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### Title

A Labor Theory of Negotiation: From Integration to Value Creation

### Permalink

<https://escholarship.org/uc/item/94p5w6v6>

### Journal

Journal of Law and Political Economy, 1(1)

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### Publication Date

2020

### DOI

10.5070/LP61150260

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## A Labor Theory of Negotiation: From Integration to Value Creation

### *Abstract:*

This article argues that Mary Parker Follett developed a socialist theory of negotiation in response to early twentieth century labor struggle (at least if socialism means the democratization of economic life). This defining feature of Follett's work has been forgotten amongst negotiation scholars; indeed, it appears never to have been acknowledged, even as Follett remains an icon in the contemporary field. Prominent negotiation scholars have instead interpreted Follett's idea of "integration" as an early effort to articulate what is in fact the very different contemporary concept of "value creation." In so doing, they have reconceptualized the field with different understandings of labor, capitalism, and the common good than those Follett relied upon. Through a close reading of how prominent negotiation scholars have interpreted the meaning of integration—in the early, mid, and late twentieth century—the article broadly illustrates how political-economic transformations have influenced the ends and best practices of negotiation theory. It concludes with an approach to negotiation theory engaged with political-economic struggles of today.

*Keywords:* negotiation theory, Mary Parker Follett, law and political economy, value creation

### **I. Introduction**

This inaugural volume asks us to interrogate how our own fields could benefit from a Law and Political Economy perspective—a perspective today shorthanded as LPE. LPE is a capacious approach to legal analysis with its roots in Legal Realism and Critical Legal Studies. By insisting that the political and the economic are always already intertwined, LPE illuminates the economic logics embedded in both law and politics. In my field, negotiation theory, few scholars have investigated the economic assumptions that have shaped the field's foundational concepts or how those assumptions have shifted over time.

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And yet theories of how to negotiate invariably rely on beliefs about how individuals should craft relationships with others, often in the workplace and in the market. As such, they express a (not always explicit) social theory of both labor and value.

Readers may be surprised to think of negotiation theory as a subject of political economy. After all, classic works such as *Getting to Yes* (Fisher and Ury 1981) focus almost exclusively on individual and interpersonal behaviors—they do not address, at least not explicitly, questions of the polity or the economy. Many contemporary negotiation scholars offer techniques to help individuals cultivate self-reflexivity, empathy, and assertion, and develop strategies to overcome psychological barriers to rationality across a range of family, workplace, business, and transnational contexts. They conceive of negotiation theory as a mechanism to create cooperative social relations, but one that is ultimately intended to advance individual interests.

An inward-looking and individualized focus is a relatively recent development in negotiation theory, however. As this article shows, American negotiation theory started as, and for a long time remained, an engagement with labor and class relations. When early scholars developed their theories of negotiation in the context of workplace conflict, they did so in a moment when many workers were familiar enough with Marxist theories of class struggle to readily believe that some differences—for example, between management and labor—were not reconcilable, no matter how one performed in a negotiation. In this context, negotiation theorists aimed to open a space for potentially harmonious group relationships by introducing the concept of “integration”—the idea that labor and management could reorient their interests by creating new common values together.

Integration has remained an organizing concept in negotiation theory, but its meaning has changed over time as the ways in which capitalism is organized and understood have changed. Today, integration is synonymous with economic value creation: a negotiation is integrative when it has the potential to leave all parties better off based on their own standards of value than whatever deal they were contemplating initially. In other words, integration means that—because of some added negotiation technique—there are more subjective units of value for negotiators to allocate than they otherwise could have accessed without deploying this technique: that is, the parties have expanded the pie before dividing it.

But integration did not initially rest on a neoclassical economic analytic. It originated with Mary Parker Follett, a late Progressive era thinker. In Follett’s work, integration presupposed a corporatist account of how society as a whole, and more specifically of how industries as smaller instantiations of society function best when each social group in a negotiation commits to a common good. She aimed to address a particular unifying question: how can labor and capital assume “collective responsibility for production”? (Follett 1925a, 77; see, for example, Brand 1988). Integration served as a hopeful answer: it meant “you can be *for* labour without being *against* capital; you can be for the institution” (Follett 1925a, 82). From this perspective, a negotiation is integrative when—by participating in a shared institutional context—all groups find that their desires are working to achieve the same overarching ends.

This article traces the transformation of integration from a process aimed at producing common values during Progressive-era industrial capitalism to a process aimed at discovering and trading individual utilities during the late twentieth century. It shows how, as integration became synonymous with value creation, many theorists stopped asking explicit questions of political economy. Indeed, the

field eventually turned to ever more inward-looking questions of individual psychology and self-reflexivity in a moment when the worker was being reconfigured as her own enterprise.

The article proceeds in four parts. Part II elaborates Follett's writings. I know of no contemporary negotiation theorist who dates integration—as an organizing concept in negotiation—to scholarship before Follett (and few today who do not credit Follett when they invoke it).<sup>1</sup> In the 1910s and 1920s, Follett developed a theory of integration based on the following presuppositions: First, that society comprises different groups all potentially conscious and in favor of their interdependence. Second, that there should exist in society legal and economic mechanisms to balance power among these groups. Third, as power is balanced, groups should want to advance common ends. I then describe how these ideas persisted and changed in the work of Richard Walton and Robert McKersie, mid-century negotiation theorists who focused similarly on labor-management conflict. In sum, these early theorists envisioned the progressive amelioration of class conflict as both a means and ends of a larger common good.

In Part III, I elaborate what happened to negotiation theory when an explicit common good was no longer something scholars could presuppose as an aim in negotiation. In the 1980s and 1990s, when scholars transformed and popularized negotiation as a general field, basic socio-legal ideas had changed. No longer could one assume that there were such things as “groups intermediate between the state and the individual” as basic units of social organization forged through shared normative practices and interests (Kennedy 2006, 40), let alone that there existed reliable mechanisms to balance power among groups in an exchange. Without these anchors, many contemporary negotiation scholars theorized individuals as the unit of negotiations, and they theorized the purpose of negotiation as value creation—that is, an effort to expand the value of an exchange when value is a metric of individual preference.

Part IV turns to negotiation theory today and interprets the stakes of this genealogy for LPE readers. Most of this article illustrates how political-economic transformations have influenced the ends and best practices of negotiation theory. But through this genealogy, readers will also see how contemporary negotiation theorists have not only reproduced but also strengthened historically specific meanings of value by translating them into techniques for self and social interaction. I conclude by posing an inverse relation between political economy and social practice. Scholars and organizers who wish to reconfigure the boundaries between the economy and polity are today thinking with different practices of negotiation. This is because negotiation theory not only reflects the terrain of the possible, it contributes to reshaping it.

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<sup>1</sup> Of course, the idea of integration predates Follett. I suggest only that in the genealogy of negotiation theory, the term is traced to her. This was not always the case. As Jane Mansbridge observed in 1998, “Through an extraordinary series of omissions, the conception of ‘integration,’ which has now become one of the best-known concepts in modern negotiation is not generally credited to [Follett]” (1998, xxiv). Around the time of Mansbridge’s observation, feminist negotiation scholars had begun to recover Follett’s foundational contribution (see note 3 and surrounding text), and today she is regularly cited for the principle of integration.

## II. Integration

### A. *Voluntarism and Mary Parker Follett*

To understand the original arguments for integrative negotiation one must attend to theorists' contemporaneous social contexts—specifically, the industrial wars of the early twentieth century (Brody 1965).<sup>2</sup> I begin here with Mary Parker Follett, who has been described by feminist negotiation scholars as “the mother of the contemporary field” of negotiation (Kolb 1995, 339).<sup>3</sup> A Radcliffe-educated New England reformer, Follett was active in the settlement house movement and then, seeking more participatory approaches to reform, helped to create social centers in Boston public schools where citizens themselves could deliberate on “all the important civic questions of the day” (Mattson 1998, xxxvi-xxxvii, quoting Follett). Drawing on these centers, as well as on American philosophical pragmatism (among other popular social theoretical traditions), in 1918 Follett published *The New State*.<sup>4</sup> A then widely discussed book, it argued that we should structure our political life neither as struggle nor as aggregation (“[d]emocracy is not a sum in addition”) but rather as an experiment in cooperation—and *not* because people already share common values or familial-national ties but rather because through “the stimulus and the bracing effect of many different experiences” people can “learn[] how to evolve collective ideas” (1998 [1918], 5, 97, 196, 159).<sup>5</sup>

Follett opened *The New State* by arguing that “[o]ur political life is stagnating, capital and labor are virtually at war . . . because we have not yet learned how to live together” (1998 [1918], 3). As this quotation suggests, Follett’s work bridged philosophical meditations on national democracy with extensive reflections on labor-management conflict. In both contexts, she refused “the separation of economics and politics” as well as top-down and expert-led approaches to reform (261, n1). Follett wanted public institutional change—for example, she wrote admiringly of Roscoe Pound’s arguments for social legislation (122-133). But the “new state” she envisioned rested far less on new rules of law than on the directly democratic participation of social groups engaged in collaboration. As such, her writing on industrial organization remained highly voluntarist in orientation. That is, her writings expressed a broader social ethos that predominated in the American labor movement from the 1890s

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<sup>2</sup> One caveat is in order. Although I read the works of foundational negotiation theorists by considering the broader conflicts that engaged them, a history of American labor relations far exceeds this the scope of this article. I confine my analysis to some of the ideas about labor conflict and accommodation that other legal historians have identified as predominating in different moments, and that influenced negotiation theorists’ understandings of the meaning of integration.

<sup>3</sup> As Carrie Menkel-Meadow elaborates this honorific: “For some of us, it is heartening to discover that the idea of ‘integrative’ solutions to situations of conflict, in fact, originated with a woman” (2000, 7n35). She continues:

As in many other fields of endeavor, some of the “fathers” got the credit they might not have wholly deserved. For instance, in their classic book on labor-management negotiations, Richard Walton and Robert McKersie discussed and cited Follett’s work, but they seem to have walked off with the credit for the idea (Menkel-Meadow 2000, 7n35).

See also Kolb and Porter (2015, 50).

<sup>4</sup>As one (critical) reviewer put it, “Miss Follett knows her Hegel, her Duguit, her James, her Roscoe Pound, her Harold Laski. She knows her particularism, her syndicalism, her guild socialism, her dualism, her pluralism” (McBain 1919, 170).

<sup>5</sup> Readers can see her pragmatist inspiration: “We sit around the council table not blank pages but made up of all our past experiences. Then we evolve a so-called common will, then we take it into the concrete world to see if it will work. In so far as it does work, it proves itself; in so far as it does not, it generates the necessary idea to make it ‘common.’ Then again we test and so on and so on” (1998 [1918], 50–51).

through the 1920s—namely, “voluntarism” or a staunch belief in “the ‘private ordering’ of industrial relations” (Forbath 1991, 1–2n3).

But whereas the labor leaders who forged voluntarist American ideology aimed to make labor “an ‘equal partner’ with capital” through strikes and collective bargaining (Forbath 1991, 15), Follett viewed this as an impoverished aspiration for private ordering. Follett was troubled that allocations among labor and capital followed from only distributive bargaining. When bargaining power is the “only determinant of value,” labor organizes around “the impulse of self-protection against exploitation” (1925b, 95; 1925a, 74). She dismissed calls for an “equilibrium between capital and labour” or the idea that labor and capital should “find an absolute balance of power” (1925b, 113). She wanted to surmount equilibriums and balances for more dynamic social practices that would enable “the workers a chance to grow capacity or power for themselves” (109).

The alternative Follett proposed was *integration*. “The integrating of desires,” she reasoned, “precludes the necessity of gaining power in order to satisfy desire” (1925b, 104).<sup>6</sup> Collective bargaining illustrates that capital and labor *can* compromise among conflicting interests, she argued, but it represents only one step towards “the full application of the group principle.” This is because “[n]othing will ever truly settle differences but synthesis” (1998 [1918], 114). Synthesis or integration occurs when each side *wants* to achieve the ends that will strengthen the larger social group they all belong to—the household, the civic association, the enterprise, the industry, or the nation-state. For example, Follett reasoned that joint understandings of the costs of living and the conditions of industry should lead workers and managers to want a fair wage (1925a, 75).

Before turning to Follett’s writing on negotiation, I sketch some of the larger historical contexts that led her to champion voluntary integration. More specifically, I briefly retell William Forbath’s (1991) elaboration of how, by the 1920s, American labor relations were widely understood by all sides as a bargaining situation populated by adversaries deeply invested in amassing private economic power—that is, precisely the understanding of labor-management relations that Follett wished to transcend.

Follett was turning to an idea of voluntary integration in a historical moment in which many labor leaders, at least, had converged on a version of voluntarism as an appealing political and legal strategy. This form of voluntarism presumed that “workers should pursue improvements in their living and working conditions through collective bargaining and concerted action in the private sphere rather than through public political action and legislation” (Forbath 1991, 2n3). Labor leaders who espoused voluntarism did so because they confronted a legal apparatus hostile to their interests. In the mid-nineteenth century, labor organizers had called for institutional forms of solidarity, including protective state legislation to regulate the conditions of work and wages as well as for cooperative or state ownership of industry (12–14). But by the late 1890s, such demands appeared futile. Labor protests met with repeated state repression, and state and federal judiciaries refused to uphold protective legislation (15–16). This refusal led prominent labor leaders to call instead for collective self-help.<sup>7</sup> For example, American Federation of Labor (AFL) leader Samuel Gompers described actions

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<sup>6</sup> Follett developed a distinction between “power-with” (integration) and “power-over” (domination). See note 13 and surrounding text.

<sup>7</sup> Or at least to call for self-help among a subset of (skilled) male workers. As Forbath explains, labor leaders described female workers as a “‘dependent class,’ which could not weather the voluntarist world of free contract” and thus in need of state protection (Forbath 1991, 17).

to “accomplish[] through economic power what we had failed to achieve through legislation” (42).<sup>8</sup> For labor, freedom of contract became an organizing principle to legitimate direct action.

As a result, over the first two decades of the twentieth century, legal struggles between labor and management focused on what constituted a competitive and fair market—precisely the kinds of struggles that Follett hoped eventually to obviate through integration. Dominant labor leaders argued that workers should be free to combine like capital to amass economic power (Forbath 1991). State and federal judges, however, repeatedly enjoined labor protests and collective actions. “[W]orkers’ ‘combinations,’” these judges reasoned, “represented a more violent and menacing version of the same kind of monopolistic concentrations of economic power that they condemned in corporate ‘aggrandizements of capital’” (63–64). Hence courts enjoined many broad-based, class-based (and successful) secondary strikes—for example, union members who refused to work on parts manufactured by nonunion workers or who organized boycotts against that manufacturer’s distribution networks and patrons (59–97).

Labor leaders, in turn, offered alternative interpretations of market freedom. Judges, they argued, had impermissibly interfered in the market to privilege industrial corporations rather than promote competition (Forbath 1991; see also Kennedy 2006). They lobbied for anti-injunction statutes to restore the aims of voluntarism; that is, to restore the rights of laborers, like other sellers, to disengage from the market unless capital successfully competed for their favor (Forbath 1991, 130–32). Labor leaders also instructed union members to act on their own understandings of liberalism and freedom by disobeying court orders (143). During the 1920s, a spike in judicial injunctions “prompted articulate disobedience on an unprecedented scale,” which, in turn, led political elites to worry that judicial repression had only intensified industrial unrest (158–159).

In sum, the intense conflicts that Follett wished to transform cast the question of industrial relations as one of fair or unfair distributive bargaining in private competitive markets. As Forbath observes, voluntarism meant that dominant strands of the labor movement not only affirmed “liberty of contract,” they also accepted, “the naturalness of the capitalist marketplace, the inevitability of marketplace conflict, and the legitimacy of the competitive freedom enjoyed by corporations” (Forbath 1991, 131). Follett began with these same assumptions, yet she sought to surmount them—in large part through a different approach to labor-capital negotiations.

### B. *Follett and Negotiation*

“I differ . . . from those people who say that the greatest fairness to the worker is to give him equal power in the bargaining process,” Follett told a group of personnel administrators in 1925 (1925b, 115). “I think we owe both the worker and ourselves more than that” (ibid.). In this section, I describe Follett’s understanding of integration. Follett proposed integration as an alternative to collective bargaining, which she viewed as “a temporary expedient,” something that “is at present necessary” for it “has a very real use in its implication that labour and management meet in a sense as equals” (without collective bargaining, she wagered, wages and working conditions would fall below acceptable conditions) (1925a, 72; 1925b, 114; 1926, 168; 1925b, 116). But “the collective contract,” Follett predicted, “must in time go the way of the individual contract” for “[t]he paradox of contract,” she

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<sup>8</sup> As did more radical syndicalist movements. As a leader of the Industrial Workers of the World put it: “the men now realize that they will never get relief by legislation, and that they must get it through their own action” (Forbath 1991, 48).

warned, “is that while it seems to be based on relation, it is in reality based on the individual” (1998 [1918], 117, 125). In contract, individuals, separately or in the aggregate, reach agreement about their particular wills. In associations, by contrast, people act as “community-units” and the need for contract fades away (125-126).

Follett thus argued that the problem with the collective contract is that it can fix wages and labor conditions for workers, but it does not create new community values because it “does not give labor a direct share in industrial control” necessary to produce associations (1998 [1918], 117; 1925a, 72). “[C]reating new values [requires] a wholly different process from the sterile one of balancing,” one in which both labor and managers are organized so that they *want* to align their self-interest with that of the larger social group to which they both belong (1925b, 114). Industrial peace, she thus concluded, must rest not on contracts forged through groups equally matched in economic power, but rather on the making of “labor and capital into one group” through “an integration of interests and motives, of standards and ideals of justice” (1998 [1918], 117). Or to put this all another way, Follett wished to encourage negotiations in which everyone’s (workers, managers, owners) principal question was how they could all come to want to participate in forging common ends.

Follett elaborated this rather heady understanding of integration in a series of practical lectures that she gave to the Bureau of Personnel Administration in the mid-1920s. She encouraged managers and businessmen to pursue a process she called *functional unification*. Consider this illustration:

[M]y reason for my very strong advocacy of employee association is *not chiefly to bring about equal power, but because this helps us to approach functional unity*. I should want to make a “side,” not for a fair fight, not for fighting at all, but in order that it should enrich the whole. If I were a manufacturer I should want to consolidate my workers, not in order to give them greater strength in a fight, but in order that they should, *by conscious unity*, be a stronger part of my plant and thus strengthen my whole organization (1925b, 115; emphasis added).

Hence, Follett argued that once the stage was set for a fair fight, the need to fight should fade. Even an individual capitalist should want to support worker coordination because it helped to facilitate integration.

The most important thing, then, to observe about Follett’s theory of integration is that it followed from her theory of group process. Follett instructed her audiences that the test of good administration “should be whether you have a business with all its parts so coordinated . . . that they make a working *unit*—that is, not a congeries of separate pieces, but . . . a functional whole or integrative unity” (1925a, 71). She also explained that people in groups always respond to their past interactions and broader social contexts: “Employees do not respond only to their employers, but to the relation between themselves and their employer. Trade unionism is responding, not only to capitalism, but to the relation between itself and capitalism” (1925c, 45). Follett used this idea—“that response is always to a relation”—to craft a dynamic theory of integration that combines self and social change, self and social control, and democracy understood as interpenetrated not “plus-plus” relations (1951 [1924], 63; 1927a, 185).

Let me briefly elaborate on each point. First, Follett stressed that integration involves constant self and social change. This idea followed from her rejection of nineteenth century liberal individualism—the mistaken understanding, she explained, of “developed individuals first existing and then coming together to form society” when really “the interpenetrating of psychic forces creates at the same time



individuals and society” (1998 [1918], 75). Hence, integration happens not when independent individuals “rearrange existing values” but rather when they confront diverse interests and when their valuation of those interests evolves into revaluation.<sup>9</sup> Revaluation, in turn, entails more than private revisions of thought taking place within individual minds with aim of reaching consensus:

[V]alue does not appear on the mere viewing of interest: it is more than a process of inspection, introspection or retrospection. The realizing of a second value involves activities which change my attitude towards the first value. The evaluation of my interests changes as I *do* things (1951 [1924], 172).<sup>10</sup>

In pragmatist fashion, Follett thus argued that revaluation happens through experience and what she called the “interbehavior” of men (*ibid.*).

Second, and closely related, Follett linked revaluation to social regulation. To integrate differences, workers and managers must create new values and desires—but not through suppression, manipulation, or even persuasion, but rather by recognizing how they all exist together “*under* the situation” (1925d, 63). If you find the “law of the situation,” Follett explained, no one needs to give orders to anyone; employers and employees “should agree to take their orders from the situation” (58–59).<sup>11</sup> Obeying the law of the situation harmonizes individual liberty with authority because “organizing activity” and “directing activity” become the same thing (62; 1927a, 202). At “the social level” when everyone acts to develop and to respond to the situation then, Follett reasoned, “we get control through effective integration” (1927a, 204; see also 1925c, 49).<sup>12</sup>

Third, Follett presented integrative social control as an ideal form of workplace democracy. In the factory as elsewhere, she insisted that “[d]emocracy does not register various opinions,” through for example the suggestion box or the workmen committee that votes proposals up or down (1951 [1924], 209). Instead democracy “is an attempt to create unity” as people learn how to confront and integrate difference (*ibid.*). Integration therefore embeds “a new conception of power” (1951 [1924], 179)—what Follett called power-with rather than power-over (1925b, 101–107).<sup>13</sup> For example, she urged managers that if they could organize businesses so “that a workman has an opportunity of influencing you as you have of influencing him . . . power-with may be built up” (1925b, 105).<sup>14</sup> Indeed, Follett

<sup>9</sup> In her words: “The confronting of diverse interests each claiming right of way leads us to evaluate our interests, and valuation often is evolved into revaluation; not in the sense that sour grapes hang high, or that a *pis aller* must be accepted, but a genuine revaluation” (1951 [1924], 171).

<sup>10</sup> John Dewey (1927) developed a similar theory of communication. For elaboration see Cohen (2012).

<sup>11</sup> She encouraged managers to “to unite all concerned in a study of the situation, to discover the law of the situation and obey that” (1925d, 58).

<sup>12</sup> She elaborated:

Real authority inheres in a genuine whole. The individual is sovereign over himself as far as he unifies the heterogeneous elements of his nature. Two people are sovereign over themselves as far as they are capable of creating one out of two. A group is sovereign over itself as far as it is capable of creating one out of several or many. A state is sovereign only as it has the power of creating one in which all are. Sovereignty is the power engendered by a complete interdependence becoming conscious of itself (1998 [1918], 271).

<sup>13</sup> As Jane Mansbridge notes, many later feminist theorists popularized Follett’s distinction between power-over and power-with without linking “either the ideas or the words to [her]” (1998 [1918], xix-xx).

<sup>14</sup> Follett argued to continually expand worker opportunities for managing and influencing production (see, for example, 1925a, 86). She explained: “[O]ur aim in the so-called democratic organization of industry should be, not to give the workmen a vote on things they know nothing about, but so to organize the plant that the workmen’s experience can be

described integration, democracy, and power-with as all homologous concepts—and as all conditions for order and discipline: “we owe obedience . . . only to a functional unity of which we are a part, to which we are contributing” (1925d, 64).

In her lectures to businessmen and administrators, Follett left ambiguous what it means for workers to be part of a functional and democratic whole: “[W]hether industry is owned by individual capitalists or by the state or by the workers, it will always have to be managed,” she reasoned (1925e, 122). Yet she anticipated “that the whole machinery of competitive capitalistic business will be in some degree altered” as firms practice functional unification (1925a, 89). To be clear, Follett wanted political transformation: she wished to link changes in competitive capitalism to changes in public systems (1998 [1918], 321–322). For example, she told business managers that “the doctrine of *laissez-faire* must be abandoned in favour of deliberate, conscious control of economic forces for the sake of the general social good” (1925e, 121, invoking Keynes). Yet she simultaneously reasoned that public political change *depends* on voluntary integration: “The joint control of industry may be established by some fiat, but it will not be the genuine thing until the *process* of joint control is learned” (1988 [1918], 119).<sup>15</sup> Hence she also told business managers that “the opposite of *laissez-faire*” is not command but rather coordination, “a process of auto-controlled activity” that cannot be imposed (1932, 296).<sup>16</sup> In this spirit, she called for a process of integrative national planning that would enable plants and industries to coordinate and self-govern while also including “union-management co-operation within each plant, thus giving the workers a share from the beginning” (1932, 296–297).<sup>17</sup>

This vision—industrial democracy facilitated and reinforced by national planning—anticipated (a version of) the National Labor Relations Act (NLRA). In 1935, the NLRA gave many workers the rights to organize and bargain collectively—rights meant to remedy the “inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate [form].”<sup>18</sup> In the eyes of some of its drafters and readers, the NLRA also aimed to “subject the workplace to a regime of participatory democracy”—that is, a regime that would grant workers more than the right “to engage in endless economic combat for whatever benefits could be wrung from their corporate adversaries” but “some control over the industrial decisions that affected their lives” (Klare 1978, 285, 290).

As we have seen, Follett defined industrial (and political) democracy against the mainstream. For example, in 1918 the AFL described “democracy in industry” not as a process of integrating workers into a greater whole but rather as about achieving nondomination through representation. Against the “arbitrary or autocratic whim, desire, or opinion of the employer,” the AFL demanded that workers “have a voice in determining the laws within industry and commerce . . . equivalent to the voice which

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added to that of the expert . . . we must plan to have the workmen learn more and more of the industry as a whole” (1951 [1924], 20).

<sup>15</sup> “We cannot have any genuine collectivism until we have learned how to evolve the collective thought and the collective will,” she likewise submitted (1998 [1918], 73).

<sup>16</sup> Keith Snider observes that as Follett increasingly addressed business audiences she used the word “co-ordination.” He ventures that she strategically chose a term more familiar to business administrators to “convey the idea of joint activity around a particular situation, which would then make possible interpenetration, integration, and unity” (Snider 1998, 280).

<sup>17</sup> She elaborated: “[A] National Planning Board should not be a new seat of power,” but rather reflect the “interpenetration” of the authorities of different industrial organizations. The individual initiative embodied in these organizations could “cancel each other out, [could] fight on indefinitely or—the only fruitful way—[could] combine [through planning] by a process not of compromise but of integration” (1932, 309).

<sup>18</sup> National Labor Relations Act § 1, 29 U.S.C. § 151 (1935). The Act also created an administrative agency authorized to decide the appropriate unit for collective bargaining and to investigate and enjoin unfair labor practices.

they have as citizens in determining the legislative enactments” (AFL Reconstruction Program, reprinted in Commons 1921, 562–63).<sup>19</sup> Ultimately, however, the NLRA advanced neither democratic vision. Karl Klare (1978) traces how between 1937 and 1942, the Supreme Court interpreted the Act to uphold only a contractual framework for voluntary bargaining over wages and conditions.<sup>20</sup>

Scholars describe the contractual system of negotiation and dispute resolution that coalesced after World War II as *industrial pluralism*. Industrial pluralism, as Katherine Van Wezel Stone (1981) explains, advances a model for class relations that considers management and labor as equal parties in collective bargaining; that reasons that individual rights and interests must yield to those of the collective; and that views collective bargaining as a mini-legislative process that enables both sides to create their own rules to govern wages and (some) employment conditions without substantive state intervention. It was in the shadow of these assumptions—not voluntarism as much as industrial pluralism—that later negotiation scholars continued to work out theories of integration.

### C. *Industrial Pluralism and Walton and McKersie*

When contemporary negotiation scholars offer citations for the principle of integration, they reference Richard Walton and Robert McKersie after they reference Follett. In this section, I describe Walton and McKersie’s 1965 book, *A Behavioral Theory of Labor Negotiations*, which has been hailed as “the most important book published in industrial relations in the 1960s and [as] one of a handful of major classics of all time in the industrial and labor relations field” (Kochan 1991, ix). As others have argued, the book also “provides much of the conceptual underpinnings of what grew into the modern-day teaching of negotiations in business, public policy, law, and other professional schools” (Kochan and Lipsky 2003, 15).

Walton and McKersie offered a descriptive account of labor-management negotiations that combined attitudinal structuring (how social units relate toward the other) with distributive bargaining, integrative bargaining, and interorganizational bargaining (how individuals align their interests with a group and a group aligns its interests with an agent). Like Follett, Walton and McKersie hoped to offer a general theory of group negotiations (1965, 380; Follett 1925a).<sup>21</sup> But as with Follett, their ideas were shaped by the historically specific social contexts that anchored their writing. They analyzed the world of the industrial workplace during a postwar period when unions reached peak membership levels and when the peace hashed out between labor and management—sometimes collaborative, sometimes adversarial (Poulsen 2009)—happened largely through professional negotiators.<sup>22</sup>

My argument here is as follows: Walton and McKersie revised Follett’s experiential and dynamic account of integration. They offered an analytical model that begins with preexisting interests and that describes integration as an exchange that maximizes joint gains. In so doing, Walton and McKersie

<sup>19</sup> Compare Follett (1998 [1918], 324) (“Most trade-unionists are satisfied in their own organizations with a centralized government or an outworn representative system”).

<sup>20</sup> For a contemporary review of the NLRA’s limits in facilitating collective action, see Sachs (2008).

<sup>21</sup> For example, she argued: “I hope it will be understood that I do not intend all this to apply merely to managers and workmen. I think on every board, in every committee, the same effort should be made . . . because we are seeking an integrative unity as the foundation of business development” (Follett 1925a, 76–77).

<sup>22</sup> Union membership grew from about 10 percent in the early 1930s to around 30 percent of the workforce in the 1940s and 1950s. See Will Kimball and Lawrence Mishel, “Unions’ Decline and the Rise of the Top 10 Percent’s Share of Income,” Economic Policy Institute, February 3, 2015, <https://www.epi.org/publication/unions-decline-and-the-rise-of-the-top-10-percents-share-of-income>.

sent into motion the analytics of exchange that would anchor negotiation theory to this day.<sup>23</sup> *But* they also retained a vision of the common good that resonated with contemporaneous views of a functionally differentiated society, which made their translation from integration to value creation liminal and partial.

Walton and McKersie (1965) opened their book by explaining that it builds on John Dunlop's account of industrial relations, which is a classic in the industrial pluralist tradition.<sup>24</sup> Dunlop argued that an industrial relations system comprises workers, managers, and specialized state agencies; their shared social contexts such as workplace technology and economic constraints; a web of rules that governs the workplace; and their ideology (Dunlop 1958, 7-18). By ideology, Dunlop meant the "set of ideas and beliefs commonly held by the actors that helps to bind or to integrate the system together as an entity" (16). Like Follett, Dunlop reasoned that "an industrial relations system implies a unity, an interdependence, and an internal balance" (27). Also like Follett, he hoped his systems framework would help to "release industrial-relations discussion from the preoccupation, if not the obsession, with labor peace and warfare" and decenter collective bargaining in favor of broader attention "to the full spectrum of contemporary industrial relations" (380).

Walton and McKersie devoted their book to analyzing the specific negotiation processes inside the system Dunlop described (1965, 1-2). To develop what they called not integration but now integrative bargaining, Walton and McKersie acknowledged Follett's "pioneering and impressionistic" contributions (7). Although the adjective impressionistic understates the systemic nature of Follett's work, Walton and McKersie rightly implied a difference in their approach. As we have seen, Follett submitted that reasoned thinking and rational dialogue could carry people only so far in integration. "Genuine integration occurs in the sphere of activities, and not of ideas or wills" (1951 [1924], 150). "Values are '*eventual things*,'" she explained (172, emphasis added).

By contrast, Walton and McKersie described integrative bargaining as a subject of economic analysis that could be abstractly modeled and demonstrated through aggregation. In their model, values precede negotiation. In brief, Walton and McKersie distinguished fixed sum from variable sum games, which correspond, in turn, to issues and problems: "Issues involve a fixed total objective value which can be allocated between the parties in various shares or proportions. Problems, on the other hand, are agenda items which contain possibilities for greater or lesser amounts of value which can be made available to the two parties" (1965, 127). To illustrate integrative problem-solving, they plotted party valuations on an x-y axis and explained that in integrative bargaining "each negotiator brings a welfare orientation to the process . . . his primary concern is to increase the total sum" (16-17).

Walton and McKersie thus recast integrative bargaining into a discrete analytical and aggregative process: parties begin with their preferences and then attempt to combine them in some way that produces "at least one arrangement different from the *status quo* [that] would allow each to move to a more favorable position on his relevant utility curve" or in the alternative, given a range of sacrifice-benefit ratios, that would allow parties to improve upon the status quo without "more than token

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<sup>23</sup> For example, Fisher and Ury would make famous Walton and McKersie's basic distinction between integrative and distributive bargaining by telling readers to focus on *interests* rather than divide up *positions* (Fisher and Ury 1981). Fisher and Ury did not cite Walton and McKersie for this distinction, but as others have explained "they have clearly read Walton and McKersie" (Burchill 1999, 168 n.65). Unlike Fisher and Ury, moreover, Walton and McKersie did not style their book as a popular "how-to." Its direct influence therefore primarily remained within the field of industrial relations.

<sup>24</sup> Dunlop was a prolific industrial relations scholar who also held posts in several government administrations (including as Secretary of Labor). Stone (1981, 1516n29), describes him as an exemplary industrial pluralist.

sacrifice” (1965, 129, 139). They called this utility matching—where each side prioritizes the issue that it values most and that has the least cost to the other side as the basis for exchange (176–177).

Walton and McKersie thus also introduced subjectively expected utility theory to explain how groups in negotiation could expand their bargaining range. Subjectively expected utility theory enabled the field of microeconomics to disavow (particularly utilitarian) theories of a common good. Rather than imagine any common units of good that could be measured and allocated in a way that would benefit a society overall, ordinal economists instead argued that as a matter of positive science it was impossible to make *interpersonal comparisons of utilities*, and hence these economists also challenged any economic basis for transferring welfare among classes (Robbins 1932).<sup>25</sup> Under ordinalism, economists could assess only whether individuals understand themselves to be made better off and, accordingly, whether social systems are maximizing preference satisfaction.<sup>26</sup>

But Walton and McKersie did *not* therefore advocate policies of economic liberalization. Nor did they describe subjectively expected utility as a scientific or policy ideology—to the contrary, they told readers that despite economic theory, interpersonal utility comparisons “are difficult but essential” in order for the negotiation analyst to define many settlements as integrative.<sup>27</sup> Hence, I am venturing that Walton and McKersie used subjectively expected utility as a tool within a larger normative political-economic framework that remained anchored by a particular vision of the common good.<sup>28</sup> As Frank Burchill observes, Walton and McKersie were “‘New Deal’ theorists” working in the tradition of Dunlop and other industrial pluralists (1999, 167). Indeed, in later writing, Walton and McKersie elaborated some of the “personal beliefs” motivating their work, including the idea that “society will be healthier if labor and management move toward commitment and cooperation while preserving the integrity and strength of their respective institutions” (Walton, Cutcher-Gershenfeld, and McKersie 1994, 361). Cooperation, they previously explained, means that unions accept “managerial success as being of concern to labor; management recognizes its stake in stable, effective

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<sup>25</sup> Robbins argued that the fact that “there is no means of testing the magnitude of A’s satisfaction as compared with B’s” compels “a substantial curtailment of the claims of much of what now assumes the status of scientific generalisation in current discussions of applied Economics. The Law of Diminishing Marginal Utility does not justify the inference that transferences from the rich to the poor will increase total satisfaction” (1932, 124, 125).

<sup>26</sup> See, for example, Graziadei and Pasa (2019, 220) (describing how early twentieth century economists abandoned questions of “society’s overall utility” and instead pursued individual utility maximization where utility represents “a number without any further substantive meaning whatsoever”).

<sup>27</sup> In their words:

The age-old problem of interinstitutional or interpersonal utility comparisons is involved in . . . the integrative process. Except in the case of purely integrative situations, inevitably a comparison has to be made between the sacrifice that a given solution poses for one party and the amount of gain that it gives to the other party. These kinds of comparisons are difficult but essential. To put the issue more sharply: theoretically, interpersonal comparisons *cannot* be made; in practice, such comparisons *are* being made every day by most of us, aided by psychological projection, empathy, analogy, and stereotyping (1965, 154).

<sup>28</sup> They also used game theoretic models to offer explanations and predictions for distributive bargaining (1965, 46–47, 121). Today, analysts often read these techniques as promoting “market rule or competition” (Knafo et al. 2019, 235–237). But in the mid-twentieth century, and especially in the field of management science, mathematical and game theoretic techniques—as they developed in the defense sector—were also understood as tools of state planning (*ibid.*). For a fascinating (and dizzyingly complex) account of the how the field of modern economics was shaped by the defense sector and the game theorists it employed (including scholars like Thomas Schelling who also influenced negotiation theory) see Mirowski (2002).

unionism,” and both sides *want* to “act in such a way as to strengthen the other organization” because the other is “instrumental to its own objectives” (Walton and McKersie 1965, 188).<sup>29</sup>

Thus I am arguing that Walton and McKersie offered a rational and economic account of integrative bargaining that nevertheless also reflected—and through their highly influential practice in industrial conflict and workplace management also aimed to advance (Kochan 1991)—a particular social ideal under post-war American capitalism: a system of cooperative workplace relations based on an assumption of comparable bargaining power between organized labor and capital that was facilitated by state law and legislation.<sup>30</sup>

In 1981, Katherine Van Wezel Stone famously assailed industrial pluralism for precisely this assumption: management and labor do not have equal power, she flatly argued (1981). But whereas Stone revealed this assumption as a fiction, I wish to elucidate the crucial role it played in Walton and McKersie’s theory of integrative negotiation. Like Follett, industrial pluralists presumed the desirability, if not necessarily the reality, of labor having collective bargaining power—from there, they theorized bargaining could give way to integration, turning class conflict into cooperation. Walton and McKersie repeatedly described this dynamic—not as a logical necessity but rather simply often as a practical reality. Far more than Follett, they painstakingly described how unions and management continue to have “pure conflicts of interests,” for example in wage setting (1965, 4, 126).<sup>31</sup> Walton and McKersie reasoned that it was potentially when parties engaged in extensive distributive bargaining and had meaningful options to exit a relationship that *then* they could find possibilities for integration (1965, 179). “When the environment does not establish dependency,” they likewise suggested, “it is often possible through bargaining to create mutual gain” (399). For example, they described an especially contentious 1959 negotiation in the steel industry accompanied by a very long strike. “One outgrowth of that experience has been a greater respect for the power and determination of the other side, and as a consequence both sides have been motivated to deal with each other in a much more mature manner,” including through “real integrative bargaining,” Walton and McKersie insisted (375). Unequal and dependent relations are less likely to lead to mutual gain than to enduring patterns of class exploitation. Hence to put this one final way, Walton and McKersie saw equality of bargaining power—as fact or even as fiction—as an intelligible concept that was practically significant if one wished to create the (superior) possibility of integration.

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<sup>29</sup> When both sides are cooperative, Walton and McKersie continued, labor and management also do more than bargain over wages, hours, and conditions. They treat “[p]roductive efficiency, the solvency of the firm, elimination of waste, advance of technology, employment security, and so on . . . as matters of common interest” (1965, 188).

<sup>30</sup> To elaborate, Klare explains that after World War II labor fought and failed “to extend the frontiers of industrial democracy” (1988, 73). What emerged instead was a compromise that included the following elements:

Major employers conceded unions a substantial measure of security (the union shop and dues checkoff, for instance). They accepted very real but bounded incursions on their decisionmaking power through the establishment of legally enforceable grievance arbitration. Employers also promised, and for a long time actually delivered, steadily improving wage and benefits packages. For their part, unions agreed to deliver uninterrupted production during the term of the contract through the granting and policing of legally enforceable no-strike clauses. Labor also conceded that the core of entrepreneurial decisionmaking would remain a prerogative of management (73–74).

<sup>31</sup> To be sure, Follett herself pointed out limits to integration: “I want to say definitely that I do not think integration is possible in all cases. When two men want to marry the same woman, there can be no integration, when two sons both want the old family home, there can usually be no integration. And there are many such cases, some of little, some of great seriousness” (1925c, 36).

In sum, this Part has argued that integration—as it emerged in the early twentieth century as an aim for negotiation—was shaped by a historically specific set of ideas about political economy: that labor should be organized into collective units and that labor and management should want to engage in voluntary, cooperative, mutually beneficial negotiations. As we have seen, Follett’s version of integration was more radical: she theorized labor conflict in a moment when phrases like “‘industrial democracy’ and ‘workers’ control’” had popular salience (Lichtenstein 2003, xi). Before the rise of the modern administrative welfare state, she described integration as a directly democratic practice—as acts of self and social creation that could prefigure decentralized forms of egalitarian political organization. Walton and McKersie published their theory of integrative bargaining in 1965, towards the end of a period characterized by a strong Keynesian state, strong industry-wide unions, and robust capitalist enterprises that rested on “a well-protected continental market and a technologically and ideologically dominant mass-production model” (Lichtenstein 2003, xi). Walton and McKersie worked from within the field of industrial relations that solidified during this period—“a policy-oriented research enterprise that sought to fine-tune a depoliticized system of labor-management accommodation and conflict” pioneered by Dunlop among others (*ibid.*, ix). To this system (which of course was not actually depoliticized, though depictions of it in these terms were important (Lichtenstein (2002)), Walton and McKersie added a detailed theoretical account of how integrative bargaining could sometimes ameliorate distributive conflicts between labor and capital.

To be sure, LPE readers may argue that the idealism embedded in *both* versions of integration—both advance social cooperation in response to political-economic struggle—fails sufficiently to grapple with the actual interconnections between politics, power, and inequality within the firm, the state, and wider practices of capitalism. Follett’s contemporary critics certainly suggested as much. Harold Laski, for example, doubted her arguments for political reform, given, he argued, how the state inexorably executes the will of the capitalist class against labor’s demand “to control the means of power” (Laski 1919, 62).<sup>32</sup> My aim here, however, is modest: it is to excavate some of the historically specific understandings of valuation that animated integration as it was forged by negotiation theorists intensely interested in conflict among social groups defined as classes. In the following Part, I examine what happened to the idea of integration when this interest faded.

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<sup>32</sup> In a review of *The New State*, Laski argued that

political organization, even with the ample means for discussion that Miss Follett provides, is not a universal solvent. The root of the whole matter lies in the field of economics and it is upon this that concentration must be made. . . . What is greatly to be wished is that she would . . . examine how far [the state’s] every act is not the apotheosis of the desires of its dominant class (Laski 1919, 62).

Other critics simply doubted Follett’s faith in human nature and social cooperation. Morris Cohen, for example, told a gathering of the American Philosophical Association that Follett wrote *The New State* not with the sensibility of a philosopher or scientist but rather in “the inspired style and absolute confidence of the prophet such as Buddha [sic] or Mohammed” (1919, 676). He attacked the book’s “failure to maintain a critical attitude” (*ibid.*). “[Follett’s] state of perfect cooperation,” he continued, depends on a theory of human nature that is “directly contrary to observable fact” (677-678). See also McBain (1919, 169) (arguing that Follett “certainly rates both our capacity and our desire for cooperation far above anything that is warranted by the facts of our life”).

### III. From Integration to Value Creation

*Economics teach that there is a Pareto frontier consisting of various Pareto optimal outcomes that have different distributive consequences for the parties. The notion of creating value builds on a long established tradition in the negotiation literature acknowledging the “integrative” possibilities presented in some negotiations. See Mary Parker Follett . . . [and] Richard E. Walton and Robert B. McKersie . . .*

---Mnookin, Peppet, and Tulumello (2000, 325n1, citation omitted)

In 1984, Dunlop observed that labor leaders were calling for a new social contract. The 1970s witnessed a crisis in the American mass production economy and the beginnings of sustained challenges to the postwar regulatory institutions designed to stabilize and sustain it.<sup>33</sup> Facing market volatility, overseas competition, and technological transformations, prominent labor representatives proposed that “leaders of the various economic and social groups that compose U.S. society should agree on a program for industrialization and present that program to Washington” (Dunlop 1984, 7, citing *Business Week*, June 30, 1980, 146). The resulting proposal for a tripartite National Reindustrialization Board comprised of unions, industry, and government faltered.<sup>34</sup> Dunlop quoted a *Wall Street Journal* editorial to encapsulate the opposition: “the only industrial policy we need is one that offers the maximum possibility for individual decision makers to apply their initiatives and imagination, take their risks, and reap their rewards when their judgements are correct,” because individual decision makers are “subject to the disciplines and incentives of the market” (Dunlop 1984, 7; see, for example, DiLorenzo 1984).

As this editorial suggests, postwar ideas of the common good—held together by Keynesian welfare statism, mass production firms, and collective bargaining—lost ground to a different political-economic common sense: in brief, flexible market competition “freed” from coordinated planning and state regulation. And unlike the early twentieth century labor version of *laissez faire*, market competition in the workplace increasingly meant individual not collective action. The early 1980s intensified an attack on and decline of organized labor—a period famously marked by the Reagan administration’s hiring of permanent replacements to end a strike by air traffic controllers; Washington Consensus deregulatory policies that replaced the 1948 wage agreement between General Motors and the United Auto Workers (which had set annual wage plus cost-of-living increases for decades); changing corporate norms that included aggressive opposition to union activities; the vertical disintegration of large firms that included the outsourcing of manufacturing jobs to low-wage countries; and the increasing expansion and legitimation of a statutory regime that privileged individual employment rights, not group action (Western and Rosenfeld 2011; Voss and Sherman 2000; Brudney 1996).

In this Part, I illustrate how during this period the translation from integration to value creation became complete—and in ways that resonated with a broader shift in political economy. In the 1980s, a new group of scholars, examining contexts other than the unionized workplace, deployed value creation as a tool to respond to what they saw as a limitation of individual market rationality: namely,

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<sup>33</sup> This crisis was triggered by, among other factors, increases in the prices of oil and wheat, the collapse of fixed global exchange rates, and the saturation of domestic markets for consumer durables. For an extended and nuanced analysis, see Piore and Sabel 1984, 165-193.

<sup>34</sup> For the AFL-CIO’s statement, see AFL-CIO Executive Council (1982, 416).



that not all the negotiated exchanges that happen in workplaces and markets are, in fact, maximally efficient.

To unpack this revision, I describe David Lax and James Sebenius's 1986 *The Manager as Negotiator*, which influenced two generations of negotiation scholarship. Lax and Sebenius jettisoned the term integration and replaced it with value creation—a switch they saw as an act of rebranding not substantive redescription. As Sebenius later explained, “‘integrative’ may sound like something suppressed from a calculus course . . . . Rather than ‘integrative bargaining,’ [David Lax and I] finally settled on ‘creating value,’ a phrase directly meaningful to a broad audience. Moreover, this term is consistent with standard usage in economics, business strategy, and marketing” (Sebenius 2015, 343). But, as I argue here, value creation—now unmoored from any normative or aggregate question of how labor and capital should assume “collective responsibility for production”—in fact expresses different sensibilities about class inequality, bargaining power, shared interests, and ultimately the role of valuation in negotiations.

Lax and Sebenius opened their book by explaining that it builds on Walton and McKersie's 1965 study (1986, xiv).<sup>35</sup> But as their title suggests, they shifted focus from labor struggles to consider new workplaces where managers often negotiate with individual workers in an “increasingly complex environment [that] requires a specialization of task and skills” (292). They also focused on how managers increasingly negotiate with purchasers and suppliers across supply chains, as well as how entrepreneurs increasingly negotiate with financiers and partners (12–14, 21). They grounded their intervention in a long tradition of management studies that emphasize cooperation rather than command. But they rejected one motivating assumption: namely, that management can assume “strategies for changing or controlling behavior in a way that is consistent with a single value system [that are] functional for individuals, organizations, and society as a whole” (19 n25, quoting Kochan and Verma 1983, 16–17). They wanted their negotiation tools to travel across diverse contemporary workplaces where no one could presume that common ends or single value systems (or society as a whole) existed.

Lax and Sebenius, however, did work within a particular value system, namely Pareto efficiency. Beginning with subjectively expected utility theory, they distinguished *The Manager as Negotiator* from earlier work on “integrative” negotiation (scare quotes theirs) by offering what they called a complete model for value creation fully consistent with economic theory (1986, 114). This model is derived from negotiators' utility functions (their values and their attitudes towards risk and time); their beliefs and forecasts; their initial endowments; and their capabilities to produce (ibid.). Once endowments and utilities “are given” (92n2), then joint gains follow from *differences* in relative valuation, forecasts, risk and time preferences, and capabilities; from *shared interests*; and from *economies of scale* (115).

From this perspective, all trades create value. To determine how much, Lax and Sebenius advised negotiators to quantify as best as possible how they value goods, services, and non-market objects of desire (74–75)—if, for example, a negotiator values “prestige,” he “may ask himself how much he would be willing to pay to have the prestige conferred” (76). Willingness to pay is how ordinal economists (and negotiation theorists) manage the impossibility of making interpersonal comparisons of utility. What analysts *can* know is how actors themselves order and value their preferences in moments of commensurated exchange. Using this heuristic, Lax and Sebenius illustrated how some

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<sup>35</sup> Particularly, its application of non-equilibrium game theory to industrial relations.

trades create more value: when considering one agreement, negotiators discover a second agreement that increases the dollars available to allocate among them.

From here, *The Manager as Negotiator* addressed a puzzle. Economists often assume that individual trades will lead to ever more value creation until all that remains are zero-sum questions of distribution. But most people must *learn* how to negotiate, Lax and Sebenius countered, if they wish to advance on the Pareto frontier, especially under conditions of imperfect information and the strategic pull towards misrepresentation (156–182). Hence, Lax and Sebenius offered strategies to help people transcend the constraints of bounded rationality which may lead negotiators to divide a pie and miss the chance to grow it first.

From roughly the early 1980s to the early 2000s—the height of theory building in contemporary negotiation—the field coalesced around precisely this message. Grow the pie using tools of neoclassical economics,<sup>36</sup> and then divide it using norms of distributional fairness decided by the parties,<sup>37</sup> while appreciating how these dual aims often involve imbricated strategies (Lax and Sebenius 1986, 154–182).

I should pause to make clear that this period also witnessed the emergence of a closely related field that would coalesce as alternative dispute resolution (ADR), with far broader influences than the story I tell here. In brief, at the same time the forces of market competition, globalization, technological change, and deregulation were transforming American workplaces and legal and political institutions, new social movements were challenging authoritarian and conservative forms of social ordering in the name of racial and gender equality, diversity, and multiculturalism. Early ADR proponents advanced a (complex) mix of market and social freedoms that reflected influences from both these broader movements. For example, many proposed private bargaining to empower individuals to solve their own problems while rationalizing and cutting costs from public legal systems. Some also expressed New Left commitments to participatory, community-based forms of dispute resolution against state adjudication (Cohen 2019) and reasoned that aspiring to create a more progressive and communal world requires proliferating the art of collaboration (Menkel-Meadow 2006). From within this mix, ADR proponents advanced value creation negotiation with different sensibilities and stipulations. Some described it as a promising yet partial response to the limits of adjudication and proposed to balance it against other moral and political values (for example, Menkel-Meadow 1984).<sup>38</sup> Others argued to expand the circle of participants-with-interests (for example, Susskind 2005).<sup>39</sup> And some pursued different communicative techniques entirely (Beer 1986; Bush and Folger 1994; Winslade and Monk 2000).

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<sup>36</sup> Negotiation scholars also built on the rise of Coasian law and economics to describe the minimization of transaction costs as a category of value creation negotiation. See Gilson and Mnookin (1995).

<sup>37</sup> On questions of distribution, most negotiation scholars advised that some norm of fairness and mutual consideration would make agreements more durable and preserve mutually beneficial relationships, even as they typically declined to offer any moral prescriptions. Carrie Menkel-Meadow was perhaps the most directive when she argued that lawyers and clients should discuss “the fairness or justness of their proposals . . . [including] what, if any, detrimental effect their solution has on themselves, the other party, third parties, or the larger society” (1984, 815).

<sup>38</sup> Writing about legal negotiation, Menkel-Meadow (1984, 835) stipulated moral and social limits on value creation: “[m]aximizing joint gain is sometimes inappropriate” when a determination of rights or punishment is needed.

<sup>39</sup> Lawrence Susskind (2005, 368) distinguished his work in public policy consensus building from court-connected ADR not least because “a mediator in a consensus-building process must worry about the interests of parties who are not at the table.”

My aim in this Part, however, is intentionally pointed and narrow: it is to illustrate that although contemporary negotiation scholars continued to describe their philosophy and techniques as *integrative*, the meaning of this term significantly shifted. During this period, integration became value creation as Lax and Sebenius defined it. For example, by 2000, Robert Mnookin, Scott Peppett, and Andrew Tulumello summarized its sources thus: different resources, relative valuations, forecasts, risk and time preferences; noncompetitive similarities; and economics of scale and scope (2000, 13–14).<sup>40</sup>

For my purposes, *The Manager as Negotiator* is significant because, unlike much other contemporary writing, Lax and Sebenius made explicit some of the broader political-economic logics shaping their ideas. They advanced a microframework where efficiency—measured by willingness to pay—often appears as the most salient measure of a good workplace negotiation, *and* they elaborated that they were working within a macro-framework where efficiency produced through market competition appears as a governing value. For example, they described how a dominant political view holds that “it is precisely because [individual competition] *is* encouraged that standards of living rise in free-market societies” (150). But this view, they cautioned, “assume[s] that bargaining is Pareto-efficient” (150n36). To actually grow a pie, each negotiator must make strategic and also ethical decisions: he must decide if the individual risks involved in honestly representing and sharing information in pursuit of opportunities for value creation “are worth general improvement, even if such improvement is small, uncertain, or not likely to be visible” (153). Without these decisions, they concluded, everyone in the aggregate would struggle over a distribution of a pie that is smaller than it could be.

Invisible, however, in their work, as in that of their contemporaries, is how value creation as a concept *broke* from integration—a point I elaborate for the remainder of this Part by examining its different sensibilities about class inequality, bargaining power, shared interests, and the role of valuation in negotiations.

As we have seen, early theorists advanced integration to harmonize class conflict. By contrast, in *The Manager as Negotiator* class inequalities became a basis for value creation simply as a matter of logic. Like Walton and McKersie, Lax and Sebenius described utility matching. Walton and McKersie, however, observed how labor and management *value different things*. For example, they extensively described how when labor values security and management values flexibility, some arrangements can meet both of these interests better than alternative arrangements (1965, 126–137).<sup>41</sup> By contrast, Lax and Sebenius, as they looked beyond industrial policy to advance value creation in all economic relations, stressed how individual negotiators may value *similar things in different ways*. For example, they suggested that some people might have different appetites for risk depending on their levels of financial security; other negotiators may have different discount rates for the present value of money depending on the strength of their investment opportunities—differences in valuations that can create joint gains (1986, 99–102). Value creation, in other words, means summing differences among individual market valuations. When these valuations are shaped by individuals’ social locations and material positions, then it follows that expanding the pie can mean arbitraging across class difference (see also Liscow 2018).

Trading on individual interests also spurred a different approach to bargaining power. Follett, we have seen, worked with a social theory of value: what makes an idea common, she argued, is “not that it is

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<sup>40</sup> They also discussed reducing transaction costs and limiting strategic opportunism as sources of value creation (Mnookin, Peppett, and Tulumello 2000, 25).

<sup>41</sup> Provided, they cautioned, that management’s interest in flexibility is not in fact cover for anti-unionism.

held in common but that it has been *produced* in common” (1998 [1918], 34, emphasis added). Not least for this reason, she urged readers to “accept [collective bargaining] for the moment and surround it with the fairest conditions we are able to” (1925b, 116). To foster genuine debate and democratic engagement about the production of shared ends, labor needs countervailing power. Walton and McKersie more modestly but repeatedly observed how “real integrative bargaining” among groups often occurs among reasonably matched adversaries.

Value creation, by contrast, works with an individual theory of value. As such, no negotiation theorist could offer aggregate predictions or definitive prescriptions to “balance” among a multiplicity of complex individualized dynamics. An individual employee who drums up another job offer, Lax and Sebenius reasoned, may be *less* likely to receive a raise in a salary negotiation if her manager strongly values loyalty (1986, 251n5). Power is what power does understood by its actors. Or to put this point in their language: a negotiator increases his bargaining power when he deploys a negotiation tactic that he thinks will change the perceived bargaining range in a direction he prefers. “[W]e must compare the negotiator’s subjective distribution of beliefs about the negotiated outcome conditional on using the new tactics,” Lax and Sebenius explained, “with his subjective distribution of beliefs about the outcome conditional on not using them. The change is favorable if the former distribution gives him higher expected utility than the latter” (1986, 251n5). This theory of bargaining power does not rest on macro-normative evaluation of outcomes with, for example, metrics like “real wage growth” or “purchasing power.” Rather it rests on individualized predictions about subjectively expected utilities.<sup>42</sup> As such, Stone’s 1981 critique of industrial pluralism could have little bite against Lax and Sebenius’s 1986 nearly post-modern sensibility—they had redefined bargaining power in the workplace and elsewhere as subjective, indeterminate, and “notoriously slippery” micro-relations (249–250).

Within this framework, shared interests were not, as Follett reasoned, an expression of a collective that had become conscious of its interdependence but rather likewise a negotiation *tactic*. Lax and Sebenius, for example, advised that “[t]op management’s attempts to shift values to common precepts or norms of behavior may be effective in influencing agreements *even when they do not affect managers’ valuations*. These norms and precepts may still serve as focal points and thus yield favorable outcomes (from top management’s standpoint)” (1986, 303, emphasis added). That is, if managers can successfully appeal to a shared sense of organizational goals or an ideal of customer service, then employees may regard unpleasant tasks “quite differently” (303, 109). Follett had lectured businessmen that in order to transform firms into integrative unities, wholes must be genuine. Industries may need to give workers a stake in the business, she, for example, suggested (1925b, 110). By contrast, value creation could offer no criteria other than the choices made by individual employees to debate whether if—through management’s affective appeals to a common good—workers were advancing or alternatively subordinating their own best interests.<sup>43</sup>

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<sup>42</sup> They continued: “That the changed distribution of outcomes gives higher expected utility than the original still need not mean that the negotiator will get a better outcome than he would have by eschewing the tactics . . . . But a more favorable outcome is likely” (Lax and Sebenius 1986, 251n5).

<sup>43</sup> Hoopes (2003, 126) draws contemporary insights for management studies from reading Follett: “If fully integrating employee desires with company goals is not possible, and probably it often is not, managers should forget Follett’s idea of integration, invoke power, and say up front, ‘We’ll do it my way.’ Similarly, [Follett’s] advice to employees to avoid alienation and ‘labour *with* your leader’ as a member of the group only makes sense if the boss is willing to integrate. Otherwise, employees had better forget the group . . . .”

Follett was thus rewritten. In contemporary writing she stands often for a single, albeit foundational, proposition: that individuals can make themselves better off through negotiation because what appear like conflicting positions may reflect interests that are not actually opposed. For example, in 1981, Fisher and Ury popularized one of her stories (4, 23). She had described sitting in a room in a library:

[S]omeone wanted the window open, I wanted it shut. We opened the window in the next room, where no one was sitting. This was not a compromise because there was no curtailing of desire; we both got what we really wanted. For I did not want a closed room, I simply did not want the north wind to blow directly on me; likewise the other occupant did not want that particular window open, he merely wanted more air in the room (1925c, 32; 1951 [1924], 184–185).

For Follett, this anecdote, read in the context of her larger interventions, illustrates what she saw as the practical viability of her normative project. That without resorting to “arbitrary power” (1951 [1924], 185), individuals should and *can* integrate apparent conflicts in themselves, their relationships, their workplaces and ultimately in the state because interests that appear opposed may embed, or more often may *develop*, different meanings—when, for example, “[a] man joins a union and now identifies his self-interest with his union, which in time of strike may be quite against his immediate or personal self-interest. The next step is when the trade union joins with management to help solve industrial problems” (1927b, 216). As we have seen, Follett reasoned that when people discover their interests are not opposed it is often because they have acted with others to adapt themselves to larger social hierarchies and solidaristic values and also to create these hierarchies and values (“[t]he group and the individual come into existence simultaneously,” she insisted (1998 [1918], 137)). And because she anticipated that integration often requires a reevaluation of interests through collective action, she also made clear that “integration means three things: you and I both get what we want, the whole situation moves forward, and the process often has community value” (1927b, 215).

Fisher and Ury did not link the library anecdote to Follett’s larger claim that through participation in shared social contexts people will often reevaluate differing interests to produce communal ends. Indeed, some years later, Russell Korobkin (2002) rewrote Follett’s anecdote explicitly to demonstrate value creation—that is, to demonstrate how when private minds are put into conversation, they can learn to expand the units of value that already exist between them: “By focusing on their underlying interests, the patrons discovered they could both be satisfied by opening a window in the next room . . . . This was an *integrative solution* relative to the alternatives (ranging all the way from opening the window halfway to fist-fighting) because it made both much better off” (2002, 151; emphasis added). By better off, Korobkin meant that compared to some less efficient alternative, these negotiators discovered a solution that allowed them to aggregate more subjective units of value available for distribution. He continued:

Still, the parties had to divide the *extra utility* that they created by devising such a wise plan. Implicitly, the parties decided to allocate the surplus utility where it fell . . . [But] Patron A could have made a side payment to Patron B and still found himself better off with the integrative solution minus the side payment than he would have been with a less efficient resolution of the problem (151; emphasis added).

Hence whereas Follett saw people constantly co-producing their interests with others, Korobkin, like Lax and Sebenius, saw people constantly calculating units of value that could expand or contract depending on the markets between them.<sup>44</sup>

From this perspective—and this is my final point—integration and value creation entail different approaches to both the process and political significance of valuation. Integration imagines that diverse, heterogeneous people must nevertheless learn to develop common value frameworks if they wish society to progress (“[d]ifferences must be integrated, not annihilated, nor absorbed,” Follett argued (1998 [1918], 39)).<sup>45</sup> Value creation, by contrast, functions to obviate the need to forge common ends or collective experiences in the workplace and elsewhere. From this perspective, the progressive feature of value creation (indeed of market exchange) is that it does not presuppose that individuals do or should value anything. It presupposes only that individuals must seek carefully to understand what other people already value if they wish to maximize gains from commensurated trades (hence the field teaches extensive skills in inquiry, empathy, active listening).<sup>46</sup> People can hold whatever diverse, pluralistic, or idiosyncratic values they wish and—presuming there is enough surplus to create and distribute—nonetheless learn to collaborate and produce stable social orders across moral, political, and class difference.

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<sup>44</sup> I must add: Feminist negotiation scholars *have* stressed the relational and constructivist (but not the political-economic) nature of Follett’s theories of integration. Deborah Kolb, for example, used Follett to criticize contemporary descriptions of negotiation “as an exchange between self-interested individuals” rather than the creation of a “connected context” (Kolb 1995, 342, 344). “What we missed about Ms. Follett in the library,” she argued, “was the connection she had with her colleague and the dialogue that ensued. All that has come down is what they did with the windows” (ibid., 345; see also Davis 1989 and Menkel-Meadow 2000). Carrie Menkel-Meadow likewise argued that she prefers the term *needs*, borrowed from feminist theory, to what she sees as the “instrumentalist, economic, Pareto optimality of *interests* as described in *Getting to Yes* and general ‘integrative bargaining’ conceptualizations” (2018, 5, describing Menkel-Meadow (1984)). “Needs,” she explained, “are broader and includes that which the client might not be aware of herself, until she is counseled by a ‘problem-solving’ trained lawyer, including not only short-term gain, but long term consequences” and that also includes consideration of “the effects negotiated outcomes might have on others” (2018, 5, describing 1984, 803). This feminist-relational sensibility played an important role in shaping the field even as—or perhaps because—scholars working within economic models themselves encouraged consideration of long-term consequences, externalities, and expert participation in interest articulation (Lax and Sebenius 1986, 152, 160-2, 279-280). In Part IV, I describe efforts to connect this relational sensibility to progressive theories of political economy. See note 52 and surrounding text. Compare Cohen 2019 (tracing how ADR’s ethic of relationality has informed libertarian-conservative as well as left-progressive reform projects).

<sup>45</sup> It’s worth elaborating the point in Follett’s words:

Heterogeneity, not homogeneity, I repeat, makes unity. . . . Give *your* difference, welcome *my* difference, unify *all* difference in the larger whole—such is the law of growth . . . . If my friend and I are always trying to find the things upon which we agree, what is the use of our meeting? Because the consciousness of agreement makes us happy? It is a shallow happiness, only felt by people too superficial or too shut-up or too vain to feel that richer joy which comes from having taken part in an act of creation—created a new thought by the uniting of differences . . . . Some one ought to write an essay on the dangers to the soul of congeniality. Pleasant little glows of feeling can never be fanned into the fire which becomes the driving force of progress (1998 [1918], 40-41).

For this reason, Follett also repeatedly stressed that integration does not mean that individuals or organizations should “give up their own points of view for the sake of an imaginary ‘whole’ . . . [but rather] be expected to learn how to interweave their points of view” (1932, 301).

<sup>46</sup> Consider, for example, Mnookin, Peppet, and Tulumello’s definition of empathy: a “‘value-neutral mode of observation,’ a journey in which you explore and describe another’s perceptual world without commitment”—that is, a rational, reflective process that enables negotiators to achieve higher value deals and formulate distributive strategies (2000, 47–48). For feminist critique of this instrumental orientation, see note 39.

Thus we can see how different the political imaginations at stake and at work between integration and value creation really are. Because Follett understood integration as a co-creative and democratic practice, she did not propose to manage conflict through the production and then division of small amounts of surplus. Indeed, she dissented from Frederick Taylor who “fervently believed that adversarial relations between labor and capital would cease if sufficient wealth could be created by the intervention of a new managerial class” (Tonn 2003, 396–97). Follett wished instead to recruit labor-management conflict to the task of growing joint control over economic conditions—and in this way transform labor and management from antagonists into collaborators by socializing expertise, decision-making processes, and interests. Hence, she ventured that through integration, inquiries by labor *and* capital about production *and* distribution would merge into a shared social calculation:

Many people are now making a distinction . . . between production and distribution in this respect: in the former the interests of capital and labor are the same, it is said, but not in the latter. When that reorganization of the business world, which is no longer utopian to think of, is further actualized, then in distribution too we shall be able to see the coincident interests of labor and capital (1998 [1918], 120).

Or to put this all one final way, when negotiation theorists translated integration into value creation, the opposite of value creation became distribution. But the opposite of integration, as it originated with Follett, was alienated social and political relations.

#### IV. A Labor Theory of Negotiation

This article has traced a transformation in negotiation theory from integration into value creation that, as far as I know, is unremarked upon by its authors. I think this transformation was understandable, perhaps even inevitable given how history unfolded. Follett rather stunningly rejected distributive bargaining in a moment when labor had for decades faced violent public and private suppression. “I face fully the fact,” she wrote, “that many supporters of labor believe in what they call the ‘frank’ recognition that the interests of capital and labor are ‘antagonistic’” (1918/1998, 119). To make antagonists “into one group” (120), Follett called for voluntarism as well as for state power. She hoped to integrate both labor and capital into public political systems (321–322). To that end, she surveyed multiple potential models—guild socialism, syndicalism, and standing industrial councils—describing their benefits and limitations (321–330).

Without a political and social infrastructure to institutionalize “the joint control of industry” (118), by midcentury, it was possible to conceive of integration as a technique to harmonize industrial conflict that could be theorized apart from broad-scale political struggle and economic reorganization. In the hands of industrial pluralists and during a historical moment of strong unionization, integrative bargaining offered tools for labor and management to adjust and exchange their own subjective units of economic value in ways that facilitated more versus less industrial cooperation.

As the modern field of negotiation emerged under increasingly deregulatory workplace conditions, most scholars simply *stopped* engaging questions of political economy, including questions about the kinds of economic arrangements that could enable a genuinely democratic society. This was the case, I should add, even as a concentration of private economic power meant that a bargaining model of market engagement was becoming increasingly disconnected from many people’s experiences as laborers and consumers. This was also the case as value creation negotiation travelled to workplace

contexts where it advanced politically regressive projects. Howard Gadlin, for example, traces the emergence from the 1980s of “integrated conflict management systems”—a conceptual framework that applies value creation negotiation to workplace conflict “almost exclusively around the concerns of managers: cutting costs, enhancing productivity, and containing conflict” (2005, 371, 376). The decline of the union and the reorganization of the workplace in the 1980s, combined with the failure of tort reform proponents to transform litigation in the 1990s, helped foment the institutionalization of integrated conflict management systems within US corporations “principally as a strategy of controlling the costs of disputes” (Lipsky, Seeber, and Fincher 2003, xv, 60, 63-69, 129-130).

To be clear, it’s not that the pioneers of the modern field intended “to reinforce the power and control of managers” (Gadlin 2005, 382). They didn’t. Nor did they lack their own theory of social betterment. In 1991, Fisher, Ury, and Patton added a proviso to the second edition of *Getting to Yes* to stress that “in addition to providing a good all-around method for getting what you want in negotiation,” their interest-based approach to negotiation “can help make the world a better place” by orienting people towards cooperation rather than adversarialism and immediate gains (1991, 155). It can increase satisfaction, minimize waste, lower the costs of conflict, foster understanding among people, and promote durable agreements and relationships (1991, 154-155). “And beyond such social benefits,” they continued, “you may find that using this approach serves values of caring and justice in a way that is personally satisfying” (155). Fisher, Ury, and Patton, in other words, welded together efficiency, relationship building, and an individualized spirit of liberal egalitarianism: negotiators may wish to care about equitable equivalents in exchange and about fair distributions.

Gone, however, was Follett’s radical commitment to integration. In her work, integration did not primarily ask if the wage is unfair or the working day too long. It asked how labor and management could restructure the rules of the game through collaborative processes of collective self-determination. Or to put this another way, Follett developed her theory of integration by asking constantly about the limits of capitalism and liberal democracy to organize production, labor, and political decision-making. In so doing, she linked negotiation theory to the possibility of deep structural democratic transformation—a link that faded as integration became value creation.

Indeed, around the turn of the twenty-first century, many negotiation scholars turned to ever smaller bargaining units until the psychological make-up of the individual became the relevant object of harmonization. They asked about problem-solving versus adversarial negotiation styles and how they affected perceptions of lawyer effectiveness (Schneider 2002); how working with emotion and relational concerns as much as reason unlocks effective negotiation (Fisher and Shapiro 2005); and how the tools of psychology (and later neuroscience) could help overcome cognitive and behavioral barriers to rationality—that is, to the ability to identify, prioritize, and pursue one’s own interests (Korobkin and Guthrie 1994; Korobkin and Guthrie 1997).

Group concerns reemerged in this literature, but expressed as social identity not as socio-economic class—for example, scholars asked if women are disadvantaged in negotiation (for a review see Cohen 2003) or if the value-creating model travels across cultures (Gelfand and Christakopoulou 1999; Brett 2000). One bestseller focused on self-understanding and reflexivity in interpersonal relations (Stone, Patton, and Heen 1999), followed by a book that instructs negotiators how to become more responsive to performance reviews and other kinds of feedback (Stone and Heen 2014). Another bestseller revived an idea of functional unification but now cast wholly at the individual level. Erica Fox theorized that if people wish to close their performance gaps and optimize their reactions in negotiations, they should understand themselves as composites of four identities analogous to four



inner executive workers,<sup>47</sup> with different strengths and orientations that can be balanced and harmonized by one's own inner board of directors (2013, 9, 62)—a theory of integration radically disconnected from Follett's attention to groups and social structures.<sup>48</sup>

As these examples also suggest, even as the field stopped explicitly engaging questions of political economy, its strategies and techniques continued to reflect the economic logics of its time—today, an economic and political culture that casts the worker as her own enterprise. Follett once reasoned that “management, not bankers nor stockholders, is now seen to be the fundamental element in industry” (1925e, 122). Today, by contrast, scholars argue that “shareholder democracy” has shattered the assumption that “professional managers control public corporations” (Anabtawi and Stout 2008, 1255). One consequence of shareholder control is “short-termism,” that is, institutional incentivizes for corporations to increase their stock prices in the immediate term (ibid., 1290–293; Stout 2012). Sociologist Richard Sennett has observed that short-termism can itself propel organizational restructuring because stock prices may rise when a firm “prove[s] to the market that it is capable of change” (Sennett 1998, 51). In a moment when market disruption and organizational change are (for many reasons) normalized, and when risk and insecurity are regularized, it's not surprising that negotiation scholars attempt to teach workers how to self-optimize.

Moreover, as workers are encouraged to become more flexible and responsive to change, they are also encouraged by negotiation scholars to brand their own specific sources of value creation—or as one popular book on workplace negotiation puts it, “to make your value visible” and “tailor the value message to its recipient,” which is “an ongoing activity” (Kolb and Porter 2015, 82–85). Ilana Gershon (2016) has broadly observed how such strategies promise to help workers manage the lived dilemmas that arise when they must be simultaneously flexible and legible to remain employed. Suffice it here to say these techniques represent a very different approach to workplace negotiation than those advanced under Fordist capitalism when, for example, unions fought to install “the time method of payment” rather than bonus systems or piecework precisely so that wages could not vary with the skill or “bargaining power of individual workers in accordance with the short-term conditions of the labor market” (Dunlop 1958, 257–59).<sup>49</sup>

To be sure, it is also *because* contemporary negotiation techniques reflect dominant economic logics that they may help some (precarious) workers advance their own livelihoods and lives. Thus by illustrating how negotiation theory embeds the economic ideology of today, my aim is not to debate the specific costs and benefits of value creation in different workplace contexts. Instead by examining how prominent negotiation scholars have fashioned their ideologies and tools by theorizing workplace conflict, I wish to conclude with what I would suggestively call a *value theory of negotiation* for LPE

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<sup>47</sup> Fox writes:

Since I consult to a lot of businesses, I sometimes describe the Big Four as a leadership team, occupying your internal executive suite:

The Chief Executive Officer: CFO, or Dreamer

The Chief Financial Officer: CFO, or Thinker

The Vice President of Human Resources: The VP of HR, or Lover

The Chief Operating Officer: COO, or Warrior (2013, 33).

<sup>48</sup> Fox genealogizes her own work from within a community of scholars at the Program on Negotiation at Harvard Law School as follows: from Fisher and Ury's (1981) focus on problem-solving, to Stone, Patton, and Heen's (1999) focus on interpersonal relations, to her focus on self-negotiations (2013; see also Ury 2015).

<sup>49</sup> See also Lichtenstein (2003, 136–156) (describing union opposition in the 1940s to incentive pay policies).

projects.<sup>50</sup> In sum, this is an approach to negotiation that, as a tool of social analysis, aims to collapse distinctions between value creation and distribution in a legal realist fashion. And that, as a social practice, aims to combine efforts to distribute value with efforts to democratize decision-making power and authority.

### *A. Legal Realist Analysis of Value Creation*

By asking how value is *produced*, not simply how it is distributed, contemporary negotiation theory offers LPE scholars a distinctive analytical perspective. Negotiation theory helps make visible the social and cultural practices that later become abstracted as the act of (efficient or inefficient) exchange or as the artifact of the (violated or honored) contract. Recall, for example, how Lax and Sebenius define power in negotiation: power is the ability to influence how people conceptualize the surplus available to allocate among them (see also Korobkin 2002). This is a generative definition. It invites analysts to see how power is enacted through dynamic micro practices and not simply imposed through abstract social structures—and it does so by focusing on underlying perceptions of value rather than only on the patent struggles that emerge at moments of distribution (see also Halley 2018).

But, as we have seen, Lax and Sebenius limit their understanding of power to how negotiators perceive the relationship between negotiation tactics and expected utilities—subjective desires that exist in the minds of individuals. A legal realist approach, by contrast, would bring back in the legal rules, social and moral orders, and institutional structures that facilitate and constrain people’s possibilities for “having utilities” and taking joint action—and that likewise facilitate and constrain people’s differential abilities to perceive and potentially change these background rules and orders (Hayward 1998).

Of course, negotiation theory already incorporates legal realist insights. In 1979, when Robert Mnookin and Lewis Kornhauser observed that people bargain in the shadow of the law, they illustrated how legal rules shape the distributive moment in privately ordered exchanges. This realist observation influenced a vast range of legal scholarship. Perhaps it spread so readily because distribution is not the neoclassical economist’s question. For it is equally the case that people *create value in the shadow of the law* and other social and moral orders. That is, we create the “wants, needs, and desires . . . backed by ability to pay” that generate possibilities for private exchange and ever-expanding markets based on rules about property, contract, and competition as well as on our social, cultural, and class positions (Harvey 2018, 22; Hale 1923).

Let me offer a brief example from my work to illustrate a realist approach to value creation (Cohen 2020).<sup>51</sup> Value chain development is a newly dominant policy framework for poverty reduction in the

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<sup>50</sup> I intend this phrase to recall Diane Elson’s oft-cited argument that Marx’s labor theory of value was in fact a value theory of labor. “My argument,” she writes, “is that the *object* of Marx’s theory of value was labour. It is not a matter of seeking explanation of why prices are what they are and finding it in labour. But rather seeking an understanding of why labour takes the form it does, and what the political consequences are” (1979, 123). As a political project, a value theory of labor insists that efforts to change labor processes (the conditions and organization of production) and efforts to change money processes (the circulation and distribution of wages, finance, price of goods, etc.) cannot be pursued in isolation “as if there were two separate arenas of struggle” (172; see also McCluskey 2003).

<sup>51</sup> Scholars have “wonder[ed] whether we negotiation theorists need to spend more time on the macro questions surrounding our work: under what socioeconomic and political conditions can we actually get to yes by negotiating fairly, equitably, and wisely to achieve joint and mutual gain with those we negotiate with?” (Menkel-Meadow 2006, 499). With legal realist analysis of value creation, I am calling for sustained, micro-descriptive analysis of how subjects and social contexts combine to *make interests* (Hayward 2009), the stuff of joint and mutual gains. For some examples, see Macey and

Global South. Promoted as a third way between direct state regulation and market fundamentalism, it encourages states to coordinate with firms to incorporate laborers, small suppliers, contractors, and piece workers into contractual networks known as global value chains. Within these networks, differentially situated actors are supposed to create new sources of economic value that can be shared down the chain (Werner, Bair, and Fernández 2014; Gereffi 2014; Baldwin 2016).

Like other forms of economic organization, value chain development aims to create not only new sources of economic value but also new kinds of economic subjects that include new ways of engaging with buyers, other sellers, and the commodities being produced. To examine these processes of subject formation and valuation—indeed to examine how economic ideologies shape self and social relations—I disaggregated agricultural value chains into practices of negotiation. I spent several months in South India watching how agribusiness corporations endeavored to transform small farmers into people who wanted to collaborate in new ways to sell high-end standardized products. I traced some of the refusals that followed when farmers—asked to adopt the calculative rationalities of their more powerful negotiation partners—jettisoned the value chain for existing commodity markets where relations of patronage and reciprocity appeared better to serve their distributive interests. I also described how radical entrepreneurs—aiming to create more solidaristic forms of exchange than either traditional commodity markets or new global value chains—proposed to redefine “value” against its dominant economic and social meanings. In sum, I observed constant negotiations over what counts as a source of value creation (Cohen 2020).

Contemporary negotiation theorists argue that when negotiators wish to evaluate a proposal, they must “necessarily . . . value products or services in money or some other currency of trade” (Korobkin 2014, 94). But if analysts, rather than aim to commensurate, instead aim to reveal how actors negotiate across regimes of value, different kinds of evaluations come into view. These include analysis of how social structures shape individual interests and decisions; how commensurating and then aggregating interests can therefore involve their own distributional consequences; and how clashes among different standards of value may reflect not only negotiations over price but also negotiations over the very conditions of exchange. Legal realist negotiation theory, in other words, explores how individual needs and desires are shaped by contingent socio-economic structures, and how structural/institutional/policy-oriented interventions can therefore change the contexts for negotiations (Sturm 2009).

### *B. Thinking with Integration*

Realist analysis of value creation illuminates the constitutive power of legal and social orders. I have therefore described it as a useful tool for LPE scholars who wish to engage in microsocial analysis in order to argue that different background rules could produce different, more egalitarian distributions. But it does not alone invite alternative social imaginations grounded in a belief in human sociality and cooperation. LPE readers interested in the *social constitution* of value may also wish to advance Follett’s complementary project in the *socialization* of value and decision-making authority. Let me therefore briefly sketch three contemporary scholarly projects that engage with integration, or rather that engage with intensely distributed forms of democratic self-organization.

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Susskind (2003) (offering a case study that considers how residents habituated to environmental risk dampened their demands in negotiation) and Sturm and Gadlin (2007) (offering a case study of how institutional factors shape individual negotiations in the workplace).

*Critical Legal Studies*: Readers might recall that a longstanding, if not always dominant, aim of critical legal studies is to use legal and institutional tools to transcend social alienation. Duncan Kennedy, for example, encouraged the creation of radically democratic groups within bureaucratic workplaces and institutions—a kind of politics for the moment when allies could not hope to influence broader-scale distributive institutions (1982, 1984). Karl Klare likewise urged jurists to stop seeing workers as “sellers of labor power and . . . consumers of commodities” but instead as people who “produce value by embodying their labor power in things, services, and relationships” and hence as people who should have “a decisive say in the decisions that affect the process [of social production]” (Klare 1978, 321). But it is Peter Gabel who linked political-economic change to integrative negotiation.

In a recent book that collates decades of his thinking, Gabel warns readers against presuming that the singular “solution to ‘the problems of capitalism’ can be found in the creation of a new economic system” (2018, 128). The promise of new systems and forms, he continues, “obscures what it will really require to create the lived substance of equality and community,” namely, meeting a social-spiritual need for mutual recognition (129). “The solution to the worker’s problem,” he for example elaborates

is not a reorganization of the production process as such from capitalism to socialism, but a . . . *movement of collective intersubjective action* through which [the worker] could come to realize his or her desire for authentic human connection, for mutual recognition. He or she needs to become part of the creation of a *spiritually redemptive socialism*, not a mere reorganization of the economic system in its material aspect (2018, 97, emphasis added).

Here is how Follett put the point a century earlier:

[W]e must learn the method of a real cooperation . . . . This can be done only by every one taking part. The fact that the state owns the means of production may be a good or a poor measure, but it is not necessarily collectivism or a true socialism . . . . The socialization of property must not precede the socialization of the will. If it does, then the only difference between socialism and our present order will be substituting one machine for another . . . . *Not socialization of property, but socialization of the will is the true socialism* (1998 [1918], 73–74; emphasis added).

Like Follett, Gabel thus submits that political-economic reorganization *depends* upon integrative social and for both also spiritual relations. Follett invoked a “group spirit,” a “social spirit,” a “spirit of democracy” as a basis for integration (1998 [1918], 43, 62)—a claim that Gabel propels forward when he argues that “we human beings are bound together by spirit, that there is a vibrant life-force that unites and that is social in nature” (2018, 10).<sup>52</sup> Gabel’s animating context is the social movement, not the shop floor conflict. But he too recommends alternative practices of negotiation. Or rather he argues for “a fundamentally different paradigm” of alternative dispute resolution—one that that could foster an “alternative to detachment, separation, adversarial modes of relating” because in this model participants would refuse to use market-inflected legal norms as strategies to resolve conflict (Friedman and Gabel 2003, 40–42; c.f. Cohen 2013).<sup>53</sup>

<sup>52</sup> These thinkers write from different social-theoretical traditions, but both universalize a desire for authentic social connection and co-creation as the basis for political life and economic reorganization.

<sup>53</sup> To be sure, the feminist-relational turn in negotiation (see *supra* note 43) and the psychological-relational turn (Stone, Patton, and Heen 1999; Fisher and Shapiro 2005; Fox 2013) have produced a rich set of practices meant to foster self-

*Democratic Experimentalism:* Democratic experimentalism, a different contemporary integrative project, is organized around an inverse supposition: that today's material conditions mean that self and social interests will often blur in complex negotiations. Or more precisely, that volatile markets, technological complexity, and scientific uncertainty make it hard for any negotiator to know what her self-interest "is" in advance of deliberation—thus motivating feelings of interdependence and spurring rational incentives to seek collaborations (Dorf and Sabel 1998; Simon 2004; Sabel and Simon 2017).

This work too echoes Follett, particularly her faith in lay decisionmakers to engage in highly demanding forms of democratic self-rule. Michael Dorf and Charles Sabel, for example, invoke Follett's "strikingly original observations on the deliberative inventiveness of [civic] groups" as well as her descriptions of "deliberative decisionmaking as the discovery of new possibilities through consideration of diverse viewpoints" (1998, 415n468, 322n127). Also like Follett, Sabel derived his theories of integration in part by analyzing labor-management relations. In 1984, Sabel and Michael Piore described the shift from mass production capitalism to flexible specialization as an *opportunity* to revitalize workplace democracy (Piore and Sabel 1984). They reasoned that the more human skill, agility, and creativity influences productivity, the more labor and management should *want* to develop collaborative rather than adversarial shop floor relations including through cultivating worker self-determination. And the more firms should *want* to organize themselves into interdependent communities of producers to foster innovation. Crucially, Piore and Sabel also stipulated that socializing interests within and across firms (what they called "collective individualism") depends upon socializing other goods (305). For example, they urged "the state [to] coordinate the necessary rearrangement of relations among firms, and between labor and capital," (306) including through social welfare systems that could supply finance, vocational training, and marketing information, and by establishing communitarian property regimes (305).<sup>54</sup>

Sabel and his collaborators translated these arguments for collaborative, flexible firms into arguments for new forms of regulatory governance that likewise rest on decentralized negotiations (Dorf and Sabel 1998). In the regulatory context, however, they proposed primarily to socialize networks of information.<sup>55</sup> In brief, they envision stakeholder deliberations that take place within "institutions that pool the knowledge gained from these deliberations in ways that support and discipline them" (Simon 2012, 15). People deliberate about a shared problem, institutions make the products of such deliberation—choices, criteria, standards—open to public view, and public officials pool, compare, measure these products across institutions, expanding how negotiators can make claims upon one another to care for a common good. To anticipate such negotiations, democratic experimentalists do not draw on value creation negotiation as much as on general principles of pragmatist experimentation

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and other-understandings and connections. As I suggested above, much of this work, as it emerged in the late twentieth and early twenty-first century, followed on the heels of value creation negotiation. Hence the turn to psychology in contemporary negotiation developed apart from the idea of integration as a response to mass political struggle as it did in Follett's writings, and likewise apart from the idea of integration as a practice of social movement organizing as I have briefly described in Gabel's writings. This ethic of relationality in contemporary negotiation theory *can* form part of a project of social recovery, in Gabel's terms, if it is reciprocally linked to transformative politics, policies, and institutions. See, for example, Harris (2012) (drawing on Fisher and Shapiro 2005).

<sup>54</sup> That is, a regime where property is used not "to the maximum advantage of its possessor" but rather "held in trust for the community—its use . . . subordinated to the latter's maintenance." Piore and Sabel (1984, 305; see also Simon 1992).

<sup>55</sup> See Cohen (2015) (illustrating how as Sabel constructed the field of democratic experimentalism, the new flexible firm became a model to democratize state institutions while the role of the state in democratizing firms receded from the project).

(Sabel and Simon 2017; c.f. Cohen 2012).<sup>56</sup> As such, they also argue that whether negotiations can actually disrupt and diversify political and economic hierarchies is knowable only through social practice in their model (Cohen 2008; Cohen 2010).

*Community Economies:* A final example of how theories of political economy and negotiation interpenetrate is of feminist community economies scholars who, like Follett, envision firms where everyone *really* shares the same interests in production and distribution. These postcapitalist scholars engage with negotiation and decision-making practices not least because they aim to challenge the idea that “the economy” exists apart from everyday efforts and interactions. For example, J.K. Gibson-Graham, Jenny Cameron, and Stephen Healy (2013) describe small-scale participatory enterprises where practical deliberations do not entail learning how to grow the pie before dividing it. Rather they entail learning, first, how to make democratic decisions within a group about “survival payments,” that is, payments necessary for workers’ own social reproduction, for surviving well (53, 71–73, 78). And second, to make democratic decisions about how to allocate surplus—“that bit left over or extra, . . . one thing we have to work with to create new worlds”—in ways that prioritize different kinds of social, environmental, and economic investments (65, 72).

To redraw boundaries between the polity and the economy, members of participatory enterprises thus ask about what kinds of negotiated decisions should be made according to what kinds of political and economic logics (c.f. Menkel-Meadow 2004-5). They use non-market mechanisms such as democratic deliberation to determine how to control and invest enterprise surplus and how to allocate inputs such as compensating labor, even as they use market mechanisms to distribute the goods they produce (Fraser and Jaeggi 2018).<sup>57</sup> Of course, in practice, these deliberative processes may entail intense conflicts not least because negotiators cannot resolve disagreements by referencing simply how to maximize profit. But this is what I mean by thinking with integration: asking how different imaginations of political economy inspire—and are in turn enabled by—different practices of negotiation.

## V. Conclusion

In the spirit of our inaugural volume, this article brought a Law and Political Economy perspective to the field of negotiation by examining how negotiation scholars have attended to some of the most important conflicts of their day—namely, workplace conflicts. It recalled how early twentieth century negotiation scholars made explicit their ambitions to produce more equitable forms of industrial organization through their own historically contingent theories of integration. And it showed how when integration became value creation, scholars reconceptualized the field with different understandings of capitalism, labor, and the common good in mind.

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<sup>56</sup> Sabel and Simon themselves propose that they share with the field of ADR an interest in problem solving—to the extent, they qualify, that ADR “occasionally understands [problem solving] in institutional as well as psychological terms.” But they distinguish their work from what they see as ADR’s drive for equilibrium and stability (a drive that, to be sure, reflects the influence of Pareto optimal equilibrium theory) (2017, 486-87).

<sup>57</sup> Fraser and Jaeggi ask about what is specific to markets under capitalism versus under market socialism. “Market socialism,” Fraser suggests, “would use markets distributively to mete out consumer goods, while using non-market mechanisms (such as democratic planning) for allocative purposes, such as allotting credit, capital goods, ‘raw materials,’ and social surplus. . . . Capitalism . . . [uses] markets allocatively – to direct society’s use of its accumulated wealth and collective energies” (Fraser and Jaeggi 2018, 24).

More pointedly, this article argued that Mary Parker Follett had a *socialist* theory of integration—at least if we take socialism to mean, with Forbath, “the extension of democracy and democratic institutions into economic life” (Forbath 2020). When “almost everyone at present [is] restricted in a hundred ways as the result of the present economic depression,” Follett argued, people can find freedom only through “organized relation” (1932, 307). This defining feature of Follett’s work has been forgotten among negotiation proponents, or rather it appears never to have been acknowledged, even as she remains an icon in the field. But by showing how negotiation theory has been shaped by political-economic struggles, perhaps this article will prefigure some reimaginations. Today, as we confront our own overlapping economic, ecological, and social crises, LPE scholars and social movement organizers are recruiting law to postcapitalist political visions (Britton-Purdy, Grewal, Kapczynski, and Rahman 2020; Akbar, Ashar, and Simonson forthcoming). We may again see theories of negotiation that unfold beyond value creation.

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