Pracademics

Making Negotiation Theory Implemented, Interdisciplinary, and International

Andrea Kupfer Schneider[*]

Abstract

Negotiation can be thought of as the tool that facilitates conflict engagement and resolution. As part of, and yet different from, conflict theory, negotiation theory has had a separate parallel development in the last 30 years. The challenges for negotiation theory in the future are similar to those found in the broader conflict theory – ensuring that negotiation theory can be implemented by practitioners; making sure that negotiation theory draws upon a multitude of disciplines; and includes theories, experiences and culture from around the world. The development of negotiation theories in law schools – where communication to resolve disputes is part of the job description – highlights the importance of pracademics and demonstrates how we need effective theories to engage in conflict.

The challenge of negotiation theory is one that I have been happy to think about for the past 20 years. And, in a year in which my mentor Roger Fisher passed, I am even more delighted to take this opportunity to both reflect backwards on what influenced my thinking as well as project forward to what I believe are the key challenges in evolving negotiation theory.

1. Negotiation Theory as Part of Conflict Theory and Engagement

As part of the inaugural issues of the *International Journal of Conflict Engagement and Resolution*, colleagues have focused on the history of conflict theory, the current definition and scope of conflict theory, as well as future challenges. In some ways, this essay is similar, focusing more particularly on my personal reflections of the field of negotiation and outlining future directions that the field of negotiation should address. On the other hand, by focusing solely on negotiation theory and, in particular, how lawyers view negotiation, the subject is narrower.

Negotiation is one tool by which one arena of conflict theory operates. What do I mean by this? Conflict theory generally operates to categorize types of con-

---

[*]   Andrea Kupfer Schneider is Professor of Law and Director of the Dispute Resolution Program, Marquette University Law School. Many thanks to the faculty and students at the Conflict Management, Resolution, and Negotiation Program at Bar Ilan University where I first presented this material for their comments and helpful suggestions and to Larry Susskind for the use of the great word "Pracademic" to describe the linkage between theory and practice.

flicts (Menkel-Meadow, 2003), explain why conflicts occur, or perhaps to outline how people and countries should handle conflict (Follett, 1995; Schelling, 1960).

But to move to conflict engagement, as this journal encourages us to do (Alberstein and Rothman, 2013), one must engage the other. This engagement often occurs through negotiation – the communication between parties to discuss and perhaps resolve the conflict. Negotiation is the implementing tool. Negotiation theory can be viewed alternately as a subset of conflict theory, as the activist branch of conflict theory, or perhaps as a separate field that can inform and impact conflict theory. Whichever might be one's assumptions about this relationship, it is clear that these theories are inextricably linked, that historically they have developed and evolved by influencing one another (see the impact of *Getting to Yes* on the larger field) (Menkel-Meadow, 2013), and that each can, and should (even now), evolve progressively by complementing each other. This essay will focus on three challenges – making negotiation theory implemented, interdisciplinary, and international – each of which had to be faced in the development of negotiation theory historically. It will also assess how the field is meeting those challenges today.

2. Negotiation Theory Implemented—or How Lawyers Linked Theory to Practice

Negotiation theory arguably started with either Mary Parker Follett in the 1920s or Richard Walton and Robert McKersie in the 1960s, who, respectively, wrote on negotiation strategy in the business or labour markets. Negotiation theory as a separate field really started in the late 1980s, when negotiation classes became stand-alone classes at many law and business schools. A fuller curriculum was developed, and while this is concurrent with the development of alternative dispute resolution as a field, the development of negotiation theory was not necessarily the same, nor was it fuelled by the same goals.

Early negotiation classes included a diverse set of readings ranging from law – both the more integrative approach (Fisher et al., 1981; Menkel-Meadow, 1984) and the more competitive approach (White, 1967) – to business (Lax and Sebenius, 1986; Raiffa, 1982), to international relations (Axelrod, 1984), and to classic game theory (Schelling, 1980). The challenge in these courses was to distill the theory from these writings and teach specifically what lawyers were supposed to do while representing a client.

The lawyer's focus on advocacy, and on solving the problem with which the client arrived, gives immediacy to negotiation theory. As Tamra Pearson d'Estrée has written, effective professional education in conflict resolution must combine both theory and practice (D'Estrée, 2013). And negotiation workshops, which are widely taught at law schools, bring a 'practicum' approach to teaching: pushing students to reflect, learn, and integrate the theories of negotiation as they develop the skills to implement it (Argyris and Schön, 1974/1992).

Broad questions posed in conflict theory – "from where does this dispute arise?" "what are the systemic causes?" "how might we better alleviate this in the

Andrea Kupfer Schneider

future?" – have their place in legal teaching as reflected in courses on legislation, policy, and even court reform. These queries, however, are not as salient for the day-to-day responsibilities of the legal practitioner. And so the focus of negotiation theory as taught by legal scholars has been to make the theory immediate and useful (Menkel-Meadow et al., 2011; Riskin et al., 1987).

2.1 Theory into Practice

The Negotiation Workshop at Harvard Law School (now modelled across the country) is a clear example of how this translation from theory into practice operated. In fact, in the first week of class, students would learn about the Circle Chart – a tool for demonstrating the importance of both theory and practice or the importance of thinking in theory and in reality.[1] Professor Roger Fisher would start by pointing out that many times when we have a headache, we take aspirin. We go immediately from problem (headache) to solution (aspirin). But more complicated medical problems take a more thorough approach. A recurring stomach pain, for example, needs a diagnosis – what, in theory, could be causing the pain. Then, still in theory, what might be several approaches to fixing the pain. Only after assessing several approaches, would we move to the more specific action plan of what to do tomorrow to fix the person's pain.

Circle Chart
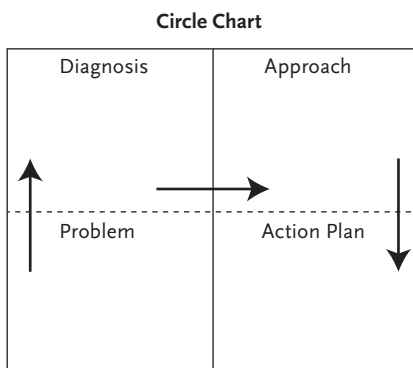
Similarly, for conflict, Roger explained that we should be methodical in combining theory and practice. What is the problem at hand? What is the theoretical diagnosis for that problem? What might we do about it? And then, in reality, what can someone do tomorrow?

Roger always taught that there was the theoretical world and the real world – problems and solutions occur in the real world but solutions devoid of careful thinking in theory were only going to be as simple as the headache–aspirin analogy. For anything more complicated, a lawyer would want a careful diagnosis and theoretical approach before designing a specific answer to the problem.

My own journey in negotiation began during my first year of law school when I took the negotiation workshop with Bruce Patton, which continued the next

---

1   Fisher et al, *Getting to Yes*, p. 69.

year when I became Roger's research assistant.[2] Theories were only as good as they were practical – and this directly came from the top. Roger's own experience was to put theory into practice, derive and edit the theory from practice, and so forth. It was a constant cycle. His early books were clear examples of this concept. *Dear Arabs, Dear Israelis* (Fisher, 1972), was a compilation of letters that he had sent to leaders in the Middle East in 1971, prior to the Yom Kippur War in 1973. His book, *International Mediation: A Working Guide* (Fisher and Ury, 1978), was also filled with practical advice for what mediators in these high-stakes international situations could do. *Getting to Yes* (Fisher et al., 1981) built on all of this very practical advice. Roger derived his working theory from what he could see effectively being used in practice.

This challenge of pracademics – connecting theory to practice – remains an ongoing and crucial focus for the field today (Susskind, 2013). If what we teach in a negotiation classroom cannot help our students become more effective in the real world, both students and teachers are all wasting their time.

2.2 Is Getting to Yes Getting It Right?

For me, this connection has continued throughout my career. My first major work in negotiation was a study on how lawyers negotiate (Schneider, 2002). My working title was 'is getting to yes getting it right?' In other words, was what we teach in theory actually working for real lawyers in practice? The study was based on an earlier study done by Gerry Williams asking lawyers about their most recent negotiation experience, regardless of how that turned out, and asking one lawyer to describe the opposing lawyer (Williams, 1983). The survey also asked lawyers to rate the other lawyers for effectiveness.

In January 1999, the survey was sent out to 2,500 randomly selected lawyers in the Milwaukee and Chicago metropolitan areas. It had a 29% response rate with a broad mix of practice areas (Schneider, 2002). In early articles, I discussed how it appeared that lawyer negotiations had changed compared with the original Williams study using his original division of lawyers into competitive and cooperative lawyers (Schneider, 2000). (In short, the number of competitive lawyers had grown slightly.) More importantly, the descriptions of these competitive lawyers were far more negative. These negotiators were also rated as far less effective. Outlining much of the stylistic findings of the study, I focused on how the descriptions of the lawyers – in two, three, four, and five groups – were different and how these differences were reflected in effectiveness ratings. There were numerous interesting lessons. For example, the adjective linked most closely to effectiveness was 'ethical'. Unethical adversarial negotiators were rated by their peers as less effective than ethical adversarial negotiators. Participants were

---

2   Roger Fisher and Bruce had designed this course (still the model for how I and many others teach negotiation around the country) and, while Roger was on sabbatical, Bruce was teaching the course. I loved it, decided to become more involved in the program, and became Roger Fisher's research assistant for my second and third years of law school. As I have described in the *Negotiation Journal,* working for Roger was a life-shift (Schneider, 2013).

Andrea Kupfer Schneider

encouraged to write several lines explaining their decision (and these decisions were often clearly justified – i.e., the judge yelled at them or they got less at trial).

Much of the early writing on negotiation focused on the difference between competitive and cooperative negotiators (Williams, 1983) or adversarial and problem-solving (Menkel-Meadow, 1984) or hard bargaining versus principled (Fisher et al., 1981). Perhaps this reflected the thinking of labour relations or theories of how to engage during the Cold War or even the model of the Prisoner's Dilemma. The revolution of *Getting to Yes* and Carrie Menkel-Meadow's focus on problem-solving was pointing out that the competitive approach was only one choice – the problem-solving alternative was a legitimate and effective negotiation strategy (and likely already used by many wise lawyers but unlabelled as such) (Macaulay, 1963). Much teaching in the 1980s and 1990s focused on how to teach this collaborative approach to negotiation and how to ensure that students had the skills necessary to implement these approaches.

When examining the results of my study, therefore, I was not surprised to see the effectiveness gap between adversarial and problem-solving negotiators. The biggest lesson for me going forward was the difference between the two groups that I had labelled cautious and true problem-solvers. The cautious problem-solvers were all described positively, but had very few adjectives describing them. The true problem-solvers had all of those same adjectives – and had about 30 more adjectives also describing them. This difference was apparently important as the true problem-solvers were perceived as 75% effective by their peers while the cautious problem-solvers were only perceived as 25% effective. Of the cautious problem-solvers , 62% were perceived as average (Schneider, 2002).

What made up this difference? The true problem-solvers started with the same base of ethics and personality but then apparently added skills in assertiveness, empathy and flexibility. The adjectives and tactic descriptions that made up the difference between true and cautious problem-solvers were revealing in terms of the additional behaviours that effective negotiators needed to engage in – i.e. they needed to be more than experienced, they needed to be astute, rational and communicative (Schneider, 2002). Negotiators needed to be more than trustworthy; they also needed to be perceptive, fair-minded and helpful.

Effective Negotiation Skills

Assertiveness (Speaking)

Empathy (Listening & Inquiry)

Creativity (Inventing)
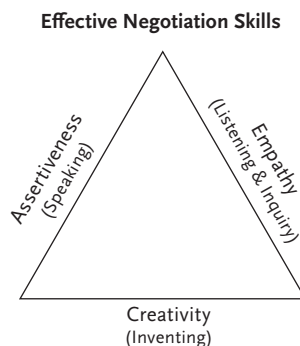
2.3 Teaching Skills Based on Theory

I have outlined these three skills as assertiveness, empathy and creativity and focused much of my teaching in the last decade on this framework. More recently, I have turned back to the negotiation style debate (Schneider, 2012). It is clear that our negotiation literature is replete with discussions over the most effective styles (e.g. Condlin, 2008; Craver, 2010). This debate – whether the most effective style is true problem-solving, competitive problem-solving, or nice competitive, etc. – come from the concern that style choices are missing many of the nuances we should be focusing on. We need to give students the skills to negotiate well, regardless of how we categorize the styles that those choices might fall under. This revamping adds two important elements that our style debate does not surface – ethics and social intuition (Reilly, 2010; Schneider, 2012).
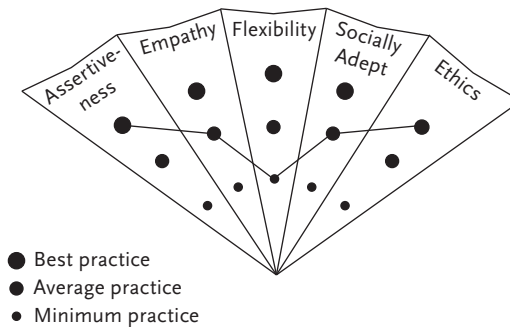
And, to make these skills more practical for students, I devised a scale so that we can teach skills on a continuum from minimum to average to best. For example, knowing your BATNA is a minimum skill, attaching a reservation point to that BATNA could be considered an average skill, and figuring out how to improve your own BATNA while in the midst of a negotiation would be an example of best practices. I give examples for each of these skills elsewhere (Schneider, 2012). The challenge for all of us moving forward is to continue to unpack what skills are needed for effectiveness, to test this empirically, and to teach these to students in ways they can implement.

3. Making Negotiation Theory Interdisciplinary

A second challenge for the field of both negotiation and conflict engagement is the continuing effort to include a variety of disciplines. Built by economists, social psychologists, sociologists and anthropologists, negotiation had a complex body of knowledge even in the 1960s. Early writing in negotiation focused on labour negotiations (Walton and McKersie, 1965), international diplomacy (Schelling, 1960) and game theory (e.g., Luce and Raiffa, 1957; Siegel and Fouraker, 1960; Shapley et al., 1964). As discussed above, the move to law school changed the focus of the approach slightly as more law professors wrote in the

Andrea Kupfer Schneider

area; but then, throughout the 1990s, more elements were added to the negotiation theory mix. Cognitive barriers, addressed by a group of psychologists and economists primarily located at Stanford (e.g. Kenneth Arrow, Daniel Kahneman, Amos Tversky and Lee Ross), were first compiled in *Barriers to Conflict Resolution* (Arrow et al., 1995) and then widely translated into shorter applications and experiments through their students' efforts (e.g. Korobkin and Guthrie, 1997) as well as the work of other psychologists who focused on the elements of persuasion (e.g. Cialdini, 1993).

A sharpened focus on internal negotiations and emotions also occurred, as the well-known 'interpersonal skills exercise' from the Program on Negotiation – developed with trained psychologists – led to rethinking about what makes negotiations difficult (Stone et al., 1999) as well as new consideration of mood (Freshman et al., 2002) and emotions (Fisher and Shapiro, 2005; Nelken, 1996; Nelken et al., 2010). Similarly, experts from the education field were also consulted about adult learning, how to teach skills that stick, and other pedagogical tools (summarized in McAdoo and Manwaring 2009; Manwaring et al., 2010).

By the early 2000s, negotiation training was expanding again, this time to include hard sciences (summarized in Yarn and Jones, 2006), complex adaptive systems, a larger array of types of psychology (Shestowsky, 2006) and more from anthropology, particularly in terms of thinking about cultural differences. In most negotiation courses today – and in negotiation textbooks – students could well be reading the classics listed above plus an array of game theory (Brams, 2003), cognitive psychology (Gladwell, 2000; Levitt and Dubner, 2006; Thaler and Sunstein, 2009), neuroscience (Ariely, 2010), emotion (Fisher and Shapiro, 2005; Goleman, 1995), anthropology and more.

3.1 Implementing Interdisciplinary Theory

The challenge is to continue to integrate all of these streams while continuing to make them actually useable and implementable. I learned about this challenge when I was teaching negotiation with Robert Mnookin at Stanford Law School. Bob and other colleagues had created the Stanford Center on Conflict and Negotiation focusing on economics, psychology (in what became the field of cognitive psychology or behavioural economics), business and others.[3] So it was at Stanford that I was introduced more carefully to the idea of multiple disciplines impacting negotiation and conflict theory. Stanford's contribution was twofold: first, two key graduates – Chris Guthrie and Russell Korobkin – focused on empirically testing some of the concepts outlined by the cognitive psychologists and brought this work more clearly into the law school mainstream (Korobkin and Guthrie, 1997). The second lesson was that, without this type of translation, this very important work did not get utilized across disciplines.

---

3   The Program on Negotiation had this type of interaction as well with luminaries such as Jeff Rubin, Larry Susskind, Deborah Kolb, Michael Wheeler, Howard Raiffa and others but, being a law student and focused on the law, I am afraid to say that I did not realize all that the Program provided until later.

Barriers to Conflict Resolution, for example, was published with contributions from widely respected academics. However, these chapters were not broadly excerpted into law textbooks or assigned for class reading – the language used was still too discipline-specific and not sufficiently clear to be used in classes or trainings. Only after their work was put into 'English' would these theories gain wider currency in the law school curriculum. (Note, that this was also true for the entire field of behavioural economics – it took some popular literature, blogs and magazine articles into the early 2000s before psychological phenomena like tipping point [Gladwell, 2002], freakonomics [Levitt and Dubner, 2009] and others hit the mainstream.)

When I returned to Washington, DC, for several years to practice law, this lesson on interdisciplinary approaches remained with me. I was able to join the regular lunch meetings with such political science and international relations heavyweights as Bill Zartman, Saadia Touval and others who formed the core of those connected with the *International Negotiations*. They also connected me with diverse ICAR faculty (explained in Avruch, 2013) and, through Saadia's recommendation, landed me a job at the Elliot School of International Affairs in the political science department at George Washington University. This year of teaching before leaving to teach at Marquette Law School grounded me in political science and my early articles on international relations and conflict linked classic international relations theory with dispute resolution theory (e.g. Schneider, 1999).

The importance of an interdisciplinary approach was also crucial in co-authoring my dispute resolution textbook. Particularly, in working on the negotiation and international chapters, my co-author Carrie Menkel-Meadow brought her encyclopaedic knowledge of the field of conflict resolution to the forefront.

3.2 A Growing 'Canon' of Negotiation

Finally, while working with Christopher Honeyman – who had been funded by the Hewlett Foundation to examine the link of theory to practice (Cheldelin et al., 2002/2003) – we decided to host a conference at Marquette in 2003 to examine the current state of interdisciplinary negotiation theory. After gathering professors in law, architecture, public policy, international relations, business, philosophy and psychology, we found that there were only six concepts that flowed across all of the disciplines:

1. The concept of a personal style or strategy in the negotiation (Schneider, 2002; Williams, 1983).
2. The importance of communication skills – both listening and talking (Putnam, 2006).
3. The concept of integrative versus distributive negotiations (Fisher et al., 1981; Raiffa, 1982).
4. The concept of a bargaining zone between the parties, the idea of a BATNA and reservation prices (Fisher et al., 1981).
5. The importance of brainstorming and option creation in negotiations.
6. The importance of preparation for the negotiation (Honeyman and Schneider, 2004).

Andrea Kupfer Schneider

But the idea of a 'canon', as it stood at the time, only referred to the sharply limited list of items then taught across *all* negotiation classes. Logically enough, each field in which negotiation was being taught already used much more material developed within its own discipline: it just was not the same material across fields. Moving past those concepts, we realized that we found a whole series of topics not covered in each other's classes. Some of this had to do with definitions – the concept of framing an argument in law school negotiation classes was quite different than the concept of the frame of the dispute as it is taught in public policy schools. Some of this had to do with the requirements of the discipline. For example, while ethics or morality was taught across the board, legal ethics and the rules connected to it was unnecessary in an international relations class. And yet some of these 'missing' concepts were missing just because those of us in one discipline had not yet been introduced to the concept regularly being taught in another discipline.

The *Marquette Law Review* symposium issue started this attempt to inform an audience, at least a law school audience, what other subjects should be considered for inclusion. New subjects included action science (based on education theory) (Moffitt and Peppet, 2004), complexity theory (Hughes, 2004), theory of the mind (Sally, 2004) and others. Subjects that had already started to make their way into law teaching – emotions, apology, heuristics, decision analysis, game theory and others – were also further explored.

The project so galvanized us that we then moved to a bigger venue, creating *The Negotiator's Fieldbook* with 80 chapters by 80 authors (Schneider and Honeyman, 2006). The Fieldbook includes luminaries in dispute resolution writing in their particular field (Morton Deutsch on social conflict, for example) (Deutsch, 2006) and newer academics translating classic theory into a new generation. The key to the project was that each chapter was to be written in approximately five pages with as few footnotes as possible. Our reasoning was that we wanted these ideas to be implemented. The failure of the Barriers book to be used in law school classrooms ten years earlier was a strong lesson for us. Another interesting element of the Fieldbook was that we tried to expand the contexts in which we saw negotiations operating and take lessons from that. So chapters in the Fieldbook discuss lessons from hostage negotiations (Taylor and Donohue, 2006), the military (Lira, 2006), indigenous conflict (Goh, 2006) and even negotiating for the last seat on an oversold airplane (Dingwall and Menkel-Meadow, 2006). This challenge of collecting the best theories on negotiation from multiple disciplines and finding ways to inform other disciplines about them is ongoing for the field.

4.   Making Negotiation Theory International

The third challenge in current negotiation teaching is to make sure that our theory builds on expertise from all around the world. As an initial challenge, not many law schools around the world teach negotiation and, of course, language is an ongoing barrier. Scholars have responded to this challenge in two ways. First, scholars focus on cultural differences around the world. Culture as a variable in

negotiation has been well addressed (e.g., Avruch, 2012), and the importance of understanding cross-cultural differences has also been examined (Chew, 2001). The second way of meeting this challenge has been to write about international conflict as well. And the field is clearly cognizant of the importance of reaching out to scholars around the world (see IACM in general and the ensuing journals; see also *International Negotiation*). After the Fieldbook was published, one of the most salient critiques was that the book was still rather Western and particularly U.S.-centred. And it was true – we had authors from the United States, Britain, Australia, and Israel – but these were all Western understandings of conflict.

Building on the interdisciplinary work already done with the Fieldbook, other scholars used the *Rethinking Negotiation Theory* series of meetings and books to go overseas. Through a series of three meetings – in Rome, Istanbul, and Beijing – and four books, the struggle to integrate international thinking continues. Personally, I have gained some fascinating insight into topics I already teach. For example, when presenting on gender differences in negotiation in Istanbul, it was crucial to recognize the difference in cultures and law that define the problem (Schneider et al., 2009). Not surprisingly, advice we might give for dealing with a particular situation in the United States would be different if we were in Turkey. I think we all know this: it is just that sometimes we need to hear that and interact with others in order to recognize the limits on our own thinking. At the meeting in Beijing, I was struck by the difference in how deception in the negotiation was handled by U.S. law students versus their Chinese counterparts. The resulting book chapter– written with two Chinese co-authors – explores where both legal and philosophical differences would result in different expectations and different behaviours (Schneider et al., 2012).

For me, having started my academic career writing on international conflict, it is easy to remember to look overseas. But it is more than writing about an international situation – be it the World Trade Organization, or the investor – state arbitration system, or even adjudicating human rights violations. To keep our thinking international, it also requires us to continually ask how others – those with different cultures, different assumptions, different histories – might respond to what we are teaching (Avruch, 2013).

5. Conclusion

The challenge for negotiation theory, like the broader theories of conflict engagement, is how to meet these challenges simultaneously. This is more than a question of depth versus breadth. If the field of conflict theory is changing into a field of conflict engagement, the primary interventionist tool of this field – negotiation – must meet the challenge of remaining relevant and utilized,[4] while building on the best of all disciplines and the best of all thinking from around the world.

---

4   *How Can We Teach So It Takes?* (with Christopher Honeyman and Scott Hughes) 20 *Conflict Resolution Quarterly* 429-433 (Spring 2003); *Why don't they listen to us? The Marginalization of Negotiation Wisdom* (with Sanda Kaufman and Christopher Honeyman) in Négociation et tranformations du monde (Christophe Dupont ed.) (Editions Publibook 2007).

Andrea Kupfer Schneider

And this field must do more than give the same tired advice. We must continue to build on the stepping stones – the canon of negotiation – while adding more to ensure that the theory is interdisciplinary, international and, above all, implemented.

References

Alberstein, M. & Rothman, J. (2013). Taking stock of the field: Past, present and future. An introduction. *International Journal of Conflict Engagement and Resolution*, *1*(1), 3-9.

Argyris, C. & Schön, D. (1974/1992). *Theory in practice: Increasing Professional Effectiveness*. San Francisco, CA: Jossey-Bass.

Ariely, D. (2010). *The upside of irrationality: The unexpected benefits of defying logic at work and at home*. New York: Harper.

Arrow, K.J., Mnookin, R.H. & Tversky, A. (Eds.). (1995). *Barriers to conflict resolution* (1st ed.). New York, NY: W.W. Norton.

Avruch, K. (2012). *Culture and Conflict Resolution*. Washington D.C.: United States Institute of Peace Press.

Avruch, K. (2013). Does our field have a centre? *International Journal of Conflict Engagement and Resolution*, *1*(1), 10-31.

Axelrod, R. (1984). *The evolution of cooperation*. New York: Basic Books.

Brams, S.J. (2003). *Negotiation games: Applying game theory to bargaining and arbitration*, rev. edn. New York: Routledge.

Cialdini, R.B. (1993). *Influence: the psychology of persuasion*. New York: William Morrow.

Cheldelin, S., Greenberg, M., Honeyman, C. & Volpe, M. (2002/2003). Two special issues, containing nineteen articles responding to the 2002 Hewlett Theory Centers Conference developing feedback from practice expertise into new scholarship; a collaboration between Honeyman's Theory to Practice Project, two of the Hewlett Theory Centers, and the Hewlett Foundation. *Negotiation Journal*, *18/4 & 19/1*.

Chew, P. (Ed.). (2001). *The conflict and culture reader* (1st ed.). New York, NY: NYU Press.

Craver, C. (2010). What makes a great legal negotiator? *Loyola Law Review*, *56*.

Condlin, R. (2008). Bargaining with a hugger: The weaknesses and limits of a communitarian conception of legal dispute bargaining, or why we can't all just get along. *Cardozo J. of Conflict Res, 9,* 301.

D'Estrée, T.P. (2013). Conflict resolution as a profession and the need for communities of inquiry. *International Journal of Conflict Engagement and Resolution*, *1*(1), 83-95.

Deutsch, M. (2006). Internal and external conflict. In A.K. Schneider and C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC: ABA Section on Dispute Resolution Press.

Dingwall, R. & Menkel-Meadow, C. (2006). The last plane out. In A.K. Schneider and C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC: ABA Section on Dispute Resolution Press.

Fisher, R. (1972). *Dear Israelis, dear Arabs; A working approach to peace* (1st ed.). New York, NY: Harper & Row.

Fisher, R. & Shapiro, D. (2005). *Beyond reason: Using emotions as you negotiate*. New York: Penguin.

Fisher, R. & Ury, W. (1978). *International mediation: A working guide: Ideas for the practitioner*. New York, NY: International Peace Academy.

Fisher, R., Ury, W. & Patton, B. (1981). *Getting to yes: Negotiating agreement without giving in*. Boston, MA: Houghton Mifflin.

Follett, M.P. (1995). Constructive conflict. In P. Graham (Ed.), *Mary Parker Follett – Prophet of management: A celebration of writings from the 1920s*. Boston, MA: Harvard Business School Press.

Freshman, C., Hayes, A. & Feldman, G. (2002). The lawyer-negotiator as mood scientist: what we know and don't know about how mood relates to successful negotiation *Journal of Dispute Resolution* 1.

Gladwell, M. (2000). *The tipping point: How little things can make a big difference* (1st ed.). Boston, MA: Back Bay Books.

Goh, B.C. (2006). Typical errors of westerners. In A.K. Schneider & C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC: ABA Section on Dispute Resolution Press.

Goleman, D. (1995). *Emotional intelligence: why it can matter more than IQ*. New York: Bantam Books.

Honeyman, C. & Schneider, A.K. (2004). Introduction: catching up with the major-general: the need for a "canon of negotiation." *Marquette Law Review*, *87*, 637-648.

Hughes, S. (2004). Understanding conflict in a post-modern world. *Marquette Law Review, 87,* 681-690.

Andrea Kupfer Schneider

Korobkin, R. & Guthrie, C. (1997). Psychology, economics, and settlement: A new look at the role of the lawyer. *Texas Law Review*, *76,* 77-140.

Lax, D.A. & Sebenius, J.K. (1986). *The manager as negotiator: bargaining for cooperation and competitive gain*. New York: Free Press.

Levitt, S.D. & Dubner, S.J. (2006). *Freakonomics: A rogue economist explores the hidden side of everything*. New York, NY: Harper Perennial.

Lira, L.J. (2006). The military learns to negotiate. In A.K. Schneider & C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC: ABA Section on Dispute Resolution Press.

Luce, R.D. & Raiffa, H. (1957). *Games and decisions*. New York, NY: Wiley

Macaulay, S. (1963). Non-contractual relations in business: A preliminary study. *American Sociological Review*, *28*(1), 55-67.

Manwaring, M., McAdoo, B. & Cheldelin, S. (2010). Orientation and disorientation: Two approaches to designing "authentic" negotiation learning activities. In C. Honeyman, J. Coben, & G. De Palo (Eds.), *Venturing beyond the classroom: Volume 2 in the rethinking negotiation teaching series*, St. Paul, MN: DRI Press.

McAdoo, B. and M. Manwaring. 2009. Teaching for implementation: Designing negotiation curricula to maximize long-term learning. *Negotiation Journal* 25(2), 195-215.

Menkel-Meadow, C., Love, L., Schneider, A.K. & Sternlight, J. R. (2011). *Dispute resolution – beyond the adversarial model* (2nd ed.), Austin, Boston, Chicago, New York, The Netherlands: Wolters Kluwer.

Menkel-Meadow, C. (1984). Toward another view of legal negotiation: The structure of problem solving. *UCLA Law Review, 31,* 754.

Menkel-Meadow, C. (2003). Introduction: From legal disputes to conflict resolution and human problem solving. In C. Menkel-Meadow (Ed.), *Dispute processing and conflict resolution: theory, practice and policy*. Aldershot, UK: Ashgate/Dartmouth.

Menkel-Meadow, C. (2013). The historical contingencies of conflict resolution. *International Journal of Conflict Engagement and Resolution*, *1*(1), 32-55.

Moffitt, M. & Peppet, S.R. (2004). Action science: Action science and negotiation. *Marquette Law Review*, 87.

Nelken, M.(1996). Negotiation and Psychoanalysis: If I'd Wanted to Learn About Feelings, I Wouldn't Have Gone to Law School, *Journal of Legal Education*, 46, 420.

Nelken, M., A. K. Schneider, and J. Mahaud. (2010). If I'd wanted to teach about feelings I wouldn't have become a law professor. In *Venturing beyond the classroom: Volume 2 in the*

rethinking negotiation teaching series, C. Honeyman, J. Coben, and G. De Palo (Eds.). St. Paul, MN: DRI Press.

Putnam, L. L. (2006). Communication and interaction patterns. In A. K. Schneider and C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC: American Bar Association.

Raiffa, H. (1982). *The art and science of negotiation.* Cambridge, MA: Belknap Press.

Reilly, P. (2010). Mindfulness, emotions, and mental models: Theory that leads to more effective dispute resolution. *Nevada Law Journal*, *10*(2), 7.

Riskin, L., Westbrook, J.E., Guthrie, C., Reuben, R.C., Robbennolt, J.K. & Welsh, N.A. (1987). *Dispute resolution and lawyers* (4th ed.) Belmont, CA: West, a Thomson business.

Sally, D. (2004). Social manuevers and theory of mind. *Marquette Law Review*, *87,* 893-902.

Schelling, T.C. (1980). *The strategy of conflict*. Cambridge, MA.: Harvard University Press.

Schneider, A.K. (1999). Getting Along: The Evolution of Dispute Resolution Regimes in International Trade Organizations. *Michigan Journal of International Law, 20:4, 199.*

Schneider, A.K. (2000, Summer). Perception, reputation and reality: An empirical study of negotiation skills. *Dispute Resolution Magazine*.

Schneider, A.K. (2002). Shattering negotiation myths: Empirical evidence on the effectiveness of negotiation style. *Harvard Negotiation Law* Review, 7, 143-233.

Schneider, A.K. (2012). Teaching a new negotiation skills paradigm, *Washington University Journal of Law & Policy, 39,* 13.

Schneider, A.K. (2013). Beyond Theory: Roger Fishers's Lessons on Work and Life, *Negotiation Journal*, 29, 171.

Schneider, A.K., Cheldelin, S. & Kolb, D. (2009). What travels: Teaching gender in cross-cultural negotiation classrooms. In C. Honeyman, J. Coben & G. De Palo (Eds.), *Venturing beyond the classroom, Vol. 2 in the Rethinking Negotiation Series*. Saint Paul, MN: DRI Press.

Schneider, A.K., Deason, E., Chen, D. & Xiahong, Z. (2012). Ethics in legal negotiation: A cross cultural perspective. In C. Honeyman, J. Coben & A.W. Lee (Eds.), *Educating negotiators for a connected world*. Saint Paul, MN: DRI Press.

Schneider, A.K. & Honeyman, C. (Eds.). (2006). *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC. ABA Section on Dispute Resolution Press.

Shapley, L.S., Nash, J.F., Hausner, M. & Shubik, M. (1964). "So long sucker" a four-person game. In M. Shubik (Ed.), Game theory and related approaches to social behavior. New York, NY: John Wiley.

Andrea Kupfer Schneider

Shestowsky, D. (2006). Psychology and persuasion. In A. K. Schneider and C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC: American Bar Association.

Siegel, S. & Fouraker, L.E. (1960). *Bargaining and group decision making: Experiments in bilateral monopoly*. New York, NY: McGraw-Hill.

Stone, D, B. Patton and S. Heen. (1999). *Difficult Conversations: How to Discuss What Matters Most*. New York: Viking.

Susskind, L. (April 2013). Confessions of a pracademic: searching for a virtuous cycle of theory building, teaching, and action research. *Negotiation Journal*, 29:2 225-237.

Taylor, P.J. & Donohue, W. (2006). Hostage negotiation opens up. In A.K. Schneider & C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator*. Washington, DC: ABA Section on Dispute Resolution Press.

Thaler, R.H. and C.R. Sunstein (2009). *Nudge: Improving decisions about health, wealth, and happiness*. New York: Penguin Books.

Walton, R.E. & McKersie, R.B. (1965). *A behavioral theory of labor negotiations: An analysis of a social interaction system*. New York, NY: McGraw-Hill

White, J.J. (1967). The lawyer as negotiator: An adventure in understanding and teaching the art of negotiation. *Journal of Legal Education* 19: 337-354.

Williams, G.R. (1982). *Legal negotiation and settlement* (1st ed.). St. Paul, MN: West Publishing.

Yarn, D. H. and G. T. Jones. (2006). In our bones (or brains): Behavioral biology. In A. K. Schneider and C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experiencep negotiator*. Washington, DC: American Bar Association.