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A GENESIS OF CONFLICT: THE ZERO-SUM MINDSET

*Jonathan R. Cohen**

ABSTRACT

Parties in conflict often operate under the assumption that for one party to win, the other party must lose. This concept, known as the “zero-sum mindset,” can lead to undesirable results, both because it can make disputes harder to resolve and because people holding such beliefs are more likely to get into conflicts to begin with. Over the past several decades, legal educators specializing in dispute resolution have worked hard to challenge that mindset. This task is not simple, for framing conflict in zero-sum terms has very deep cultural roots tracing back at least to the Biblical stories in Genesis. This article works in three stages. First, I present a brief history of the zero-sum mindset and efforts to challenge it in American legal dispute resolution discourse. Second, I examine several stories from Genesis in which the zero-sum mindset leads to conflict. Third, I conclude with reflections on the importance of raising awareness of the zero-sum mindset as a step toward both preventing conflicts and more effectively resolving those that arise.

I. INTRODUCTION

Is it possible for both parties in a conflict to “win,” or for one party to win, must the other party lose? Simple though that question sounds, its ramifications are far from trivial. When parties see conflicts as zero-sum, they are led quite naturally into combative tactics. If the parties believe that the only way for one side to get more is for the other side to get less, then they’d best prepare for battle. By contrast, when parties see conflicts as positive-sum, they tend to look for integrative solutions. Although there is no single explanation for the puzzle of why some disputes are resolved amicably while others become destructive affairs, the mindsets that the

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parties bring to conflicts are undoubtedly very significant factors.¹ Note, too, that such mindsets may influence not only how conflicts unfold, but whether they arise in the first place. While seeing the world as zero-sum does not make conflict inevitable, it does make it more likely. Where do these mindsets come from? How deep-rooted are they? In this Article, I suggest that, at least within Western society, the zero-sum mindset has informed our understanding of conflict for generations. More specifically, many of the most famous Biblical stories in Genesis depict conflict in essentially zero-sum terms. This is not to say that such Biblical depictions are the cause of the zero-sum view of conflict so many take in our world, but rather that the assumption that for one party to win the other party must lose has been foundational to the way many people, in particular lawyers, have approached conflict for generations.²

The structure of this article is as follows. First, I present a brief history of the zero-sum mindset in American alternative dispute resolution discourse over the past century. My goal here is not to be exhaustive, but to provide readers with a short historical sketch indicating that challenging this mindset has been one of the central tasks of American dispute resolution teaching and scholarship over the past century. Second, the heart of the essay turns to several of the early stories of Genesis, specifically, the three conflict narratives of brothers Cain and Abel, Isaac and Ishmael, and Jacob and Esau. In these narratives, we see a clear pattern: for one party to win, the other party must lose. The zero-sum mindset, in other words, undergirds these ancient conflict stories. Although positive-sum examples exist in Genesis too (and I shall discuss several), the zero-sum mindset undergirds these famous sibling conflict stories. Third, I conclude with some reflections about the importance of raising awareness of the zero-sum mindset as a step towards better resolving disputes in our world. My argument is not what I consider the Pollyannaish one that all conflicts are positive-sum. Rather, my claim is that because many parties approach con-

¹ An array of forces, including tactical and strategic barriers, psychological, organizational, and institutional factors, structural incentives, and principal-agent tensions all influence how conflicts unfold. See STANFORD CENTER ON CONFLICT AND NEGOTIATION, *BARRIERS TO CONFLICT RESOLUTION* 3–7 (Kenneth J. Arrow et al. eds., 1995).

² Let me express at the outset my intellectual debt to Leonard Riskin for his famous critique of what he dubbed the “standard philosophical map” of lawyers. As Riskin argued, the mindsets that lawyers bring to conflicts, frequently including the zero-sum assumption that for one party to win the other party must lose, are critical to how conflicts unfold. See Leonard Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 43–44 (1982).

flicts exclusively through zero-sum lenses, far too often parties fail to see the positive-sum elements within conflicts. Accordingly, awareness of our mindsets is critical if our world is to improve at processing conflicts constructively.

II. A VERY BRIEF INTELLECTUAL HISTORY

History is a blend of ideas and events, and it is possible to tell the history of dispute resolution both in terms of the transformation of institutions and practices and in terms of the spread of ideas.³ For example, Harvard Law School professor Frank Sander's 1976 Pound Conference Lecture, in which he advocated for a "multi-door courthouse" that would funnel different types of disputes into different dispute resolution mechanisms (e.g., mediation, arbitration, adjudication, etc.), is often seen as a watershed moment in the institutional development of the alternative dispute resolution movement.⁴ However, that lecture was preceded by Lon Fuller's seminal jurisprudential writing about process pluralism, specifically, his idea that different forms of dispute resolution were appropriate to different types of disputes.⁵ When it comes to addressing the zero-sum mindset, there is, to my knowledge, no single watershed event, either in the history of institutions or in the history of practice, demarking the effort to uproot that mindset. As I describe below, much, though not all, of the effort to tackle that mindset has been implicit rather than explicit. Nevertheless, there can be little doubt that one of the major thrusts of the alternative dispute resolution movement over the past several decades has been trying to shake the hold of the zero-sum mindset. To see this, however, it is helpful to first discuss a very closely related concept: integrative bargaining.

Integrative bargaining is the approach of looking for value-creating ways to "expand the pie" when two parties are negotiating. By contrast, distributive bargaining is the value-claiming approach of trying to obtain a certain slice of the piece, often, but not

³ For overviews of that history, see Carrie Menkel-Meadow, *Mothers and Fathers of Invention: The Intellectual Founders of ADR*, 16 OHIO ST. J. ON DISP. RESOL. 1 (2000); Carrie Menkel-Meadow, *Roots and Inspirations: A Brief History of the Foundations of Dispute Resolution*, in THE HANDBOOK OF DISPUTE RESOLUTION 13 (Michael L. Moffitt & Robert C. Bordone eds., 2005) [hereinafter *Roots and Inspirations*].

⁴ See, e.g., Michael L. Moffitt, *Before the Big Bang: The Making of an ADR Pioneer*, 22 NEGOT. J. 437, 437-38 (2006).

⁵ See *Roots and Inspirations*, *supra* note 3, at 16-21.

always, the largest slice one can get.⁶ Integrative bargaining explores options and interests, usually in a cooperative tone. Distributive bargaining often, but not always, focuses on allocation, with parties resorting to adversarial tactics such as threats, bluffs, and positional posturing. Integrative bargaining and distributive bargaining are approaches to bargaining, while the zero-sum mindset and positive-sum mindset describe a party's beliefs about the range of possible outcomes—whether the pie can be expanded or whether it is essentially fixed in size.

What is the linkage between these styles of bargaining and the parties' mindsets? One might think of the zero-sum mindset as an intellectual premise to distributive bargaining, and the positive-sum mindset as an intellectual premise to integrative bargaining. As Carrie Menkel-Meadow describes: "When choosing the adversarial or competitive model, negotiators assume that scarce resources must always be divided and allocated, as in a "zero-sum" game. Instead, integrative negotiations (taking account of the real needs and interests of all parties) can actually lead to "expanded pies[.]"⁷" If one does not believe that the pie can be expanded, then there is little sense in exploring value-creating options. If one does believe that the pie can be expanded, then looking for integrative ways to expand that pie makes a great deal of sense. Hence, efforts to promote the use of integrative bargaining can be seen as implicitly challenging the zero-sum mindset.⁸

⁶ I write "but not always" because the task of distributing or allocating a fixed amount need not inherently be adversarial. For example, some parties may look toward fair, objective criteria to determine such allocation. See, e.g., ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 81–94 (1991) (advocating principled negotiation using objective criteria as a means of addressing distributive issues). Another way to put this is that the scarcity of resources alone does not make hostilities inevitable. Some parties divide scarce resources by fighting over who gets the larger share. Other parties cooperatively agree to a fair mechanism to determine such allocations. So, too, the presence of plentiful resources does not make cooperation inevitable. There is an allegory told in many cultures of a person who visits heaven and hell and finds in each place the same thing, namely, people seated around a banquet table covered with succulent foods, but who have long spoons (or in some versions chopsticks) attached to their arms, running from their shoulders to their hands, preventing them from bending at the elbow. In heaven the people are happy and well-fed, but in hell they are emaciated. Why the difference? In heaven, people take turns feeding one another, but in hell they attempt to feed only themselves. See *Allegory of the Long Spoons*, WIKIPEDIA, http://en.wikipedia.org/wiki/Allegory_of_the_long_spoons (last visited Feb. 18, 2015).

⁷ CARRIE MENKEL-MEADOW ET AL., *NEGOTIATION: PROCESSES FOR PROBLEM SOLVING* 117 (2014).

⁸ The mathematical language of "zero sum" and "positive sum" comes from the field of game theory. See, e.g., JOHN VON NEUMANN & OSKAR MORGENSTERN, *THEORY OF GAMES AND ECONOMIC BEHAVIOR* (1944); THOMAS C. SCHELLING, *THE STRATEGY OF CONFLICT* (1980).

In American thought, the integrative approach to bargaining traces at least to the writings of Mary Parket Follett from the 1920s. Follett asserted that conflicts were resolved in one of three ways: (1) domination, in which one party gets its way, (2) compromise, in which the parties meet in the middle, or (3) integration, where options are explored that better meet the parties' underlying interests.⁹ The most famous example of integration is likely that of two sisters fighting over an orange, one wanting the zest for baking and the other the fruit for eating.¹⁰ If they simply fight over who gets the orange without articulating their underlying interests, it is easy to imagine them reaching the fair but suboptimal solution of cutting the orange in two, each getting one half. Yet, if they discuss their interests (i.e., why they want the orange), the integrative solution of giving one sister all of the zest and the other sister all of the fruit is obvious. All too often, however, people assume that situations are zero-sum when in fact they are not, a cognitive error social psychologists have dubbed the "fixed pie" bias.¹¹

Over the past several decades, legal educators have repeatedly attempted to challenge the zero-sum mindset among law students and lawyers, suggesting in various ways that legal disputes should

⁹ See DYNAMIC ADMINISTRATION: THE COLLECTED PAPERS OF MARY PARKER FOLLETT 34–35 (Henry C. Metcalf & L. Urwick eds., 1940); Menkel-Meadow, *Roots and Inspiration*, *supra* note 3, at 15. Follett was not alone in her use of the term "integration." For example, although he used the term somewhat differently from Follett, Laswell also discussed "integration." See H.D. Laswell, *Compromise*, in 4 ENCYCLOPAEDIA OF THE SOC. SCI. 147–48 (Edwin Seligman & Alvin Johnson eds., 1937). To the best of my knowledge, the first extended treatment of the integrative bargaining model is that of Walton and McKersie. See RICHARD E. WALTON & ROBERT B. MCKERSIE, A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS, chs. 4, 5 (1965).

¹⁰ Many know this example from *Getting to Yes* (see FISHER ET AL., *supra* note 6, at 56–57); however, there is some ambiguity about its precise origins. See Deborah M. Kolb, *The Love for Three Oranges Or: What Did We Miss About Ms. Follett in the Library?*, 11 NEGOT. J. 339, 339 (1995).

¹¹ I use the general term "fixed-pie" bias loosely, for there are subtleties beyond the scope of this paper concerning different biases in this area. See generally Max H. Bazerman & Margaret A. Neale, *Heuristics in Negotiation: Limitations to Effective Dispute Resolution*, in NEGOTIATING IN ORGANIZATIONS 51, 62 (Max H. Bazerman & Roy J. Lewicki eds., 1983) (critiquing the belief that "all conflicts are of a fixed pie nature"); Leigh Thompson & Reid Hastie, *Social Perception in Negotiation*, 47 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 98 (1990) (distinguishing between and empirically examining "fixed sum error" and "incompatibility error"); Michele J. Gelfand & Sophia Christakopoulou, *Culture and Negotiator Cognition: Judgment Accuracy and Negotiation Processes in Individualistic and Collectivistic Cultures*, 79 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 248 (1999) (examining the fixed-pie error in individualistic American culture versus collectivist Greek culture); THE HANDBOOK OF NEGOTIATION AND CULTURE 49–51 (Michele J. Gelfand & Jeanne M. Brett eds., 2004) (surveying research on culture and the fixed-pie bias).

not be viewed simply as battles to be won (though some do become battles) but as problems to be solved—problems to which the solutions are not always zero-sum.¹² Even if courtroom trials are typically winner-take-all, zero-sum affairs,¹³ legal negotiations need not be. As Carrie Menkel-Meadow writes, “While there may be some paradigmatic zero-sum games in legal negotiations, most are not zero-sum [Z]ero-sum games in legal negotiations may be more the exception than the rule. Our conceptualization of the negotiation process ought not to be based on the exceptions.”¹⁴ Some works, such as Leonard Riskin’s critique of the lawyer’s “standard philosophical map,”¹⁵ explicitly challenge the zero-sum mindset. Even those that don’t do so explicitly often do so implicitly by teaching integrative bargaining. Classic negotiation exercises like “The Oil Pricing Exercise” and “Sally Soprano” from the Program on Negotiation at Harvard Law School are designed to teach the benefits of cooperation rather than pure competition and of parties exploring interests rather than becoming locked into positions.¹⁶

¹² See Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984).

¹³ Even in those few areas of American law, such as in comparative negligence, that embrace apportioning damages rather than awarding all-or-nothing verdicts (see John E. Coons, *Approaches to Court Imposed Compromise—The Uses of Doubt and Reason*, 58 NW. U. L. REV. 750 (1964) (advocating greater use of apportionment in American law)), the zero-sum assumption is implicit, for one dollar more to one party is still one dollar less to the other party. Put differently, apportionment alone does not imply integration. Integration, by contrast, involves looking at the parties’ underlying interests, as when a judge in a child custody case creates a visitation arrangement that factors in the parents’ underlying schedules (e.g., if the father works weekends and the mother works weekdays, giving the father custody during the weekdays and the mother custody on the weekends).

¹⁴ Menkel-Meadow, *supra* note 12, at 786–87.

¹⁵ Although he does not use the term “zero-sum mindset,” the concept is no doubt present in Leonard Riskin’s famed critique of the intellectual assumptions that lawyers typically bring to cases:

The philosophical map employed by most practicing lawyers and law teachers, and displayed to the law student—which I will call the lawyer’s standard philosophical map—differs radically from that which a mediator must use. What appears on this map is determined largely by the power of two assumptions about matters that lawyers handle: (1) *that disputants are adversaries—i.e., if one wins, the others must lose*—and (2) that disputes may be resolved through application, by a third party, of some general rule of law.

Riskin, *supra* note 2, at 43–44 (emphasis added). Leading legal negotiation textbooks, too, include at least some mention of the zero-sum frame. For recent examples, see ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: HOW LAWYERS CAN CREATE VALUE IN DEALS AND DISPUTES* 196–98 (2000); CARRIE MENKEL-MEADOW ET AL., *supra* note 7.

¹⁶ See *respectively Oil Pricing Exercise*, PROGRAM ON NEGOTIATION: HARVARD LAW SCHOOL, <http://www.pon.harvard.edu/shop/oil-pricing-exercise-3> (last visited Feb. 2, 2015) (a repeat play prisoner’s dilemma exercise in which long-term maximization requires cooperative

Some scholars have criticized the extent to which legal education has emphasized integrative negotiation, believing that the “real world” of legal conflict is a tougher place than such cooperative approaches would suggest.¹⁷ Whether or not that criticism is valid,¹⁸ the essential point for the argument here is that teaching integrative bargaining, often under the label of problem-solving, has become a staple of dispute resolution instruction by law schools over the past several decades. Whether through theoretical instruction or via role-play exercises, one of the basic lessons is that the pie is not always fixed, the world is not always zero-sum. In short, for roughly the past century, the effort has been underway both within law schools and elsewhere to teach people that negotiations need not be solely distributive, but that in some negotiations at least, it is possible for both sides to “win.” As game theorist and military strategist Thomas Schelling wrote some fifty years ago:

Pure conflict, in which the interests of the two antagonists are completely opposed, is a special case For this reason, “winning” in a conflict does not have a strictly competitive meaning; it is not winning relative to one’s adversary. It means gaining relative to one’s value system; and this may be done by bargaining, by mutual accommodation, and by the avoidance of mutually damaging behavior.¹⁹

Not all conflicts are zero-sum. Often one party can “win” without the other party losing.

behavior); *Sally Soprano I*, PROGRAM ON NEGOTIATION: HARVARD LAW School, <http://www.pon.harvard.edu/shop/sally-soprano-i/> (last visited Feb. 2, 2015) (an employment contract negotiation with a great range of creative integrative possibilities). When parties interact repeatedly with one another over time, the lesson that cooperative rather than purely competitive approaches can often be beneficial to parties is one of the basic teachings of game theory. *See generally* ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

¹⁷ *See* Gerald B. Wetlaufer, *The Limits of Integrative Bargaining*, 85 GEO. L.J. 369 (1996); Charles B. Craver, *Negotiation Ethics for Real World Interactions*, 25 OHIO ST. J. ON DISP. RESOL. 299 (2010).

¹⁸ A detailed response to that criticism is beyond the scope of this work, however, I note both that advocates of integrative negotiation do teach that distribution is a core aspect of negotiation (*see, e.g.*, Robert H. Mnookin et al., *The Tension Between Creating and Distributing Value*, in *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 11–43 (2000)) and that empirical studies of negotiation by practicing lawyers have found much problem-solving behavior among legal negotiators (*see, e.g.*, Andrea K. Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143 (2002)).

¹⁹ THOMAS C. SCHELLING, *THE STRATEGY OF CONFLICT* 4–5 (Harvard Univ. Press ed. 1980).

III. A ZERO-SUM BIBLICAL FRAME

How old is the framing of conflicts as zero-sum? At least as old as the Bible, which is to say, very old indeed.²⁰ From its opening chapters, many Biblical stories present conflicts as essentially zero-sum affairs. This is not to say that the Bible never presents integrative images of conflict, but that right from the start of Genesis, we find multiple stories in which conflicts arise within zero-sum framings of human relations.²¹ Below I focus on this pattern in Genesis stories; however, as Jerome Neyreh and Richard Rohrbaugh describe so well, the zero-sum motif is common in

²⁰ The origins of the Bible, both in terms of authorship and time of composition, have been a matter of tremendous debate among scholars. Most Western Biblical scholars understand the Pentateuch to be a redacted document drawing upon several antecedent sources, the so-called “documentary hypothesis.” For an introduction to that field, see RICHARD ELLIOT FRIEDMAN, *WHO WROTE THE BIBLE?* (1987). As to dating the Pentateuch, states Prof. Marc Zvi Brettler, “The ultimate result of this redaction [was] most likely completed during the Babylonian exile (586–538 BCE) or soon thereafter in the early Persian period.” Marc Zvi Brettler, *Torah: Terminology, Contents, and Traditional Views of Authorship*, in *THE JEWISH STUDY BIBLE* 1, 6 (Adele Berlin & Marc Zvi Brettler, eds., 1999).

²¹ Within Jewish tradition, even the very creation of the world depicted at the beginning of Genesis has been associated with the zero-sum framing of conflict. The Bible, of course, begins with a story of the world’s creation, with the first verse variously translated as, “In the beginning, God created the heavens and the earth . . .” or “When God began creating the heavens and the earth . . .”). In his opening comment on the first verse of Genesis, the most famous of all Jewish Biblical commentators, the eleventh-century, French Rabbi Sholmo Yitzchaki of Troyes (commonly known by the acronym “Rashi”) begins by asking an unusual question: Why does the Bible (whose first five books Jewish tradition calls the “Torah”)—a book Jewish tradition understood in large part as a legal text (i.e., the laws God gave to Israel)—begin with the story of creation rather than with the first legal commandment concerning the dating of months found in Exodus 12:2? Why, in other words, did not the Bible start with the first law? (I describe this question as “unusual” as I suspect that for most readers starting with a history of the world’s creation seems a natural place for a historical, narrative text to begin.) Rashi answers as follows:

It was not necessary to begin the Torah [whose main object is to teach commandments, mitzvot, with this verse] but from “This month shall be unto you” [the beginning of months] (Ex. 12.2), since this is the first mitzvah [commandment] that Israel was commanded [to observe]. And what is the reason that it begins with Genesis? Because of [the verse] “The power of His works He hath declared to His people in giving them the heritage of the nations” (Ps. 111.6). For if the nations of the world should say to Israel: “You are robbers, because you have seized by force the lands of the seven nations [of Canaan] they [Israel] could say to them, “The entire world belongs to the Holy One, Blessed Be He, He created it and gave it to whomever it was right in his eyes.”

ABRAHAM BEN ISAIAH & BENJAMIN SHARFMAN ET AL., *THE PENTATEUCH AND RASHI’S COMMENTARY: A LINEAR TRANSLATION INTO ENGLISH: GENESIS 1* (1976).

According to Rashi, Genesis begins with God’s creation of the world because in the future people will be fighting over who has the right to which piece of land. The world, in other words, is a zero-sum one with various peoples fighting over who will control what land. Sadly, that fight continues to this day.

many other parts of the Hebrew Bible, Christian Scriptures, and other writings from the ancient world.²²

Though it might be claimed that the first conflict between humans in the Bible occurs in the third chapter of Genesis when Adam blames Eve for his eating of the forbidden fruit (an act evincing a zero-sum mindset—I if one of us must be at fault, it is she, not me!),²³ the first indisputable conflict between Biblical characters occurs in the fourth chapter of Genesis with Cain’s murder of Abel. As we read:

Now the man [Adam] knew his wife Eve, and she conceived and bore Cain, saying, “I have gained a male child with the help of the Lord.” She then bore his brother Abel. Abel became a keeper of sheep, and Cain became a tiller of the soil. In the course of time, Cain brought an offering to the Lord from the fruit of his soil; and Abel, for his part, brought the choicest of the firstlings of his flock. The Lord paid heed to Abel and his offering, but to Cain and his offering He paid no heed. Cain was much distressed and his face fell. . . . [Sometime thereafter] when they were in the field, Cain set upon his brother Abel and killed him.²⁴

Why does Cain murder his brother Abel? One factor is that within this story, God’s approval seems to have a comparative, zero-sum quality. The Bible describes Abel offering from the “choicest” of his firstlings, but with Cain’s offering, there is no such praise. God’s paying heed to Abel’s offering goes hand in hand with his disregarding of Cain’s offering. Could both brothers’ offerings have been accepted? We don’t know for sure, but the zero-sum flavor of the story is very strong. Cain’s jealousy, too, is a factor in the story, but without what seems like the zero-sum backdrop of scarce Divine acceptance, that jealousy would not have arisen. As with sibling relationships to this day, both the differential treatment of children by parents and the scarcity of love in the home

²² Jerome H. Neyrey & Richard L. Rohrbaugh, “*He Must Increase, I Must Decrease*” (*John 3:30*): *A Cultural and Social Interpretation*, 63 *THE CATHOLIC BIBLICAL QUARTERLY* 464, 468–76 (2001). In the Bible, zero-sum thinking is employed not only by human characters, but by God as well. Consider, example, God’s statement to Gideon in Judges 7:2 in which God appears concerned that His stature might be diminished if Israel’s stature increases (“The people that are with thee are too many for Me to give the Midianites into their hand, lest Israel vaunt themselves against Me, saying: mine own hand hath saved me.”).

²³ *Gen.* 3:12. Biblical quotations are from *THE TORAH: THE FIVE BOOKS OF MOSES* (Jewish Publication Society trans., 2d ed. 1978).

²⁴ *Gen.* 4:1–8.

are recipes for sibling rivalry.²⁵ Indeed, scarcity is a foundational premise of many Biblical stories,²⁶ scarcity not only of parental love and Divine acceptance, but physical resources such as land and food, and social resources such as honor, rank, and status.²⁷

That linkage between zero-sum thinking and conflict continues in the subsequent inheritance and birthright stories of the half-brothers, Isaac and Ishmael, and the full brothers, Jacob and Esau. Let us start with the first narrative. To recall, Isaac is Abraham's younger son by his first wife Sarah, and Ishmael is Abraham's older son by his second wife Hagar, the maid-servant Sarah gave to Abraham to take as a wife when she, Sarah, had not yet conceived. As the boys grow, Sarah's jealousy arises:

Sarah saw the son, whom Hagar the Egyptian had borne to Abraham, playing. She said to Abraham, "Cast out that slave-woman [Hagar] and her son [Ishmael], for the son of that slave shall not share in the inheritance with my son Isaac." The matter distressed Abraham greatly, for it concerned a son of his[, Ishmael]. But God said to Abraham, "Do not be distressed over the boy [Ishmael] or the slave [Hagar]; whatever Sarah tells you, do as she says, for it is through Isaac that offspring shall be continued for you. As for the son of the slave-woman, I will make a nation of him, too, for he is your seed."²⁸

²⁵ On the psychological effects of differential treatment of children by parents, see Gene H. Brody, *Sibling Relationship Quality: Its Causes and Consequences*, ANN. REV. PSYCHOL. 2, 7 (1998); Amy J. Rauer and Brenda L. Volling, *Differential Parenting and Sibling Jealousy: Developmental Correlates of Young Adults' Romantic Relationships*, 14 PERSONAL RELATIONSHIPS 495, 498 (2007); Per T. Smiseth et al., *Interaction Between Parental Care and Sibling Competition: Parents Enhance Offspring Growth and Exacerbate Sibling Competition*, 61 EVOLUTION 2331, 2337 (2007). On the scarcity of parental love producing sibling conflict within Biblical narratives, see REGINA M. SCHWARTZ, *THE CURSE OF CAIN: THE VIOLENT LEGACY OF MONOTHEISM* 1-4, 115-16 (1997); STEPHEN R. HAYNES, *NOAH'S CURSE: THE BIBLICAL JUSTIFICATION OF AMERICAN SLAVERY* 210 (2002). The Biblical motif of limited parental love and ensuing sibling rivalry is consistent with anthropologist George Foster's claim discussed below of the workings of peasant societies adhering to the belief that all goods (not just land) are in limited supply. See George Foster, *Peasant Society and the Image of Limited Good*, *infra* note 53, at 298-99.

²⁶ As Regina Schwartz observes, a scarcity framework underlies not only many of these sibling rivalry stories, but many of the larger scale conflicts in the Bible as well. As she describes:

When everything is in short supply, it must all be competed for—land, prosperity, power, favor, even identity itself. In many biblical narratives, the one God is not imagined as infinitely giving, but as strangely withholding. Everyone does not receive divine blessings. Some are cursed—with dearth and death—as though there were a cosmic shortage of prosperity.

SCHWARTZ, *THE CURSE OF CAIN*, *supra* note 25, at xi. The Bible does present counterexamples in which plentitude, rather than scarcity, frames certain stories; however, in Schwartz's view, the rule of scarcity is the dominant motif. *Id.* at 118-19.

²⁷ Neyrey & Rohrbaugh, *supra* note 22, at 469-76.

²⁸ *Gen.* 21:9-13.

Admittedly the framing here is not completely zero-sum, for in the last sentence above, God promises to make a nation out of Ishmael's descendants as well. Still, the zero-sum flavor of the story is very strong. *Either Isaac or Ishmael* is to receive the inheritance from Abraham—they are not, as Sarah puts it, to share that inheritance together. In Sarah's eyes at least, Ishmael and his mother Hagar must be cast aside so that her son Isaac can inherit.

The conflict narratives about the twin brothers Jacob and Esau have perhaps the clearest zero-sum framing to them. From the time of their conception, the Bible depicts these twins as struggling against one another in Rebekah's womb.²⁹ Rebekah asks God why they struggle so, and God replies, "Two nations are in your womb, Two separate peoples shall issue from your body; One people shall be mightier than the other, and the older shall serve the younger."³⁰ In the future, the brothers' descendants will inhabit a zero-sum world in which one group must serve the other—they are not to be equals—and the brothers' fighting starts even in utero.

The ensuing stories in which Jacob obtains Esau's first-born, inheritance birthright and then later their father Isaac's blessing reinforce this picture of a zero-sum world producing sibling conflict. First comes the birthright story in which Jacob exploits his brother's hunger, trading him a bowl of stew in exchange for Esau's first-born birthright.³¹ Several chapters later comes the "masquerade" story in which, with their mother Rebekah's help, Jacob tricks their old, dim-eyed father Isaac into giving him Esau's blessing.³² I won't relay these well-known stories in detail here, however, the denouement of the second tale is worth highlighting. No sooner had Jacob left the presence of his father Isaac than Esau arrives seeking his blessing.³³ When Isaac tells him that he has bestowed the blessing upon Jacob, Esau bursts into wild and bitter sobbing and implores Isaac, "Bless me too, Father!"³⁴ At first, Isaac refuses, explaining that, "Your bother [Jacob] came with guile

²⁹ *Gen.* 25:22.

³⁰ *Gen.* 25:23.

³¹ *Gen.* 25:29-34.

³² *Gen.* 27:1-29. Whether Isaac actually was deceived or whether he was playing along with Jacob's ruse is, of course, a matter of debate. The text suggests that Isaac was unaware of the original ruse for later he begins trembling violently when Esau informs him that he has been deceived. *Gen.* 27:33. However, clearly Isaac was suspicious that it was Jacob masquerading as Esau whom he originally blessed, for before administering that blessing Isaac wonders, "The voice is the voice of Jacob, yet the hands are the hands of Esau." *Gen.* 27:22.

³³ *Gen.* 27:30-31.

³⁴ *Gen.* 27:34. Technically, the birthright and the blessing were not identical. The birthright included Esau's first-born inheritance rights, but the blessing did not govern inheritance per se.

and took away your blessing.”³⁵ The world, again, is a zero-sum one: the innermost blessing can be given to only one son, not both. When Esau persists (“Have you but one blessing Father?”³⁶), Jacob offers a second blessing, but this second blessing is as much a curse as a blessing, stating that, among other things, Esau “shall serve his brother.”³⁷ Esau’s anger from all of this is so great that he resolves to kill Jacob, and their mother Rebekah cautions Jacob to flee their home.³⁸ As with the earlier Cain and Abel story, the impulse toward violence and the zero-sum framing of the world are again deeply linked.

Observe that within the Bible’s zero-sum world, matters such as love and loyalty take on a deeply comparative quality. What does it mean to love someone? It means to love them more than someone else. For example, Jacob’s love for Rachel is described in comparative terms: though both Rachel and Leah become his wives, the text repeatedly reminds us that he loved Rachel more than he loved Leah.³⁹ So, too, the Bible frames loyalty comparatively. What does it mean to be loyal to someone? It means to be more devoted to them than to someone else. How do we know that Abraham is loyal to God? Because he is willing to sacrifice his only son Isaac, whom he loves, because God so instructs him.⁴⁰ Indeed, much of the book of Exodus can be understood in such terms. Who should the children of Israel serve? Either God or Pharaoh, but not both.⁴¹

Does the Bible always present conflicts as zero-sum? No. Sometimes parties do reconcile. For example, some twenty years after fleeing their home lest Esau kill him, Jacob and Esau reconcile.⁴² Further, sometimes the Bible does present integrative, alter-

³⁵ *Gen.* 27:35.

³⁶ *Gen.* 27:38.

³⁷ *Gen.* 27:39.

³⁸ *Gen.* 27:41–42.

³⁹ See *Gen.* 29:16–18 (“Now Laban had two daughters; the name of the older one was Leah, and the name of the younger was Rachel. Leah had weak eyes; Rachel was shapely and beautiful. Jacob loved Rachel[.]”); *Gen.* 29:30 (“[Jacob] loved Rachel more than Leah.”).

⁴⁰ *Gen.* 22:1–12 (“For now I know that you fear God, since you have not withheld your son, your favored one, from me.”).

⁴¹ The possibility of serving both Pharaoh and God is raised toward the beginning of the Exodus narrative, when Moses requests that Pharaoh permit the Israelites undertake a three-day sojourn to make sacrifices to their God. Pharaoh rejects that possibility, imposing harsher working conditions on the Israelites. *Ex.* 5: 1–20. Loyalty is essentially portrayed as binary, not to be divided. So, too, with the story of Korah’s rebellion. *Num.* 16.

⁴² See *Gen.* 33.

native solutions to what appear zero-sum problems.⁴³ Consider two other examples from Genesis: Abraham's bargaining with God over the fate of Sodom and Reuben's interventions to save the life of his brother Joseph from death at the hands of their other brothers.

The negotiation between Abraham and God over the fate of Sodom has a very positional flavor; however, at a deeper level it may be understood as a win-win exchange. "What if there are fifty righteous people?" Abraham asks God, "Will you sweep away the righteous with the wicked?"⁴⁴ What if there are forty-five? forty? thirty? twenty? ten? On its surface, the exchange echoes the trope of many linear, win-lose bargains, with Abraham bargaining with God over the minimum number of righteous individuals, much like how people often bargain over the price of an item. Yet the case can be made that beneath the surface, this is a win-win exchange in which multiple options are proposed to find an outcome that better serves the parties' underlying interests.⁴⁵ God wins by becoming more just, making it less likely that he will punish innocent citizens of Sodom along with guilty ones. The innocent citizens of Sodom win by decreasing the chance that they will be (wrongfully) destroyed. Although other readings of the text are certainly possible, the story is suggestive at least of the idea that two parties involved in a conflict can come out ahead.

Reuben's interventions to prevent Joseph's death at the hands of their brothers is an even clearer example of a win-win exchange. At first, the brothers plot to kill Joseph for what one might call zero-sum reasons: they are jealous that their father Israel loves Joseph more than them (here, again, love is portrayed comparatively),⁴⁶ giving him alone a coat of many colors, and they are resentful of the prophetic dreams that Joseph has (naively) relayed to them, dreams portending that Joseph will rule over them in the future.⁴⁷ Initially, the brothers scheme to slaughter Joseph,⁴⁸ yet,

⁴³ In the Bible, as in life, some integrative bargaining occurs not in the context of conflict but of transactional deal making. For example, when Abraham purchases the Machpelah cave from Ephron the Hittite so as to have a place to bury his deceased wife Sarah (*Gen.* 23), it seems fair to presume that the transaction makes both parties (Abraham and Ephron) better off. Ronald T. Hyman, *Abraham as Negotiator: Guidelines for Persuasive Talk*, 69 J. JEWISH EDUC. 9, 10–13 (2004).

⁴⁴ *Gen.* 18:23–24.

⁴⁵ Hyman, *supra* note 43, at 13.

⁴⁶ See *Gen.* 37:3–4 ("Now Israel loved Joseph best of all his sons, for he was the child of his old age; and he made for him an ornamented tunic [coat of many colors]. And when his brothers saw that their father loved him more than any of his brothers, they hated him[.]").

⁴⁷ *Gen.* 37:3–11.

as we know, Joseph is saved from death. How does this occur? Reuben suggests that rather than directly shedding Joseph's blood, they cast him into a pit, saving his brothers from directly shedding Joseph's blood and keeping Joseph alive, at least temporarily.⁴⁹ Soon thereafter, the brothers spot a caravan en route to Egypt approaching, and Judah offers the integrative, creative solution of selling Joseph into slavery. "What do we gain by killing our brother and covering up his blood?" he asks. "Come, let us sell him to the Ishmaelites, but let us not do away with him ourselves. After all, he is our brother, our own flesh."⁵⁰ The brothers agree, and Joseph's life is spared. The brothers' interest in getting Joseph out of their lives is met for he will be a slave in Egypt, sparing the brothers from the grisly task of killing Joseph themselves. Joseph, of course, is better off alive than dead. Judah, in other words, offers a "win-win" solution: rather than the outcome being a dead Joseph murdered by brothers, the outcome is a disposed-of-but-living Joseph, whom his brothers did not actually kill. Unlike the other sibling conflict stories discussed above, in this "win-win" example, the Bible's implicit frame is not zero-sum but positive-sum.

IV. SOME CONCLUDING REMARKS

The linkage between the zero-sum mindset and the adversarial approach to conflict is ancient. In many Biblical stories, conflicts are depicted in essentially zero-sum terms. From the small scale familial conflicts of Genesis to the large scale clashes such as that between God and Pharaoh in Exodus or the later conquest of the land of Israel, conflict stories replete with zero-sum framings and jealous combatants are a central Biblical motif.

Why does the Bible do this? For those who accept the Bible as history, the answer is that this is how history unfolded. Many conflicts in our world both then and now are zero-sum, and the Bible is simply reflecting this. Other readers might point to the cultural context in which the Bible was produced. Research over the past several decades has explored the important role that cul-

⁴⁸ *Gen.* 37:18–20.

⁴⁹ *Gen.* 37:21–22.

⁵⁰ *Gen.* 37:26–27.

ture plays in conflict,⁵¹ including how culture influences the mindsets (i.e., are conflicts zero-sum or positive-sum) that parties bring to conflicts.⁵² These stories were produced in ancient agrarian cultures. Might such peasant societies built upon the limited land resources be especially prone to zero-sum worldviews?⁵³ For other readers, the Bible's religious nature may actually help explain the *prevalence* of so many zero-sum framings. Many religions, after all, view their path as *the* (not *a*) correct one and other paths as incorrect ones. As Kirster Stendahl, former Dean of Harvard Divinity School and retired Bishop of Stockholm, wrote in a critique of the prevalence of religious supersessionism (i.e., the claim that a new religion has superseded an older one), “[W]e are heirs to traditions that have—it seems—in their very structure the negation if not the demonization of the Other.”⁵⁴ Indeed, in Robert Wright's view, overcoming zero-sum thinking, both within religious thought and elsewhere, forms a central challenge of our era.⁵⁵

⁵¹ See, e.g., Kevin Avruch & Peter W. Black, *The Culture Question and Conflict Resolution*, 16 PEACE & CHANGE 22 (1991); Jeanne M. Brett, *Culture and Negotiation*, 35 INT'L J. OF PSYCHOL. 97 (2000); THE HANDBOOK OF NEGOTIATION AND CULTURE, *supra* note 11, at 53.

⁵² Gelfand & Christakopoulou, *Culture and Negotiator Cognition*, *supra* note 11; Jeswald W. Salacuse, *Ten Ways that Culture Affects Negotiating Style: Some Survey Results*, 14 NEGOT. J. 221, 227–28 (1998) (finding levels of win-win and win-lose attitudes among negotiators from different countries).

⁵³ Neyrey and Rohrbaugh, drawing upon the work of anthropologist George M. Foster, put much emphasis on the agrarian roots of these Biblical stories. Neyrey & Rohrbaugh, *supra* note 22, at 467–81. See also Anselm C. Hagedorn & Jerome H. Neyrey, 'It Was Out of Envy That They Handed Jesus Over' (Mark 15.10): *The Anatomy of Envy and the Gospel of Mark*, 20 J. STUD. NEW TESTAMENT 15, 20–25 (1998). Foster described an anthropological pattern of many peasant societies built are the “Image of Limited Good” (roughly, the zero-sum assumption) in which fundamentally-limited agricultural production went hand in hand with a zero-sum cultural orientation. Wrote Foster:

By “Image of Limited Good” I mean that broad areas of peasant behavior are patterned in such fashion as to suggest that peasants view their social, economic, and natural universes—their total environment—as one in which all of the desired things in life such as land, wealth, health, friendship and love, manliness and honor, respect and status, power and influence, security and safety, *exist in finite quantity and are always in short supply* Consequently, there is a primary corollary to The Image of Limited Good: if “Good” exists in limited amounts which cannot be expanded, and if the system is closed, it follows that *an individual or a family can improve a position only at the expense of others*.

George M. Foster, *Peasant Society and the Image of Limited Good*, 67 AMERICAN ANTHROPOLOGIST 293, 296–97 (1965). See also George M. Foster, *Interpersonal Relations in Peasant Society*, 19 HUM. ORG. 174 (1960); George M. Foster, *Cultural Responses to Expressions of Envy in Tzintzuntzan*, 21 SW. J. OF ANTHROPOLOGY 24 (1965). A fine example of this pattern is found in Genesis 13: 6–7, where a conflict arises between Abram's herdsmen and Lot's herdsmen because a single area of land cannot support the grazing needs their combined cattle.

⁵⁴ Kirster Stendahl, *Qumran and Supersessionism—and the Road Not Taken*, 19 PRINCETON SEMINARY BULL. 4, 134 (1998).

⁵⁵ Asserts Wright:

The literary drama that zero-sum conflicts provide offers another explanation for their prevalence in the Bible. Like courtroom trials, zero-sum conflicts produce an inherent dramatic tension: who will win and who will lose? Zero-sum conflicts work well for exploring subjects such as jealousy and loyalty and for telling moral tales of good versus evil.⁵⁶ Indeed, a nutshell version of the Bible might go like this: a conflict arises between two parties, a winner prevails, and the Biblical storyline follows the winner.

We see the literary structure of a zero-sum conflict used in many contemporary books as well. In the best-selling children's series, *Harry Potter* and *The Hunger Games*, zero-sum framings lie at the core of the conflicts. In Harry's battle against the evil Lord Voldemort, it is prophesized that, "[E]ither must die at the hand of the other for neither can live while the other survives."⁵⁷ In the dystopian *Hunger Games*, the rule of the televised spectacle was to kill or be killed; as with the ancient Roman gladiators, the games were a battle to the death.⁵⁸ Beginning with the Bible and continuing to this day, zero-sum conflicts make for powerful drama. Sto-

[W]e've reached a stage in history where the movement toward moral truth has to become globally momentous. Technology has made the planet too small, to finely interdependent, for enmity between large blocs to be in their enduring interest. The negative-sum side of the world's non-zero-sumness is too explosively big to be compatible with social salvation. In particular: in any envisioned "clash of civilizations" between Islam and the West, neither side can realistically hope for conquest.

So if the God of the Abrahamic faiths is to keep doing what he has often managed to do before—evolve in a way that fosters positive-sum outcomes of non-zero-sum games—he has some growing to do.

ROBERT WRIGHT, *THE EVOLUTION OF GOD* 436–37 (2009). See also Robert Wright, *NON-ZERO: THE LOGIC OF HUMAN DESTINY* (2000) (depicting the rise of non-zero-sum dynamics as a central force in human history).

⁵⁶ Such zero-sum, moral tales often have a simplistic quality to them. As with many children's stories, frequently the "good" characters are all or mostly good and the "bad" characters are all or mostly evil. Nevertheless, the stories can be quite gripping, as the reader identifies with the moral hero battling an evil foe or otherwise being tested.

⁵⁷ J.K. ROWLING, *HARRY POTTER AND THE ORDER OF THE PHOENIX* 841 (2003).

⁵⁸ SUZANNE COLLINS, *THE HUNGER GAMES* 18 (2008) ("The rules of the *Hunger Games* are simple . . . The twenty-four [competitors] will be imprisoned in a vast outdoor arena . . . [and over] a period of several weeks, the competitors must fight to the death. The last [competitor] standing wins."). While the *Hunger Games* series does make use of the zero-sum-game motif, its heroine Katniss can be understood as challenging that zero-sum game and, more broadly, the social structure. Not only does she find a way to circumvent the games' ordinary rules and have two contestants survive (both she and her friend Peeta (*Id.* at 344–45)), but author Collins suggests that challenging the zero-sum structure of the games was central to Katniss's heroism. See SUZANNE COLLINS, *CATCHING FIRE* 19 (2008) ("All I [Katniss] was doing was trying to keep Peeta and myself alive. Any act of rebellion was purely coincidental. But when the Capitol decrees that only one tribute can live and you have the audacity to challenge it, I guess that's a rebellion in itself.").

ries teach us many messages. Some of those messages, like the narrative storyline, are explicit. Some of those messages, like the structures framing the storyline, are implicit. At least in Genesis, one of the Bible's most significant implicit messages is that conflicts are often zero-sum affairs.

Does this mean that the zero-sum mindset cannot be changed? Changing the assumptions that people bring to social interactions is not simple, but it is not impossible either. As described above, legal educators specializing in dispute resolution have been challenging this mindset for decades, as have many beyond the legal academy. Does this mean that the goal should be (what I consider the Pollyannaish one) of getting people to believe that zero-sum situations never exist? No. Some situations are no doubt zero-sum ones, and seeing those situations realistically makes sense. That being said, many conflicts have both zero-sum and positive sum elements—that is what makes them complex.⁵⁹ In my view, the goal should be to help people, including lawyers, move beyond the zero-sum-*only* mindset. When situations are not zero-sum, parties and their representatives need a grasp of the negotiation skills, including the communication skills, needed to reach good solutions. Most of us know how to argue, but do we also know how to listen?⁶⁰

Many people, of course, never realize that conflicts can be positive-sum: they simply assume that for one party to win, the other must lose. An interesting example comes from the second edition of Thomas Schelling's seminal work, *The Strategy of Conflict* (for which he, in part, later won the Nobel Prize). Writes Schelling:

[The first edition of *The Strategy of Conflict*] has had a good reception, and many have cheered me by telling me that they liked it or learned from it. But the response that warms me most after twenty years is the late John Strachey's. John Strachey, whose books I read in college, had been an outstanding Marxist economist in the 1930s. After the war he had been defense minister in Britain's Labor Government. Some of us at

⁵⁹ See generally Jonathan R. Cohen, *Adversaries? Partners? How About Counterparts? On Metaphors in the Practice and Teaching of Negotiation and Dispute Resolution*, 20 CONFLICT RESOL. Q. 433 (2003).

⁶⁰ On the need to foster a culture of dialogue rather than debate generally, see DEBORAH TANNEN, *THE ARGUMENT CULTURE: FROM DEBATE TO DIALOGUE* (1988). On the importance of listening in conflict resolution specifically, see Robert H. Mnookin et al., *The Tension between Empathy and Assertiveness*, 12 NEGOT. J. 217 (1996); Jonathan R. Cohen, *Open-Minded Listening*, 5 CHARLOTTE L. REV. 139 (2014).

Harvard's Center for International Affairs invited him to visit because he was writing a book on disarmament and arms control. When he called on me he exclaimed how much this book had done for his thinking, and as he talked with enthusiasm I tried to guess which of my sophisticated ideas in which chapters had made so much difference to him. It turned out it wasn't any particular idea in any particular chapter. Until he read this book, he simply had not comprehended that an inherently non-zero-sum conflict could exist.⁶¹

Until it was pointed out to him, Strachey never realized that non-zero-sum conflicts could exist. At one level, that may sound humorous, but at another level, it shows how terribly important fostering awareness of the zero-sum mindset is. That a former defense minister of the British government never understood that conflicts could have positive-sum elements is a grave situation. Indeed, while the faces of those in power have changed with the passing of time, the mindset of many behind those faces may well remain the same.

Changing how people perceive the world is far from easy, but it is very important. The mindsets people hold may influence not only how they respond once a conflict has arisen (e.g., whether they will use adversarial approaches geared toward distribution or cooperative approaches geared toward integration), but also whether conflicts arise in the first place. Put differently, zero-sum beliefs about the world may both generate conflict and may also impact conflict resolution. Sometimes parties' beliefs about the world may act like self-fulfilling prophecies: when they believe the world is zero-sum rather than positive-sum, they become more distrustful, which in turn makes combat more likely, which in turn reinforces their zero-sum mindsets, and so on—a vicious cycle, so to speak. Raising awareness of the zero-sum mindset may help in resolving conflicts more cooperatively and also in preventing some conflicts from arising in the first place. This is not to say that zero-sum situations never exist, but perhaps that they are more rare than parties tend to think. If so, to see more peace in our outer world, we would do well to consider our inner mindsets.

⁶¹ SCHELLING, *supra* note 19, at vi.