

Making Negotiation Theory More Helpful for Practitioners

ABA Section of Dispute Resolution Conference

Friday, April 21, 2017

John Lande's Take on What Theoretical Perspectives Seem Helpful or Not

- Binary models of negotiation
 - Any of you heard of the integrative and distributive models of negotiation?
 - What about adversarial and problem-solving approaches?
 - Or competitive and cooperative styles?
 - Can a negotiator be adversarial if she is polite?
 - Is a negotiator adversarial if he seeks a fair division of the amount at stake without seeking to “expand the pie”?
- I remember being so excited when reading Getting to Yes because it sounded so good and made so much sense.
 - I used to teach that stuff.
 - I put it in the first edition of my book.
- Then I interviewed lawyers about cases they recently settled.
 - Some cases neatly fit into one of the two boxes.
 - But some didn’t.
 - E.g., being friendly but greedy.
 - E.g., using power but seeking a reasonable settlement.
- I realized that the system of two models doesn’t fit reality very well.
 - Part of the problem is that these models assume that a lot of variables are all bundled together.
 - For example, being adversarial means being selfish, nasty, using power, using zero-sum assumptions, AND exchanging offers.
 - Conversely, being cooperative means being generous, friendly, looking for win-win outcomes, AND explicitly discussing interests and options.
 - Also, we usually try to categorize a single negotiation or negotiator with a single category, when the reality is much more complicated and varies over time.

- We fool ourselves if we try to cram the round holes of reality into the square holes of our theory.
- So I think we need to “unbundle” variables in the two models reflecting
 - whether negotiators are concerned about the interests of the other side
 - whether negotiators analyze interests or exchange offers
 - whether they try to create value in the negotiation
 - whether they use hostile tone
 - whether they base their actions on interests or power
- Indeed, the symposium suggests that we need to fundamentally re-think concepts and principles in negotiation theory.
- This is hard, even painful – giving up comfortable ideas.
- But the old ones don’t work well – and most people don’t use them in practice anyway.