this research indicates a set of prescriptive stages to optimize the process and final outcomes. We described the five key steps that are critical to maximizing the likelihood of reaching a good agreement. We also discussed how integrative negotiation is well suited for ensuring that the ensuing agreement will fulfill its purpose, continue in force, and lead to subsequent negotiations.

In closing, we want to highlight three special circumstances that call for extending the basic negotiation model we employed above. First, we acknowledge that we have drawn a sharp distinction between distributive and integrative negotiation strategies. We did this because we view integrative negotiation as superior for the criteria for contractual agreements

we discuss, and because our experience has shown us that many often misunderstand what a “win–win” approach involves. However, we also acknowledge that many negotiations involve inherently distributive issues, and that even once value is created via integrative negotiation, it will need to be distributed among the parties (Lewicki et al., 2015). We believe that subsequent research can further illuminate the tension between distributive and integrative approaches, as well as how that tension can be managed to produce improved outcomes. In short, while negotiation research and practice has often relied on an “either–or” approach that contrasts distributive and integrative approaches, more work needs to be done to determine the viability of a “both–and” hybrid model (e.g. Saunders, 1999).

Second, we also focused on dyadic, interpersonal negotiation – that is, one-on-one negotiations. Many negotiations are far more complex, and we have elaborated on these dynamics elsewhere (Lewicki et al., 2015). Constituents often hire negotiators to act as their agents. Fassina (2004) has described the types of contracts constituents should formulate with their agent (behavior-contingent, outcome-contingent, or combined) based on a set of contingencies. Negotiators also often have a series of negotiations to conduct before an agreement can be reached, both within their own group, and between their negotiating team and the other party’s. Research suggests that an integrative approach is especially well suited for intra-team negotiations (Lewicki et al., 2015). In any event, it would be useful for future research to conduct more empirical investigation into these issues.

Finally, the parties may be working across cultural boundaries where there are very different standards for how a contract negotiation is conducted. Cross-cultural contract negotiation must confront issues surrounding different legal and political systems, different cultural values that give rise to different styles of negotiating, and other influential considerations (Brett, 2014; Phatak and Habib, 1996). This raises a number of complications in seeking to produce an agreement where both parties are truly on the same wavelength: differences in protocol, the meaning of verbal and nonverbal messages, time sensitivity, the ethicality of certain negotiating tactics and so on are factors that tend to be taken for granted within a culture. When we get acclimated to these sorts of factors within our own culture, we overlook how they can become barriers to reaching and implementing a cross-cultural agreement.

## Note

1. We acknowledge that both distributive and integrative negotiation strategies originated out of the same historical and conceptual roots (cf. Raiffa, 1982; Rubin and Brown, 1975; Walton and McKersie, 1965), and many reviews of the negotiation literature provide an extensive review of both approaches (e.g. Lewicki et al., 2014; Thompson, 2011). We believe that there is a time and a place for distributive negotiation, and explain the strategy and tactics of this approach more fully elsewhere (Lewicki et al., 2014).

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### Author biographies

**Edward C Tomlinson** is an Associate Professor of Management at West Virginia University. He earned a bachelor's degree in economics and business at Virginia Military Institute, and an MBA from Lynchburg College. He also received master and PhD degrees in labor and human resources from the Fisher College of Business at The Ohio State University. His primary research interests include negotiation and conflict resolution, interpersonal trust, behavioral integrity, and deviant workplace behavior. He has published in several top-tier management journals, including *Academy of Management Review*, *Journal of Applied Psychology*, *Journal of Management*, *Journal of Management Education*, *Journal of Occupational and Organizational Psychology*, and *Group & Organization Management*. He also co-edited (with Ron Burke and Cary Cooper) *Crime and Corruption in Organizations: Why it Occurs and What to Do about it* (published by Gower, 2011).

**Roy J Lewicki** is the Irving Abramowitz Professor of Business Ethics and Professor of Management and Human Resources Emeritus at the Max M Fisher College of Business, The Ohio State University. He has a BA degree from Dartmouth College and a PhD in social psychology from Columbia University. Professor Lewicki maintains research and teaching interests in the fields of negotiation, conflict management and dispute resolution, trust development, managerial leadership, organizational justice and ethical decision making, and has published many research articles and book chapters on these topics. He is a Fellow of the Academy of Management and the Organizational Behavior Teaching Society. He is the author/editor of 36 books, including *Negotiation* (Lewicki, Saunders and Barry, 2015) and *Essentials of Negotiation* (Lewicki, Barry and Saunders, 2015) – the leading academic textbooks on negotiation – and *Mastering Business Negotiations* (Lewicki and Hiam, 2007), a book for managers. He has extensive management consulting and training experience worldwide.