

# Framing: What's in a Frame (That Which We Call a Rose by Any Other Name Would Smell as Sweet)

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# WHAT'S IN A FRAME? (THAT WHICH WE CALL A ROSE BY ANY OTHER NAME WOULD SMELL AS SWEET)

MARCIA CATON CAMPBELL\* & JAYNE SEMINARE DOCHERTY\*\*

## I. INTRODUCTION

In most large-scale, multi-party disputes, such as those characteristic of public policy and environmental conflict, third-party intervenors make detailed conflict assessments before beginning facilitated or mediated processes.<sup>1</sup> Fundamental to these assessments is identifying and unpacking the multiple frames disputants hold to get a clearer picture of the conflict's drivers. Frames are perceptions that the parties hold about what defines the conflict, who is involved in it, how issues are presented, what the expected outcomes might be, and how they will be reached and evaluated.<sup>2</sup> Frames structure disputants' conceptions of the conflict and exert profound influences on their behavior, strategizing, and choice of negotiating tactics. Frames can be malleable; however, some are essentially immutable.<sup>3</sup> At times, disputants will cling to particular conflict frames that stymie negotiations and push conflicts into intractability. Thus, if left unexamined, frames can limit the range of possible solutions the disputing parties can envision.

This essay presents an entrenched, large-scale, multi-party conflict as the basis for a brief discussion of frames and framing dynamics. Its focus is on macro-level frames, meaning those frames that determine the parties' approach to the conflict and structure the possibilities for its resolution, rather

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1. See Lawrence Susskind & Jennifer Thomas-Larmer, *Conducting a Conflict Assessment*, in THE CONSENSUS BUILDING HANDBOOK 99-136 (Lawrence Susskind et al. eds., 1999); Marcia Caton Campbell, *Intractability in Environmental Disputes: Exploring a Complex Construct*, 17 J. PLAN. LITERATURE 360 (2003).

2. ROY J. LEWICKI ET AL., ESSENTIALS OF NEGOTIATION 31 (3d ed. 2001).

3. *Id.*; see also JAYNE SEMINARE DOCHERTY, LEARNING LESSONS FROM WACO: WHEN PARTIES BRING THEIR GODS TO THE NEGOTIATION TABLE (2001); Barbara Gray, *Framing of Environmental Disputes*, in MAKING SENSE OF INTRACTABLE ENVIRONMENTAL CONFLICTS: CONCEPTS AND CASES 23 (Roy J. Lewicki et al. eds., 2003).

than on micro-level moves and countermoves among the parties as negotiations get underway. In some cases, reframing can enhance the prospects for negotiation or conflict transformation leading to resolution; however, in others, reframing is less plausible.<sup>4</sup> Although empirical research on multi-party dispute framing is a relatively recent development, frame analysis has quickly become a central part of the conflict assessment pedagogical canon and the public sector dispute resolver's tool kit. Frame analysis can hold utility for law students as well, as they seek to understand what motivates the strategic choices made by their clients and those who sit across the negotiating table.

## II. HIGHWAY THROUGH A MONUMENT: A "ROAD TO NOWHERE?"<sup>5</sup>

In the desert Southwest stretches a 17-mile-long mesa of black volcanic rocks covered with over 15,000 ancient carvings, some of which may date back 2000 years or more. This boulder field is a sacred shrine for a Native American Indian tribe and draws other tribes from across the southwestern state for religious practices. Designated a national monument by the National Park Service over a decade ago, the 7000-acre park lies directly west of a rapidly growing city of 700,000 population. This sprawling city is landlocked by a forest to the north, a mountain range and an Indian reservation to the east, and an Air Force Base to the south. The city's planners project population growth of fifty percent over the next twenty-five years, to more than one million people, and expect most of the residential development accommodating the growth to occur west of the city. Housing prices in subdivisions on the city's west side are substantially more affordable than in the rest of the metropolitan area, but the monument is a physical barrier between the city and the undeveloped land to the west.

Three years after the monument's designation, developers and their

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4. On the potential for reframing, see generally Michael Elliott et al., *Lessons Learned about the Framing and Reframing of Intractable Environmental Conflicts*, in MAKING SENSE OF INTRACTABLE ENVIRONMENTAL CONFLICTS: CONCEPTS AND CASES 409-36 (Roy J. Lewicki et al. eds., 2003); Linda L. Putnam & Majia Holmer, *Framing, Reframing, and Issue Development*, in COMMUNICATION AND NEGOTIATION 128-55 (Linda L. Putnam & Michael E. Roloff, eds., 1992); Gray, *supra* note 3, at 11-34. On conflict transformation, see E. FRANKLIN DUKES, *RESOLVING PUBLIC CONFLICT: TRANSFORMING COMMUNITY AND GOVERNANCE* (1996); DOCHERTY, *supra* note 3; Heidi Burgess & Guy Burgess, *Constructive Confrontation: A Transformative Approach to Intractable Conflicts*, 13 MEDIATION Q. 305.

5. This case is adapted from James Brooke, *Sprawling Albuquerque Hopes to Cut Through Monument*, N.Y. TIMES, Jan. 25, 1998, at 12; John McQuaid, *Standing Their Ground: Unwelcome Neighbors: How the Poor Bear the Burdens of America's Pollution*, NEW ORLEANS TIMES-PICAYUNE, May 24, 2000, at A6; *Highway Plan Through N.M. Petroglyph Memorial Rocks Community*, WASH. POST, Mar. 23, 1998, at A5.

political allies proposed a six-lane highway extension through the monument to connect future residential development with the existing highway that runs across the northern part of the city. Approximately one-quarter mile of the highway extension would cut through the national monument and require moving about a dozen of the ancient petroglyphs and the loss of 8.5 acres of the park's acreage for the highway corridor.<sup>6</sup> The tribe, which holds creation beliefs that their ancestors emerged from the earth, considers the monument an organic whole that links its people with the spirit world in the afterlife. As a result, the tribe also finds abhorrent options such as tunneling under the monument or building a bridge over it. For religious reasons, the tribe would even prefer that the ancient carvings were destroyed than relocated to another part of the park. The Indians vehemently oppose the road—in any form—as a desecration of sacred tribal lands.

The highway extension is backed by the City Council, most of the state's Congressional delegation, and the local business community. Voters' polls yield conflicting results: One poll conducted by a local newspaper shows that a slight majority of the respondents favor the extension through the monument, while another poll shows that a majority of the city's residents would prefer an alternate route. (A previous referendum for the highway extension was rejected by voters because the proposed location necessitated destroying several holes of a local golf course, causing tribal members to question what non-Natives consider truly sacred).

During this time, as development begins to encroach on the monument, the debate surrounding the highway proposal turns vociferous and bitter. Critics of the monument and proponents of the road publicly question the legitimacy of the Indians' religious practices and the monument's importance to them. They contend that few in the area considered the monument sacred prior to its designation by the National Park Service and that the tribes are being obstructionist about the city's future development. The tribes counter that because the religious rituals performed have always been kept secret, the monument's cultural and religious significance has not been fully appreciated by people outside the tribes. Not only that, they fear that if the monument is desecrated by the road's development, this will set a precedent that opens the way for similar destruction of other sacred Indian sites elsewhere.

The city's recently elected mayor was the sole candidate in a field of seven who opposed the highway extension; however, he was elected to office by just twenty-nine percent of the electorate. In addition to a five-tribe coalition and the mayor, other opposition to the proposed highway extension comes from preservationists, environmentalists, the state's smart-growth anti-

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6. Brooke, *supra* note 5.

sprawl organization, the National Parks and Conservation Association, and the National Park Service itself. Besides their opposition to cutting through the monument, these groups point out that the highway extension would have negative environmental consequences as well—there simply is not enough water available in the desert region to support the residential growth that the road would make possible.

Over a several-year period, discussions about the highway extension became extremely contentious, polarizing the many stakeholders involved. The state's congressional delegation introduced bills in the U.S. House and Senate to remove the proposed 8.5 acre highway corridor from the national park and decertify the corridor from protected status. Native Americans have held public protests against the proposed road. The parties are deadlocked and holding rigidly to their positions.

The city's growth is inevitable, but where and how it is accommodated is open to negotiation. Other aspects of this conflict may not be negotiable. How can we tell which are which? Frame analysis helps pinpoint where the conflict's tensions and intractability lie, and it also reveals potential areas of agreement or opportunities for conflict transformation.

### III. GENERIC FRAMES (FRAMES AS CATEGORIES OF EXPERIENCE)

Broad categories of frames—known as generic frames or categories of experience—have been identified by researchers in communications<sup>7</sup> and, more recently, in environmental conflict resolution.<sup>8</sup> Parties in conflict do not necessarily use each one of these frames. Some frames may predominate, while others may not come into play at all. In still other instances, parties may have clashing versions of the same type of frame.

#### A. *Worldmaking Stories*

Even before parties encounter one another in a conflict, they hold large cognitive frames that can usefully be thought of as worldmaking stories.<sup>9</sup> Worldmaking stories are narratives that are told and retold by many people; they become symbolic cores around which organizations, communities, and civilizations shape their collective lives. Each worldmaking story expresses the authoritative claims of the community that validates it, and every worldmaking story contains implicit, if not explicit, patterns of compulsions and permissions to act in certain ways and prohibitions against acting in other

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7. Putnam & Holmer, *supra* note 4, at 128-55.

8. MAKING SENSE OF INTRACTABLE ENVIRONMENTAL CONFLICTS: FRAMES AND CASES (Roy J. Lewicki et al. eds., 2003).

9. DOCHERTY, *supra* note 3, at 61-62.

ways.<sup>10</sup> Some worldmaking stories are blatantly sacred; the worldmaking story of the Native American party in our case study would fall in this category. Other worldmaking stories are ostensibly secular, but they function as a sacred narrative because they, too, contain claims about ultimate truth or authority, and they contain action imperatives and prohibitions. Many of the non-Native parties in this case are likely to bring a secular worldmaking story into this encounter; a narrative that assumes that human beings have the right to reshape the natural world and that the instrumental needs of the many outweigh the religious rights of the few. Some non-Native parties—possibly environmentalist and preservationist groups—may hold secular worldmaking stories that are akin to the Native American stories in their willingness to place non-instrumental factors above such things as growth and development.

### *B. Whole Story*

Also known as substantive frames, whole story frames are the basic nutshell stories parties offer when asked, “What is this conflict about?” Parties use whole story frames to guide their behavior in negotiations. In the case described above, for example, proponents of the highway extension are likely to describe the conflict as being about the need to accommodate future urban growth. Environmental and anti-sprawl groups may describe the conflict as being about the physical and environmental limits to growth, while the tribes will likely describe the conflict as being about the desecration of sacred tribal lands. Early in the negotiation process, however, mediators can sometimes help parties jointly reframe their substantive frames into a single whole story frame more amenable to resolution. The extent to which this is possible can depend on the influence of other frames held by the parties. If less malleable frames dominate negotiations, as is likely in the case described here (see discussion below), a shared, whole-story frame may not be achievable.

Since mediators also carry worldmaking stories with them, there is a significant risk that they will favor one whole story over another. For example, collaborative planning processes used to address environmental conflicts often use a narrative about stakeholders and interest-based parties. This worldmaking narrative recognizes actors who hold discrete, quantifiable, instrumental interests. It has a difficult time accommodating parties who make claims about sacred space or the world as a sacred, living being.<sup>11</sup> The Native American parties in our case study may find it difficult to speak their

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10. W. BARNETT PEARCE & STEPHEN W. LITTLEJOHN, MORAL CONFLICT: WHEN SOCIAL WORLDS COLLIDE 54 (1997); DOCHERTY, *supra* note 3.

11. DOCHERTY, *supra* note 3, at 66-67.

truth into the negotiation arena; they may have to twist what they want to say to make it fit into a secular worldmaking story.<sup>12</sup>

### C. Identity

One of the least malleable frames over time and a major contributor to dispute intractability,<sup>13</sup> identity frames describe how parties view themselves, both as individuals and as members of a group. Identity frames are also closely tied to worldmaking stories, particularly through the action imperatives and prohibitions contained in every worldmaking story. We are a people, because we do X, and we do not do Y; we believe A and we reject B. Identity frames are typically positive in tone and are based on parties' demographic characteristics, place or location, roles they play, interests they hold, and institutions with which they are affiliated. Because identity frames are fundamental to parties' self-conceptualizations, threats to either self-identity or group identity can cause conflicts to escalate rapidly.<sup>14</sup>

In the monument/highway conflict above, the tribe has a distinct, well-defined identity and culture (described here in its creation beliefs), which is being threatened not only by the proposed location of the highway, but also by its proponents, casting aspersions on the validity of tribal religious practices. In addition, the potential exists for threats to Indian culture and identity more broadly if the door is opened to threatening the protected status of sites sacred to other tribes. Given the checkered history between U.S. government at all levels (federal, state, and local) and Indian tribes as sovereign nations, interactions among the parties that question tribal identity are likely to cause this conflict to spiral rapidly upward. As is typical in development scenarios, the City Council and development community probably hold an identity frame constructed around their roles as protectors of the city's future and advocates of "progress."

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12. In her forthcoming dissertation, *WHO WE ARE WHEN WE PRACTICE WELL: HOW MEDIATOR VALUES AND GOOD WORK CONNECT* (forthcoming 2004, Syracuse University), Rachel Miriam Goldberg documents a case in which Native American negotiators struggling to achieve permanent resident status on their traditional homeland found themselves in the position of negotiating for permanent homes, because the agency they were dealing with (and some of the third party intervenors) assumed that permanent residency required a permanent home. The conflict became heated, and many would say intractable, until a culturally savvy mediator asked the tribe to clarify what they meant by permanent residency. It turned out that the tribe never lived there permanently and did not want to live in permanent houses on the land now. They wanted the right to build temporary camps on the land during a specific season of the year, but the dominant cultural frame (worldmaking story) "forced" them to take a position they did not even hold.

13. Gray, *supra* note 3, at 23.

14. *Id.*; see also Caton Campbell, *supra* note 1, at 12-23.

#### D. Characterization

Characterization frames represent how parties view the “other.” Although they may be positive in tone, they are more likely to consist of negative, often stereotyped attributions of blame (often captured in blaming stories)<sup>15</sup> or causality in the conflict. Characterization frames can be closely linked to identity in framing dynamics, since strong group identity can contribute to conflict escalation by fueling a party’s negative characterizations of other parties.<sup>16</sup> For example, in the case at hand, the environmental and anti-sprawl groups opposing the road will likely characterize the City Council and development community as seeing no limits to growth. Road proponents have already pronounced the tribal consortium “obstructionist” and questioned the validity of their religious practices. This type of frame is more mutable, however, if a skilled intervenor can get parties to recognize each other’s positive characteristics during negotiations.<sup>17</sup>

#### E. Conflict Management or Process

Conflict management or process frames encompass the parties’ preferences for particular ways of dealing with a conflict. These range from passive strategies, such as avoidance, to increasingly more active strategies, such as fact-finding, joint problem solving, decisions based on expertise, appeals to political action, or direct action such as struggle, sabotage, or violence.<sup>18</sup> One factor likely to contribute to a conflict escalation in this case is the clash between an overtly sacred worldmaking story and a secular worldmaking story. When a place is deemed sacred by some people and malleable and instrumental by others, we have a recipe for potential violence. People will kill and die to protect their sacred spaces. In this case, the potential violence seems to be poised to turn inward rather than outward; the tribe has expressed a preference for destroying the carvings—a form of symbolic group suicide—rather than removing them from their sacred space. This may, however, be a dramatic expression of its identity; if push comes to

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15. DOCHERTY, *supra* note 3, at 63.

16. Gray, *supra* note 3, at 24.

17. There is some evidence that a secular/sacred divide between the parties may make it more difficult to get parties to recognize each other’s positive characteristics. Insofar as the “religious” party’s identity frame is tied to a worldmaking story about sacred space and the “secular” party treats that sacred space as instrumental, malleable, and subject to bargaining, the secular party attacks the identity of the religious party simply by stating its own preferred outcome. Insofar as the secular party shows a willingness to desecrate sacred space, it affirms the religious party’s assumption that they are apostates, unbelievers, and possibly beyond redemption. See DOCHERTY, *supra* note 3, at 189-224.

18. Gray, *supra* note 3, at 25-26.

shove and if characterization frames become particularly negative, violence may turn outward.

Looking at nonviolent options, preference for particular process frames may hinge on parties' perceptions of their BATNAs (Best Alternative to a Negotiated Agreement). The City Council and Congressional delegation will fall back on conflict management processes rooted in technical expertise, adjudication, and political action, as indicated by the city's use of road-siting referenda and the Congressional delegation's introduction of legislation to decertify 8.5 acres of the monument for the road. The tribal consortium, on the other hand, has already demonstrated its preference for direct action through public protests. Other options available to highway opponents include simply delaying action until a threat is clearly felt (in the example, we are still at the "proposal" stage), and then taking legal action based on the National Parks Act, NEPA, historic preservation law, or constitutional or legislative protections of religious freedoms.

#### *F. Outcome vs. Aspiration*

Some have argued that parties who hold outcome frames focus on achieving specific outcomes that satisfy their own interests to the exclusion of other parties' interests.<sup>19</sup> This claim is, itself, rooted in a secular worldview that assumes everything is negotiable. A sacred worldmaking story is tied to an identity frame and to a worldview that makes clear demarcations between the secular and the sacred. What is sacred cannot be commodified and is not subject to bargaining; efforts to make it a "mere interest" constitute an identity threat, particularly when those efforts are made by parties with greater power and the ability to violate what is sacred.<sup>20</sup> To that end, parties with strong outcome frames are more likely to bargain distributively or competitively, and see only a fixed, zero-sum solution to the conflict,<sup>21</sup> or they may refuse to bargain at all and choose actions other than negotiation.

The tribe clearly holds a very strong frame of this type, given that its members consider any changes to the monument a total desecration—a zero-sum outcome in which any change compromises the site's sanctity. The strength of the tribe's outcome frame is undoubtedly linked to the perceived threat to tribal identity and an imperative to defend sacred space. Complete preservation of the monument is the only truly acceptable outcome. Although

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19. LEWICKI ET AL., *supra* note 2, at 34.

20. DOCHERTY, *supra* note 3, at 154-88.

21. Tal Y. Katz & Caryn J. Block, *Process and Outcome Goal Orientations in Conflict Situations: The Importance of Framing*, in THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE 238 (Morton Deutsch & Peter T. Coleman eds., 2000).

the range of possibilities is limited by the geographic restrictions mentioned at the outset of the case, highway proponents and city residents could potentially be satisfied by other options, so long as some scenario permitting development is achieved.

In contrast to focusing on one specific outcome, parties who hold aspiration frames seek satisfaction of their basic interests or needs through more integrative negotiations.<sup>22</sup> Parties focused on aspiration frames are able to envision more creative solutions that satisfy multiple interests. Aspiration frames are more malleable in general, while outcome frames are not. Through reframing, third-party intervenors can sometimes shift parties' reliance on outcome frames to aspiration frames. The current case "snapshot," however, shows no evidence of aspiration frames and, given the clash between secular and sacred worldmaking stories, little opportunity for reframing.

### G. Power

Recent research on intractable environmental disputes identifies nine categories of power frames: authority/positional (based on traditional sources such as role, job title, or institutional status), access to resources (money, staff, and time), expertise, interpersonal style, coalitional/relational (group affiliation), sympathy/vulnerability (role as victim), force/threat (of coercion or BATNA use), moral/righteous, and voice (participation at the table).<sup>23</sup> In our case, both the City Council and the mayor have power based on their authority as government officials, although the mayor's mandate is relatively weak because he did not carry a majority of the voters with him. They and the development community have power based on access to resources, expertise, and voice. The tribes have power based on moral (religious) grounds, although it may not be fully recognized by secular interests until they exercise power through force or threat of legal action. They may also garner some power from a sympathy/vulnerability frame, given the history of federal government mistreatment of tribes. The tribes' ability to exercise power based on participation at the table (a voice frame) may be constrained by the sacred worldmaking story that they hold.<sup>24</sup>

The same dispute can be variously framed based on interests, rights, or power, with different outcomes as a result. Disputes framed on the basis of parties' interests are more resolvable, while disputes based on rights (particularly when rights are in question) and power can be more polarizing.<sup>25</sup>

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22. *Id.* at 284.

23. Gray, *supra* note 3, at 29-30.

24. *See supra*, Parts III.A and B.

25. WILLIAM L. URY ET AL., GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT

In the monument/highway case, the Congressional delegation has clearly framed the dispute as one of power: The tribe's unwillingness to concede what in the legislators' secular view is a small percentage of the monument's acreage has led them to try to resolve the dispute by decertifying the land at issue (an exercise of legislative authority and power). The tribe, however, has framed the dispute as one of sacred rights to land of critical cultural and religious significance. Any third-party intervenor walking into this situation should not assume from the outset that the conflict can be reframed as a dispute based on interests.

#### *H. Risk and Gain v. Loss*

Risk frames come into play in environmental disputes when health and human safety are threatened by environmental hazards. Local governments, government agencies, and business interests will assess the potential risk of different outcomes using cost-benefit or contingent valuation analyses.<sup>26</sup> These rubrics do not incorporate the non-quantifiable concerns about risk that parties representing the public or special groups may have. They most clearly do not incorporate a religiously motivated party's sense of "spiritual risk." If a party sees itself as mandated to protect something sacred, it may endure bodily harm, severe hardships, or even death rather than "risk" failing in its duty to an authority that supercedes secular authorities.<sup>27</sup> Risk frames influence how parties perceive potential gains or losses in negotiations. Thus, parties that have borne disproportionate levels of environmental or social harm in the past may find what seems to some a small amount of harm, such as the destruction of a dozen of over 15,000 petroglyphs, to be completely unacceptable.

#### IV. FRAMES AS ISSUE DEVELOPMENT

Another approach to framing not detailed here involves tracking frame shifts as a conflict unfolds over time. Aspects of this approach include an emphasis on negotiation context, particularly the history of relations between the parties, including the standard issues that are raised between them; issue shaping and conceptualization, or, how the interaction between parties shapes the issues under discussion and the frames in use; and, reframing or problem transformation, in which parties' conceptions of the conflict undergo substantive changes as a function of their interactions.<sup>28</sup> The primary tool for

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THE COSTS OF CONFLICT 3-19 (1988).

26. Gray, *supra* note 3, at 31.

27. DOCHERTY, *supra* note 3, at 176-77.

28. LEWICKI ET AL., *supra* note 2, at 38-39; *see also* PEARCE & LITTLEJOHN, *supra* note 10;

analyzing frames as issue development is linguistic discourse analysis, usually of transcripts from negotiation sessions.<sup>29</sup>

#### V. STRATEGIES FOR REFRAMING AND CONFLICT TRANSFORMATION

Reframing and conflict transformation depend upon parties' willingness and ability to comprehend the views of the "other," by stepping outside their own cognitive frames and adopting a different perspective. Both substantive and procedural reframing are possible. Substantive reframing can involve the movement from frames based on power or rights to frames based on interests, as discussed above. It can also be based on a search for common ground on substantive issues.<sup>30</sup> Apology, conciliation, and reparations also play important roles in opening parties up to conflict transformation.<sup>31</sup>

Another helpful approach is recognizing that not all issues on the table are the same, and not all of the parties sort the issues into the same categories. One party may see everything on the table as subject to interest-based bargaining, while another party sees some things as bargainable and others as sacred. From outside that party's worldmaking story, the bargainable and the sacred may look very similar. The common error is to accuse this party of bargaining in bad faith or betraying the negotiation process. It is important for negotiators and facilitators to learn how to "hear" a party's worldmaking story, so that they can recognize when and why some things are tradable and other things are not.<sup>32</sup>

Sometimes it is even possible to reach agreement and take joint action without reconciling frame differences. The parties can coordinate their frames rather than changing them.<sup>33</sup> This is particularly useful when dealing across a secular/religious worldview divide, like the one described in our case, so long as the negotiators recognize that they do not share frames. Otherwise,

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DOCHERTY, *supra* note 3.

29. See Jane Seminare Docherty, *Culture and Negotiation: Symmetrical Anthropology for Negotiators*, 87 MARQ. L. REV. 711 (2004) (describing skills that let us hear the linguistic indicators of frames and changes in frames during a negotiation).

30. See e.g., John Forester, *Dealing with Deep Value Differences*, in THE CONSENSUS BUILDING HANDBOOK: A COMPREHENSIVE GUIDE TO REACHING AGREEMENT 463-94 (Lawrence Susskind et al. eds., 1999) (discussing the Colorado State Health Department's process of priority setting regarding federal funding for HIV and AIDS); see also DUKES, *supra* note 4; Linda L. Putnam & Julia M. Wondolleck, *Intractability: Definitions, Dimensions, and Distinctions*, in MAKING SENSE OF INTRACTABLE ENVIRONMENTAL CONFLICTS: FRAMES AND CASES 35-59 (Roy J. Lewicki et al. eds., 2003); Jennifer Gerarda Brown, Marcia Caton Campbell, Jayne Docherty, & Nancy Welsh, *Negotiation as One Among Many Tools*, 87 MARQ. L. REV. 853 (2004).

31. Jennifer Gerarda Brown, *The Role of Apology in Negotiation*, 87 MARQ. L. REV. 665 (2004).

32. DOCHERTY, *supra* note 3, at 154-88.

33. *Id.* at 170, 175-76.

they are likely to assume they have reconciled their worldmaking stories when they have not.

In terms of process, reframing that promotes dispute tractability includes acknowledging the existence of underlying identity issues, such as the tribal concerns here, and reducing the negative characterizations that parties use to describe each other. In addition, construction of shared, place-based identity frames, a common conflict management frame, and mutually agreed-upon methods of risk assessment can enhance negotiations, as can agreeing upon the forum in which the decision will be made.<sup>34</sup> Controlling the number and size of issues on the table can also help transform entrenched conflicts such as this one. Having multiple issues on the agenda can obscure the core issue in the dispute; thus, an essential part of conflict transformation may involve the stripping away of peripheral or “overlay” issues that may be of concern, but are not central to the conflict.<sup>35</sup>

Even in cases where fundamental differences between parties make a dispute quite difficult to resolve, intervenors are on occasion able to move parties away from a focus on the immutable, such as identity or worldview, to focus on other, practical aspects of the dispute that are open to reframing, such as conflict management process and aspiration frames. There are cases, though, in which a focus on the immutable—worldmaking stories, values, and rights—is precisely what the parties need. In these cases, disputes should be “resolved” through mechanisms other than negotiations.<sup>36</sup>

## VI. CONCLUSION

Whether parties are explicitly aware of them or not, frames and framing dynamics play a critical role in determining how parties view each other, which tactics they choose, how they strategize in disputing contexts, and how the conflict management process unfolds. Negotiators who develop the capacity for paying symmetrical attention to worldmaking stories (including their own!) will be more effective and creative when it comes to framing and reframing a dispute for negotiation.<sup>37</sup> It is important to train ourselves to listen for indicators of frame differences during a negotiation session; this involves honing our skills of “on the fly” discourse and rhetorical analysis, and learning when we need to ask for help from others who can serve as “worldview translators” when we do not understand the worldmaking story or

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34. Elliott et al., *supra* note 4, at 419.

35. Burgess & Burgess, *supra* note 4.

36. Caton Campbell, *supra* note 1, at 12-23.

37. DOCHERTY, *supra* note 3, at 280-82.

frames of another party.<sup>38</sup>

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38. *Id.* at 290-99.

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