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# CATCHING UP WITH THE MAJOR-GENERAL: THE NEED FOR A "CANON OF NEGOTIATION"

CHRISTOPHER HONEYMAN & ANDREA KUPFER SCHNEIDER*

*I am the very model of a modern Major-General,*
*I've information vegetable, animal, and mineral,*
*I know the kings of England, and I quote the fights historical*
*From Marathon to Waterloo, in order categorical;*
*I'm very well acquainted, too, with matters mathematical,*
*I understand equations, both the simple and quadratical,. . .*
*I can tell undoubted Raphaels from Gerard Dows and Zoffanies,*
*I know the croaking chorus from the Frogs of Aristophanes!. . .*
*Then I can write a washing bill in Babylonic cuneiform,*
*And tell you ev'ry detail of Caractacus's uniform.*[1]

We have it on excellent if unconventional authority that more than a hundred years ago, it was already common knowledge that the education of a competent military officer had to draw from many and varied sources and subjects. What then of his more peaceable counterpart, the negotiator? Does the world really need narrower and less competent negotiators than military officers?

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1. W.S. Gilbert & A. Sullivan, *The Pirates of Penzance* (1879) ("I am the very model of a modern Major-General.").

Negotiation underlies a huge range of social activity and pervades a great variety of supposedly "legal" activity. Research and teaching of negotiation have mushroomed in the past twenty years; by now, an understanding of negotiation's essentiality is supposedly inculcated in many types of undergraduate, graduate, and professional education. Most researchers and teachers in the field maintain that negotiation is a universal phenomenon. Yet the ideas currently taught and researched are based on quite different materials, and significantly different doctrines, in the various disciplines and types of schools, without much effort to determine whether or why this should be so.

We have previously described, and even railed against, the truncated and even arbitrary *structures* of negotiation training. For practical purposes these often seem to assert, at least impliedly, that the subject can be adequately learned in a single graduate or undergraduate course, or even a forty hour crash course.[2] Our focus now changes to the *substantive contents* of these courses. During 2003, we began an effort to assess and highlight those aspects of negotiation that are truly universal, but which have not yet been generally recognized as such because they have emerged from separate streams of scholarship and discovery.

Properly assessing the dimensions of the watershed between these streams would require an extensive study, but the reader can get a quick idea by simple comparison of the subjects addressed in this volume with the respective backgrounds of their (primary) authors: There are systematic biases in the education that each of us has received, in what our teachers thought we needed to know (reflected, of course, in what *they* knew). We, with our colleagues in this volume, believe it is high time to challenge those biases.

We assert that there is a larger picture in negotiation, one that demands a broad common core be understood by *anyone* who claims competence—whether the specific domain in which that competence is to be exercised is a real estate or other business office, an ethnic, religious or international dispute, the "steps of the courthouse" or even—yes—the military, whose future centrality as an agent of negotiation in a number of very difficult disputes seems increasingly likely.[3]

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2. *See* Christopher Honeyman, Scott H. Hughes, & Andrea K. Schneider, *How Can We Teach So It Takes?*, 20 CONFLICT RESOL. Q. 429 (2003). This was the lead article of a series of nine, which sought to expand concepts of training in the field.

3. *See* Christopher Honeyman et al., *Seeking Connectedness and Authority in a Mediator* (forthcoming).

## I. THE LARGER PICTURE

Our field is slowly learning that negotiation is not merely a matter of technique—even though technique, as demonstrated in these essays, can be significantly improved in any subject domain by learning what has been discovered in other domains. Beyond technique, there is the possibility of a shared identity among people, regardless of their immediate subject matter, who have come to appreciate the centrality of negotiation and resolution of conflict throughout their work and lives. Viewed this way, negotiation as subject matter is still broader. It forms the core of a larger social change in how human beings relate to each other. Negotiation offers a more developed way of communicating, of dealing with conflicts at home and in the community as well as at work, a different way of understanding how the world works. At that level, improving the teaching and training of negotiation is a meaning-making enterprise. Developed thus, negotiation as skill set may yet radically transform the self-image of many kinds of professions whose work places their practitioners into conflict situations. Lawyers are merely the most conspicuous example, mostly because their worldview still draws fundamentally from the model of "zealous advocacy," but this larger view even challenges the self-image of "third-party neutrals."[4]

This shift in thinking is not an impossible millennial dream. It is no longer even particularly remote. For their own reasons, some groups and organizations that are traditionally regarded as "highly competitive" are already engaging in actions that fit into this set of concepts. For example, the U.S. Air Force has won awards for its dispute resolution program, initially in the area of military contracting,[5] where its previous methods had resulted in significant public black eyes. A significant reason for the change in methods was the realization that there were so few potential bidders for increasingly high-tech contracts that the Air Force had *no choice* but to teach the companies that compete with each other for its prime contracts to cooperate with each other as well. When the prime contract is awarded, it is now routine for the winning bidder to find it must immediately subcontract large parts of the job to its competitor, just to get the job done on time and to the exacting specification. Subsequently, the Air Force has expanded its

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4. *See* BERNARD MAYER, BEYOND NEUTRALITY: CONFRONTING THE CRISIS IN CONFLICT RESOLUTION (forthcoming 2004). This forthcoming book analyzes the insufficiency of current conceptions of neutral roles.

5. *See* Press Release, Air Force Media Center, Air Force Wins Best New Alternative Dispute Resolution Award (June 2002), *available at* http://216.239.41.104/search?q=cache:9GIwn4O121gJ:www.af.mil/media_center/Apr-Jun2002/0429023.shtml+air+force+dispute+resolution+award+contracting+%22old+executive+office%22&hl=en&ie=UTF-8 (last visited Feb. 9, 2004).

understanding of uses of negotiation into "deployed settings"—e.g., Iraq.[6] Among lawyers, meanwhile, the movement towards validating the use of apology in truly "settling" litigation is another aspect of this kind of shift.[7]

## II. CONTEXT

It should be evident from the preceding discussion that an initiative to create a "canon of negotiation" is inherently ambitious on its own terms. Therefore we should note here that it is not occurring in a vacuum, but as part of a larger strategy. Two ambitious projects, in turn, have led to this effort.

The Theory to Practice Project[8] demonstrated, and made concrete strides to resolve, a pattern in which scholars and practitioners were clearly producing large quantities of new knowledge about human conflict and its resolution, but without effectively integrating theory, research, and practice. The Broad Field project,[9] in turn, is designed to take the next step—formation of a strong, collaborative, continuing network of scholars and practitioners that establishes thorough cross-fertilization, both across academic disciplines and across practice specialties that mostly ignore each other. Without a sustained such effort throughout the broad field of conflict resolution, conflict resolution can never emerge as a true *field* at all; we believe the consequences, to put it mildly, would be adverse. These two successive projects, accordingly, have worked with an array of dedicated partner organizations to create a series of new discussions. Each such discussion has its own immediate purpose; but beyond that, together they try to model forms and degrees of interaction that will create a continuing dynamic toward a true cross-fertilization of the field as a whole.

The projects have benefited enormously from the enthusiasm of a key group of our colleagues. Promisingly, they come from many domains of expertise. One of the project's meetings, for instance, resulted in a coordinated stream of publications that brought to bear perspectives from anthropology, mediation and arbitration practice, law teaching, urban planning, conflict studies, family therapy, physics, and Navajo peacemaking.[10] Another resulted in articles from perspectives of law, mediation and arbitration practice, education, government agency administration, sociology,

6. C.J. Dunlap, Jr. & P.B. McCarron, *Negotiation in the Trenches*, DISP. RESOL. MAG., Fall 2003, at 4-7.

7. *See, e.g.*, Jonathan Cohen, *Legislating Apology: The Pros and Cons*, 70 U. CIN. L. REV. 3 (2001).

8. Described at www.convenor.com/madison/t-t-p.htm.

9. Described at www.convenor.com/madison/broadfld.htm.

10. *See generally* 20 CONFLICT RESOL. Q. 383 (2003) (entire issue).

economics, psychology, engineering, ethics, political science, public policy, community relations, court administration, and religious/ethnic conflict.[11] Taken together, our colleagues' efforts are starting to outline how conflict resolution can truly develop into an integrated "broad field."

We have learned a great deal from these academically interdisciplinary and multi-practice-field initiatives. The substantive outputs (the "whats") are becoming readily visible in the fields' journals; more than forty-five articles have been published in the wake of these discussions in the last eighteen months alone.[12] The series which begins here should therefore be seen as the culmination of a larger effort.

But as noted above, part of the purpose of that effort is to provide a model so that future interdisciplinary efforts will become less daunting to others than they have been in the past. In the next section we will, therefore, briefly describe our methods.[13]

## III. STARTING THE "CANON" INITIATIVE

In the summer of 2003, we invited an initial group of scholars and practitioners to work on developing the "canon." Although we have been fortunate to work on previous occasions with some of the most famous scholars and practitioners this field has produced, in this instance we reserved their participation to a second phase (see below). For purposes of the initial meeting and the writings to come from it, we decided instead to begin with a population that might seem counterintuitive: We invited as the first participants leading members of the field's second generation. These younger scholars and practitioners, unlike those twenty years or more older, got into the field of conflict resolution when it was already *recognizably* a field. Because they had actually been through the initial courses designed by the first generation of leading scholars, they had been required to read materials in depth and recently. We felt that made for an ideal start.

We encountered ready acceptance in a wide variety of settings, inherently an indication that others felt the time was right for this effort. We believe the reader will confirm our opinion that the resulting twenty-five initial essays in the canon would be difficult to improve on at this stage of the field as crisp,

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11. *See generally* 108 PENN. ST. L. REV. 1 (2003) (seventeen articles in entirety).

12. There are too many to describe, or even list, here. Please see www.convenor.com/madison/articles.htm for a reasonably current list.

13. Readers who are ready to tackle the complexities of interdisciplinary meetings themselves will find much more on this theme in *Engineering Broad-based Discussions: Engaging multidisciplinary groups to create new ideas in conflict resolution.* Published as Monograph #1 of the Research Section, Association for Conflict Resolution, 2003, *available at* www.convenor.com/madison/ACRRS1.htm (last visited Feb. 11, 2004).

concise and up-to-the-minute assessments of the respective lines of research and knowledge-building they address. The diversity of backgrounds represented among the authors will be evident to those who peruse the author notes. Here we will remark merely that the fields we have drawn from in scholarship so far include law, psychology, behavioral economics, cultural studies, urban planning, and philosophy; practice backgrounds include labor mediation and arbitration, ethnic and tribal disputes, and civil (and criminal) disputes involving the U.S. Department of Justice. This is, moreover, a work in progress. In the coming phases, described briefly below, we can confidently predict that the "canon" initiative will draw from additional scholarly fields and practice domains.

The inquiry formally opened with a two-day symposium, held at Marquette University Law School in November 2003. Our focus, then as now, was on the "semi-discovered"—the wisdom about negotiation that was truly universal in the evaluation of our panel of experts, but up to now treated as relatively standard knowledge in one field while being mostly obscure to the next. Below, we will briefly list the topics that will *not* be covered in the "canon" initiative because they are already widely taught and discussed. But we dealt with those quickly in our opening discussion. What we then ascertained, as we had expected, was that each person invited to the meeting had indeed come with material that was common knowledge in his or her own kind of school or practice, but "news" to others in the room—despite the fact that our colleagues, individually, were about as well-read as anyone you are likely to find in their respective parts of this field. (As a rough measure of the gaps in the field, we estimated that on average each of the topics which follow was substantively known already to no more than half or two-thirds of the group.)

We then applied a sort of "enthusiasm screen," zeroing in on topics about which one or another member of the group felt strongly enough to consider doing some new writing. We are very grateful to our colleagues for the number and quality of their resulting writings. We have endeavored at two stages to ensure that each essay has been considered from the perspectives of multiple fields; as a result, none of the twenty-five essays is purely an individual effort.

First, the group spent considerable time on the last morning of the meeting charting every suggestion that each individual participant had for every essay that was to be drafted by someone else (an exercise which exceeded the limits of the flip chart as a tool, and required most of the table surfaces of a small banquet hall). In the process, we invited each participant to sign up not only as draftsperson of one or more individual articles, but as contributor and commentator on others. More recently, we have assigned each draft essay to

two additional commentators, across disciplinary lines as far as possible, in order to ensure that each essay is responsive to the needs of multiple fields and easily understandable outside its field of origin.

## IV. THE EXISTING "COMMON CORE OF NEGOTIATION"

Reaching agreement about topics on which to write for this symposium involved three stages. First, as noted above, we needed to agree on subjects that were already so well taught and ubiquitous that they needed no further analysis and discussion in our setting. But we also needed to eliminate subjects that, while important, were only important to *particular disciplines*, and therefore would not be a necessary part of any interdisciplinary negotiation canon. Finally, we examined topics that at least some of us thought were crucial to any negotiation canon, but either unknown or insufficiently covered outside (and sometimes inside) our respective disciplines. In other words, we selected what subjects *should* be part of an interdisciplinary negotiation canon, but were not yet.

Our first step upon gathering together was to try to reach a rough agreement on which subjects would already be considered part of a negotiation canon. We did this, first, by brainstorming (naturally) a long list of things that each of us teach, and then by weighted voting, so that we could see graphically what items were considered most crucial to the negotiation canon but also what was *already accepted* as such. In addition, we gave each discipline different colors with which to vote, so that we could also see which items were clearly included in the canon in one field but not included in other fields. Some of the essays in this symposium come directly from this distinction (e.g., "agency:" In law school courses, we focus on one set of issues, while other disciplines examine this issue quite differently; hence the need for an essay bringing forth this distinction.)

Our results from this non-scientific but reasonably thorough methodology were interesting, and to us, surprisingly narrow. We agreed that about six topics both *should* be part of any negotiation canon *and* already were taught in all of our respective disciplines. In other words, these subjects already were part of an interdisciplinary negotiation canon. They are:

(1) the idea of personal style or strategy or personality in a negotiation (including the concepts of competitive or adversarial v. interest based or principled or problem-solving);

(2) the use of communication skills—both listening and talking—in negotiation;

(3) the concept of integrative v. distributive negotiations;

(4) the concept of a "bargaining zone" between the parties as well as the concepts of BATNA and reservation prices;
(5) the use of brainstorming and option creation in a negotiation; and
(6) the importance of preparation to negotiation.

We have since double-checked and these concepts are indeed found in the leading textbooks in a multitude of disciplines.[14] We also agreed, as part of our conference process, that since we all agreed these were already part of the canon, no further discussion about these subjects was warranted.

Our second step was to eliminate "marginal" contenders for the negotiation canon by agreeing on certain items that were taught in *only* one discipline but should still not be considered as part of a general negotiation canon, because of their specificity to one or another particular domain. For example, in relation to law, we agreed that issues of lawyer-client relations, the rules of professional responsibility, legal rules regarding settlement, and "bargaining in the shadow of the law" (and the court) were all issues that should be taught in negotiation courses in law schools—but not necessarily in other disciplines. We attempted to make the same analysis for other fields, admittedly with a somewhat less solid consensus, as for this initial group we only had one or two other academics apiece for other disciplines. For business, specific topics included quantitative methods, intra-firm negotiations, "the manager as mediator," and acquisitions. In the area of conflict transformation and societal conflict, specific topics included the question of earning legitimacy, how to get the parties to the table, the fact there may not even be "a table," and that factors always present include a long-term relationship and multiple parties. Other fields that were represented generated similar specialty subjects.

We were now ready to tackle the subjects that remained—*what should be included as part of an interdisciplinary negotiation canon, but was not yet recognized as such.* This, we recognize, is an overwhelming task; and we

14. *See, e.g.*, STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION AND OTHER PROCESSES (2003) (law textbook); RUSSELL KOROBKIN, NEGOTIATION THEORY AND STRATEGY (2002) (law textbook); ROY J. LEWICKI ET AL., ESSENTIALS OF NEGOTIATION (2d ed. 2001) (business textbook); LEIGH THOMPSON, THE MIND AND HEART OF THE NEGOTIATOR (2d ed. 2001) (business textbook); LAWRENCE SUSSKIND & JEFFREY L. CRUIKSHANK, BREAKING THE IMPASSE: CONSENSUAL APPROACHES TO RESOLVING PUBLIC DISPUTES (1987) (environmental and public policy textbook); JOSEPH P. FOLGER ET AL., WORKING THROUGH CONFLICT: STRATEGIES FOR RELATIONSHIPS, GROUPS, AND ORGANIZATIONS (4th ed. 2001) (conflict studies textbook); DEAN G. PRUITT & PETER J. CARNEVALE, NEGOTIATION IN SOCIAL CONFLICT (1993) (social psychology textbook); MICHAEL L. SPANGLE & MYRA WARREN ISENHART, NEGOTIATION: COMMUNICATION FOR DIVERSE SETTINGS (2003) (communication textbook).

must caution the reader—and ourselves—that the essays in this symposium are but a "first take" on that task.

## V. ESSAYS IN THIS SYMPOSIUM

The essays in this symposium could be divided, for convenience in a law journal, into two groups. Considered this way, the first set includes essays by law professors that discuss new interdisciplinary research (e.g., heuristics, action science, impact bias) or new developments in legal or negotiation issues (e.g., the law of bargaining, the role of apology). The second set of essays are by professors from other disciplines, and discuss either additional new interdisciplinary work (e.g., emotions, theory of mind) or negotiation topics that are typically covered in legal negotiation classes, but with a different perspective (e.g., framing, principal-agent, ethics). In this last group of essays, while the *titles* may look familiar to law professors, the *subject matter* will be quite different, because of the different discipline and viewpoint of the author. But we hope readers of this issue will come from more varied professional domains than is "normal" for a law review. So rather than attempt to group essays according to this rough division, we have decided to publish the essays in alphabetical order by subject matter. In this way, we hope that readers searching for particular topics or information will be able to locate helpful material more easily—and, perhaps, will be a bit more likely to review material that stems from outside his or her own particular discipline. Therefore, in alphabetical order by topic area,[15] the following are the essays in this symposium:

1) In *Action Science and Negotiation*, law professors Scott Peppet and Michael Moffitt explore how the research of education professor Chris Argyris and his colleagues can inform negotiation practice and pedagogy.
2) In *Teaching Negotiators to Analyze Conflict Structure and Anticipate the Consequences of Principal-Agent Relationships*, (i.e. agency) conflict studies professor Jayne Seminare Docherty and planning professor Marcia Caton Campbell explain how principal-agent relationships work in a negotiation from a public policy perspective.
3) In *The Role of Apology in Negotiation*, law professor Jennifer Gerarda Brown examines the purposes of an apology in negotiation and the qualities that make an apology most effective.
4) In *Aspirations in Negotiation*, Andrea Kupfer Schneider explains the

15. The topic area will be underlined in this list, since not all articles' titles use the topic area as we have defined it.

importance of setting specific, optimistic, and justifiable goals in a negotiation.

5) In *Understanding Conflict in a Postmodern World*, (i.e. complexity theory) law professor Scott Hughes explains how the emerging neuroscience work in complex adaptive systems will affect how we view both conflict and some of the basic tenets of conflict resolution.

6) In *Contingent Agreements: Agreeing to Disagree About the Future*, Michael Moffitt surveys the theoretical and practical implications of including contingent agreements in negotiated deals.

7) In *Creativity and Problem-Solving*, Jennifer Gerarda Brown discusses some of the most recent thinking on how people can be more creative and which of these creativity tools can help the most in negotiation.

8) In *Culture and Negotiation: Symmetrical Anthropology for Negotiators*, Jayne Seminare Docherty urges negotiators to go beyond the typical "tip of the iceberg" approach to understanding culture and to understand the multiple cultural frameworks that can be at play in negotiation.

9) In *Decision Analysis in Negotiation*, U.S. Department of Justice attorney Jeffrey Senger examines how decision analysis can be used to assess the value of a case and help to determine the best strategy in a negotiation.

10) In *Emotions in Negotiation: Peril or Promise?*, psychologist Daniel Shapiro tackles the common idea that emotions can be harmful in a negotiation. While Shapiro outlines the risks of emotions, he also discusses the equal importance of enlisting positive emotions to improve the efficiency and effectiveness of a negotiation.

11) In *The New Canon of Negotiation Ethics*, philosophy professor Kevin Gibson looks at the way that ethical considerations have moved beyond the legal threshold of "minimally acceptable conduct" toward acting in accordance with universal principles. He also looks forward to the integration of sociobiology and post-modernism into our consideration of appropriate conduct in negotiation.

12) In *Perceptions of Fairness in Negotiation*, law professor Nancy Welsh examines criteria for measuring both distributive and procedural fairness, and the variables that influence fairness perceptions.

13) In *What's in a Frame? (That Which We Call a Rose by Any Other Name Would Smell as Sweet)*, (i.e. framing) Marcia Caton Campbell and Jayne Seminare Docherty discuss the dynamics of framing in an entrenched, large scale, multi-party conflict. This use of macro-level frames is quite different from the micro-level framing that occurs as the negotiation communication actually begins.

14) In *Game Theory Behaves*, business school professor David Sally

examines the usefulness of game theory (beyond the commonly-taught "prisoner's dilemma") for explaining negotiation behavior.

15) In *Heuristics and Biases at the Bargaining Table*, law professors Russell Korobkin and Chris Guthrie tackle the interdisciplinary field of decision theory, which examines how individual negotiators can be affected by certain psychological factors to make "irrational" decisions about negotiation outcomes.
16) In *Identity is More Than Meets the "I": The Power of Identity in Shaping Negotiation Behavior*, Daniel Shapiro discusses the concept that negotiator identity is fungible in many situations.
17) In *The Impact of the Impact Bias on Negotiation*, Chris Guthrie and David Sally explain that an emerging movement in psychology—known as positive psychology or hedonic psychology or affective forecasting—shows how negotiators may not even know what they want in a negotiation.
18) In *Principles of Influence in Negotiation*, Chris Guthrie demonstrates how the concepts of persuasion presented by psychology professor Robert Cialdini can be used in a negotiation.
19) In *The Law of Bargaining*, Russell Korobkin, Michael Moffitt, and Nancy Welsh review the general common law, context-specific strictures, and ethical rules that constrain and guide the negotiator bargaining "in the shadow of the law."
20) In *Narratives, Metaphors, and Negotiation*, Jayne Seminare Docherty discusses how narratives and metaphors can help an effective negotiator understand the parties in a negotiation.
21) In *Negotiation as One Among Many Tools*, Jennifer Gerarda Brown, Marcia Caton Campbell, Jayne Seminare Docherty, and Nancy Welsh examine what other factors and elements can be used to affect a conflict situation, in addition to negotiation. They examine some approaches that nonprofit organizations such as Search for Common Ground have used overseas and demonstrate that these concepts can be translated into domestic conflicts as well.
22) In *Three Conceptions of Power*, Jayne Seminare Docherty, Russell Korobkin, and Christopher Honeyman present three different definitions of power and how each conception works in negotiation.
23) In *Rapport in Negotiation and Conflict Resolution*, law professor and social psychologist Janice Nadler discusses how the development of rapport between negotiators affects negotiation outcomes.
24) In *Team Negotiations*, business school professors David Sally and Kathleen O'Connor outline the ways in which the presence of a team

changes a negotiation.

25) In *Social Maneuvers and Theory of Mind*, David Sally explains how the interpretation of communication signals—theory of mind—should be further examined for lessons and advice that this can give negotiators.

## VI. WHAT COMES NEXT?

The sources of wisdom in this "composite field" are so diverse that this effort can succeed only if it thoroughly enlists criticism and amendment. We have accordingly provided for a series of occasions for corrections and expansion in the near future. These already include more than sixteen conference sessions designed for the forthcoming 2004 national meetings of the American Bar Association's Section on Dispute Resolution, the Law & Society Association, the International Association for Conflict Management, and the Association for Conflict Resolution. In this phase, we are looking forward to adding the experience and wisdom of some of the field's recognized leaders to the debate. We expect that these, in turn, as well as additional ideas from the emerging leaders with whom we began, will lead to further writings and discussions in this initiative.

We hope you the reader will seek out the later writings and perhaps attend one or another of the conference discussions. More immediately, we hope you will find the writings in this volume to be as wise as we think they are and will come to think of these concepts as central to your own domain of negotiation practice, teaching and/or research.