

The Unstated Models in Our Minds

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Editors' Note: You're an experienced negotiator. But when was the last time you examined your own pattern of thinking? And is your pattern the same as your counterpart's? This chapter helps you work out what's going on under the surface, and leads onward to chapters about framing, internal conflict of the negotiator, and the characteristic problems of teams. It also suggests which chapters in this book best address your real-world negotiation problems, and how to get the most out of negotiation research.

In 2003 Christopher Honeyman and Andrea Schneider convened a working conference of faculty members who teach negotiation in various disciplines. We were asked “to begin a conversation about creating a canon of negotiation” and then write papers collaboratively that would be published in the *Marquette Law Review*. The hope was that after struggling and wrestling to reach consensus about what should be taught in a negotiation course regardless of the discipline, we would at least begin to identify a “canon of negotiation” skills and theories.

In reality, we skipped much of the struggling and wrestling. We identified some important topics and we wrote papers together, but I'm not sure we did the hardest part. To illustrate with my own experience, a law school professor and I agreed that we would write a paper on the problem of agency (i.e., what happens in negotiation when the parties work through representatives) and structure (which it turned out we defined differently). I sketched out some of the main ideas that are contained in the paper that is now co-authored with Marcia Caton Campbell. [Docherty & Caton Campbell, *Agency*] My would-be co-author scratched his head—or at least I think he did since we were negotiating our writing assignment via e-mail—and said something that I heard as, “What are you talking about? This is not what I thought we were writing about, but it is interesting. Why don't you go ahead and write this?” [Bhappu & Barsness, *E-mail*] Meanwhile Marcia, whose work in multi-party, public negotiations is similar to my work in strategic peace building,¹ “got it” immediately and we agreed to finish the paper together. All of which is to say that I'm not sure that all of our papers are the cross-disciplinary products we envisioned. The same difficulty attends the chapters in this book, as well as practical negotiations that must draw from more than one field: we start in different mental spaces, and it is all too easy to end up there, with fundamental questions unrecognized, much less addressed.

One rarely addressed but fundamental question is: how much does the *context* in which we are negotiating influence the way we negotiate and the way we teach negotiation?² Nor do we grapple easily with questions such as: do professional disciplines make different underlying assumptions about human nature and social relationships? If yes, how do those assumptions influence the way negotiation is practiced and taught in each profession? How do they reshape basic concepts such as power and decision-making? And, how do they influence the ways we talk about timing, moves, tactics, strategies, and a host of other aspects of negotiation?

Truthfully, just uncovering all of the underlying assumptions would have required years, not months of exploration and discussion. And doing so would have delayed what many see as a very interesting collection of ideas, first in the *Marquette Law Review* and now in much expanded form in this volume. But for those of us who are still interested in the deeper conversation about hidden assumptions behind various approaches to negotiation, where do we begin? I would say: this volume is not a bad place to start, as long as we approach the chapters with some basic questions. First, what is similar about the way these writers approach human interactions—specifically, human interactions in which the participants communicate with one another in order to promote shared understandings, overcome differences, reach compromises, or make mutually beneficial tradeoffs? Second, what accounts for their differences?

This chapter is a first cut at identifying important similarities and differences that might be used to cluster the chapters in this book and other negotiation literature in useful ways. I think we can end up with something better than the disciplinary tower of Babel that we started with; but we will probably never develop a fully generic approach to negotiation. This chapter is very much intended as a conversation starter, not a definitive treatise, and I look forward to further discussions and debates on this issue.

What Do We Have in Common?

Barry Johnson has made a career out of studying “polarities” in human organizations, in order to help individuals and groups identify and manage “unsolvable problems.” Johnson argues that many polarities in the workplace are incorrectly framed as either/or propositions of opposites, or as problems to be solved. Is a good leader conservative to support stability or is she revolutionary to encourage change? Does an organization need to be centralized to enhance coordination or decentralized to encourage initiative? Should an organization reward team development or individual achievement? None of the above is a problem that can be solved by choosing one option and neglecting the other. “They are what we call polarities (dilemmas, paradoxes) which are inherently unavoidable and unsolvable. The on-going, natural tension between the poles can be destructive and debilitating or the tension can be *managed*, and channeled into a creative synergy that leads to superior outcomes.”³

Social theorists have long struggled with a polarity that is particularly relevant to the applied fields of conflict resolution including negotiation, mediation, facilitation, and strategic peace building. Do human beings shape their own lives and destinies or are human beings shaped by the structures in which they live? In other words, do human beings have agency, which “refers to the *actors’ characteristics and capabilities* in perceiving, interpreting, analyzing, evaluating, and acting as well as affecting the world around them?”⁴ Or are human beings ‘subjects’ existing within structures that shape their choices at an unconscious as well as a

conscious level, force compliance through the use of power, and/or induce compliance through the allocation of material and non-material rewards?

Anthony Giddens argues that this agency-or-structure dilemma should actually be considered a duality, not unlike Johnson's concept of polarity. According to Giddens, social structures both *constrain and enable* the choices and behaviors of human actors, but social structures only exist because human actors reproduce them through their interactions, particularly through their routinized interactions. Structure is both the medium and the outcome of the human conduct it recursively organizes.⁵ Or, put another way, "social activity does not take place prior to or outside of social structure. Social agents may modify or transform structures or create entirely new structures, but they do this within given social (and material) conditions."⁶

Familiar styles and forms of conduct are the glue that sustains social structures and organizations, precisely by shaping the choices of human beings, allowing them to do some things easily while making other possible actions considerably more difficult to conceive and to enact. At the same time, human beings are actors with agency—in other words with free will. They have a drive to make their lives meaningful and coherent. They also have the ability to make strategic decisions about their interactions with others, and the ability to make changes in structures by 'playing with' and modifying the routine scripts of social life.⁷ Structures are written into and enacted in social organizations and written into the unconscious mind and the routinized interactions of human beings. But structures are also created, recreated and modified by human actors who can become conscious, and who can choose to act in ways that contradict routinized activities and thereby rewrite the 'code' or the rule sets⁸ for social structures. [Abramson, *Cross-cultural Mediation*; Goh, *Errors*; Peppet & Moffitt, *How to Learn*]

When we talk about negotiation, we are inclined to look at the problem solving and creativity that go into crafting an agreement. In other words, most people studying negotiation tend to favor the human agency side of the agency-structure duality. This, as much as anything else, holds the negotiation literature together. We all believe that human beings are agents and we all are interested in how those human agents are able to negotiate with one another in order to manage problems and conflicts.

What Separates Us?

In spite of this shared approach to human interactions, there are still undeniable differences in basic points of view among the chapters in this book and the papers in the *Marquette Law Review* special issue. I would suggest that sorting these chapters according to the way they answer three basic questions would reveal a great deal about patterns of similarities and differences in negotiation research, teaching, and practice.⁹

- First, is the author primarily interested in the immediate negotiation, or is she also interested in the ways negotiation can be used to assist larger social (structural) change processes?
- Second, does the author assume that the context or social structures surrounding a negotiation are stable, or unstable?
- Third, how does the author describe human decision-making in negotiation?

Is Negotiation Connected to Structural Change Issues?

A number of chapters in this volume examine the pressures on negotiators and the ways that negotiators draw on cultural knowledge [Abramson, *Cross-cultural Mediation*; Goh, *Errors*; Welsh, *Fairness*] and institutional rules and resources [Mayer, *Allies*; Menkel-Meadow, *Ethics*; Shapiro, *Identity*] during negotiation. I suspect Giddens would be pleased to see negotiation scholars moving beyond a tendency to focus almost exclusively on the actions, interactions and goal-directed choices of the negotiators. He would like the fact that these authors are concentrating upon “how actors reflexively monitor what they do” and “how actors draw upon rules and resources in the constitution of interaction.”¹⁰

However, this approach does not fully embrace the reality that negotiations (and negotiators) can help reproduce *or* they can help modify social structures. Sometimes the renegotiation of social structures is an unintended consequence of our negotiation of a particular problem.

For example, faculty members in a graduate program in conflict resolution negotiate to open and staff a Practice Institute. The Practice Institute garners several million dollars in program grants within the first year of operation. Three years later, the faculty members find themselves negotiating with the Practice Institute staff about balancing power between the Practice Institute and the graduate program and integrating the practice activities more effectively into the teaching program. The result is likely to be a significant transformation in the identity, structures, cultural norms, and daily practices of the graduate program. None of these changes was intended by any of the negotiators (Practice Institute staff or faculty) when the Practice Institute was created.

At other times, one or more of the parties in the negotiation is consciously attempting to renegotiate social structures. For example, parties with low social power may want to use negotiation to change their status, while their negotiating partners, who benefit from the current social order, want to solve a specific problem without altering the overall social order. One is trying to renegotiate the social order and one is trying to avoid renegotiating the social order. Here, it is important to recognize that seeing negotiation as a mechanism for assisting in larger change processes does not always mean disrupting the status quo or challenging established rules. In some highly chaotic contexts, a larger change process involves establishing shared norms and rule sets to govern community life, and negotiations can help with this stabilization or they can hinder it.¹¹

In spite of these realities, negotiation scholars are not typically inclined to examine whether or how the negotiators are modifying or sustaining the institutions in which they operate.¹² It would be interesting to discuss which authors in this book do look at this problem—even indirectly—and which ones do not address it at all. Personally, I see the issue of how negotiating specific problems shapes and reshapes the social order as a cutting-edge problem for our field, and I hope that simply pointing to the relative lack of attention it has received will spark some interesting discussion and research.

Is the Context Seen as Stable or Unstable?

But if we want to engage the issue of the way negotiations sustain or modify social structures, we must first give serious consideration to the *context of negotiation*. We must ask: what are the larger institutional or structural pressures on negotiators and how do those pressures manifest in the negotiation process? Does the

structural context in which negotiators encounter one another profoundly affect the ways they negotiate?

When we gathered for our first meeting in late 2003, we tended to focus on our disciplinary contexts—law, business, psychology, conflict resolution or transformation, public policy, etc.—as a variable that might explain why we saw things differently. I would suggest, however, that the contexts in which we work are not identical to our disciplines. We can, in fact, identify features of our contexts that make some disciplines more similar than others.

For example, I think I see some patterns of differences between those authors/participants who work in settings that I would define as “relatively highly structured” and those who work in settings that I would define as “turbulent or more tenuously structured.”¹³ Highly structured environments include those where the parties, issues, rules (formal and informal) of interaction, and modes of decision-making are clear, stable, widely accepted, and routinized. Legal and labor relations settings are classic examples. But sometimes even the law and relations between economic classes are up for grabs. Labor negotiations after a corporate merger followed by downsizing differ significantly from labor negotiations in more stable settings, particularly when those negotiations occur in a global context that makes the relocation of corporate enterprises a realistic option.¹⁴ In turbulent or more tenuously structured environments, uncertainty and instability can enter the negotiations in a number of different ways. The parties that need to be involved in the negotiation may not be clearly identified, parties may emerge or disappear during the middle of negotiation, and parties may be subject to complicated internal pressures that make them operate in ways that are difficult to predict. In unstructured contexts, the issues under negotiation are highly contested and the process for defining the issues is subject to unpredictable outside pressures. The rules of interaction (formal and informal) are often contested and may be the subject of negotiation in their own right. The modes of decision-making are not routinized and may differ among parties.

Some hypothetical examples may help illustrate these differences. Two attorneys negotiating a contract on behalf of their clients may encounter complications in their negotiation. The issues may be highly technical and complex. Difficulties between the agents and their respective principals may complicate the negotiation. There may be significant disagreement between the attorneys about which laws apply and which precedents will hold sway in this particular case. But, in the end, the legal context narrows the range of issues and solution options. The attorneys succeed or fail based on their ability to understand and apply a limited array of ‘rules’ to this particular case. There is certainly creativity, but it is creativity held in check by rule sets that have legitimacy for the parties and for the wider society in which the parties are operating.

On the other hand, when negotiating a peace agreement in a country beset by civil violence, there are few precedents and rules to help bound the negotiation process. The parties build the negotiation ‘venue’ even as they negotiate the issues, and they negotiate the rule sets for their decision-making as they proceed. Which parties are allowed at the negotiation table is also unclear. There is a tendency in many cases to restrict the parties at the table to the combatants, but this has often led to unsuccessful outcomes, so that now there are significant pressures to include civil society organizations, women, and victims of the fighting in the peace negotiation process.¹⁵ Unlike the attorneys in a contract negotiation, these negotiators cannot rely on a stable set of institutions to enforce their agreements, so they spend significant amounts of time negotiating the rules of law that will hold sway

after the violence ends. In the absence of stable structures, the negotiators can (and usually do) draw on competing norms and rule sets to justify their positions, and ultimately they must reach agreement on structures as well as issues.

In reality, “highly structured” and “unstructured” contexts are not dichotomous categories, but rather points on a continuum. Many negotiations occur in situations that are structured in some respects and unstructured in others.

For example, suppose the two attorneys mentioned above are negotiating a divorce agreement on behalf of their respective clients. The law constrains their negotiations related to property settlement, child custody, support, and other issues in which the state takes an interest. But the negotiation of ongoing shared parenting relationships and other “soft” issues is typically not structured by the legal context. It is up to the attorneys and their clients to work out the details of their agreement *and* the norms and unspoken rules that will govern the negotiation of these issues, including the ways the parties will renegotiate these issues in the future. Because the rule sets provided by the legal context are of little or no use for this type of negotiation, the clients may turn to a counselor or other professional for assistance. Lack of coordination between the legal negotiation of divorce settlements and the renegotiation of relationship norms and behaviors has led some attorney mediators to work more closely with counselors, and it has also given rise to the “collaborative divorce” movement.¹⁶ In other words, some attorneys have become involved in efforts to restructure divorce processes in order to work with a broader range of issues than the legal context normally addresses.

In our other hypothetical case, the negotiators trying to end a civil conflict are often constrained by outside forces. These outside forces can include powerful parties that have a vested interest in the outcome of their negotiations. Threats of military action or promises of funds for reconstruction and development projects are among the tools used by outside parties to influence the negotiators. The negotiators may also be constrained by existing laws such as the codes of the International Criminal Court or the previously mentioned UN requirements to include women in the negotiation process. While it is clear that they are operating in a less structured context and they must create structures as part of their negotiation, their scope of creativity is not unlimited.

So what? Why should we bother thinking about whether a chapter in this book or any other literature on negotiation is treating the context of negotiation as relatively stable or relatively unstable? I think considering this issue helps us with several tasks. First, we can begin to track and explain differences in negotiation literature that are not strictly tied to academic or practice disciplines. We can, for example, begin to understand why not all law-related authors in this volume seem to be taking the same approach to negotiation. Some are looking at problems in turbulent settings while others are looking at problems in more stable settings. Or perhaps some are *assuming* stability and others are *assuming* turbulence and it is up to us, the readers, to decide which assumptions better match reality.

Second, I think that if we begin talking about the context in which we operate, we will also set the stage for some ethical discussions about larger social issues.¹⁷ Many of us work as agents for clients [Nolan-Haley, *Informed Consent*] or we assist parties in negotiations [Mayer, *Allies*] where we may not have a direct stake in the outcome. Some of us work in settings where the effects of our negotiation (negative as well as positive) will be carried by other people for a very long time, and I am not only thinking about negotiating major social issues like ending civil conflict. Even routine divorce negotiations and business negotiations have spillover effects that can do good or cause harm to persons not at the table. I hope that fo-

ocusing on the context question will lead us to discuss whether our goal as negotiators is primarily about getting the best deal within the current context for the parties at the table, or also includes using negotiation to create more just and equitable social structures.

How Does the Author Describe Human Decision-Making?

Shifting gears (temporarily) from issues of context, I think it is also useful to ask how an author describes human decision-making processes as they manifest in negotiation. Tom R. Burns notes that even when we begin with a shared assumption about the importance of human agency, we can still differ greatly in the way we understand human decision-making. Burns identifies two models of decision-making—rational choice theory (RCT) and social game theory (SGT), which both give priority to human agency while also exhibiting “substantially different conceptions of human agency and its realization in action and interaction.”¹⁸ He summarizes their differences as follows:

- ***On the nature of the human agent:***
RCT “assumes an *asocial* (or trans-social) *being* oriented to the consequences of action for self (and only for self).” Actors are extracted from their historical and social relationships, shared meanings, and cultural forms. This contrasts markedly with SGT which assumes *socially constructed agency* [Shapiro, *Identity*] and “rejects the notion of a single, universal, utilitarian type of agent” in favor of actors who are shaped (constrained and enabled) by their “different roles, relationships, institutional settings, and cultural frameworks.”¹⁹
- ***On the normative and moral aspects of human agency:***
“In RCT norms and ethical considerations are not part of the conception of human agency.” Interests are paramount and questions of ethics or of moral sentiments are not discussed explicitly although they may be incorporated into an actor’s preference structure. In SGT, however, human agents are seen as fundamentally moral creatures whose moral sentiments—shaped by their relationships and roles—enter into their judgment and action processes.²⁰
- ***On the human agent’s power to reshape social structures:***
“RCT presumes a type of agent who makes choices according to a single principle (maximization of utility) *within* a given situation.” This type of agent draws on and uses the established rules and resources and does not “*deviate* from the given principle or action conditions; she does not transform conditions....” This contrasts with SGT, which assumes “that human actors have a creative/destructive capability.” Through innovation and creativity, agents can “structure and restructure preferences, sets of options, and outcome structures, indeed entire decision and game systems in which they and others participate.”²¹

Perhaps the most striking differences among chapters in this book as well as other negotiation publications stem from differences in assumptions about whether the decision makers are operating primarily from an RCT framework or an SGT framework. Yet, we rarely name the question that clearly. Instead, we talk about differences between negotiators from individualist cultures and collectivist cultures or we talk about personality characteristics or emotional states that influence decision-making. In some cases, there is an assumption that culture, personalities, or emotional states are “getting in the way of” rationality. This as-

sumption privileges RCT-style rationality over SGT-style rationality without any critical examination of that privileging.

We might make more headway in our effort to distill some cross-disciplinary assumptions about negotiation if we convene a discussion about our unspoken assumptions about human nature, decision-making and the role of human agents in sustaining or changing the social order. Sorting out RCT and SGT assumptions is a start. However, I would caution against turning these into rigid categories. Many of us probably operate with assumptions that mix RCT and SGT principles. We see negotiators as RCT actors in some settings and as SGT actors in other settings. And, even in the SGT framework we might identify different types of logic or different rationalities at work in the actors, depending on the context and the predisposition of the negotiator. Elsewhere, I have used Weber's observation about four types of social action to offer greater nuance to our discussions about what constitutes rationality.²² These can be used to further refine our conversation about decision-making. This allows us to ask something other than "is the author a lawyer or a business negotiator or a psychologist?" Instead, we can ask "how does this author conceptualize human rationality and decision-making and *why* does she think about rationality in this particular way?"

I said earlier that I was only leaving the issue of context temporarily. I would suggest that how we think about human decision-making in negotiation may actually be tied in some respects to whether we work in stable or unstable settings. Or more accurately, our approach may be more tied to whether we *think* about our setting as stable or unstable. In stable settings, established rule sets and norms create the basis for a shared interaction logic which masks some of the cultural and socially grounded aspects of decision-making. Unstable settings or situations of crisis and emerging problems call forth the creativity of human agents and in negotiations reveal competing or contrasting judgment systems, rule sets and logics.

Conclusion: Suggestions for Reading (Using) this Book

Keeping in mind that this book is supposed to be for practitioners as well as academics and is intended as a field guide, what use is this excursion into discussing structure and agency, decision-making models or paradigms, and social change? Well, a field guide—particularly one of this size and offering this variety of papers—is only useful if the reader can *find* the material most useful to his problem. To make the hunt for relevant papers easier and more fruitful, I suggest the following approach for readers and users of this book.

First, think about your particular case and ask yourself: am I trying to figure out how my work is connected to a social change process (desired or undesired)? Are the conditions in which I am operating stable or unstable? Are the parties striving for purely rational choice decision-making or do they see themselves as tied to other actors and social pressures? In other words, first know yourself and know your own problem. Then as you read the various chapters that you think might be helpful, ask whether the author is actually addressing the problems you are facing. Or, is the author making some assumptions that don't match your reality? Even if the author's assumptions don't fully match your reality, or your reality as you perceive it, that does not mean you can't use any of the material in that chapter. It just means you need to use it with caution and perhaps with adaptations.

Speaking from my own experience, I am always more wary of claims made by authors working in my own field when they transfer assumptions about negotia-

tion from more stable settings into peace negotiations or conflict transformation processes without considering the effects of an unstable context. It is not that I reject what they are saying out of hand, but I use their work cautiously. For example, I think that it is easier to think of negotiators as rational choice theory decision makers when you are working in a stable setting with a bounded rule set to guide choices. Since I work in unstable settings, I see the persons I am working with as more oriented to a social game theory style of decision-making. They have constituencies pressuring them; they are embedded in roles that limit their range of actions; they carry (and often openly discuss) ethical limitations on their choices. Research that focuses entirely on a rational choice theory paradigm of decision-making can seem irrelevant to my work. Yet, I have found great benefit in reading negotiation materials on rational choice theory and decision-making. They remind me that even actors who see themselves as socially embedded decision makers do make cost-benefit calculations. And, if I can help them lay out the social and ethical factors they want to include in their cost-benefit matrix, they can make better decisions.

In closing, I hope that some day we might convene a discussion in the field about our unspoken assumptions and how they influence the ways we approach negotiation. The models we carry in our heads are as important for understanding why we do our work in similar or different ways as the differences in our academic disciplines or our practice arenas.

Endnotes

¹ See LISA SCHIRCH, *THE LITTLE BOOK OF STRATEGIC PEACEBUILDING* (2005), which defines strategic peacebuilding as “an interdisciplinary, coordinated approach to building a sustainable *justpeace*—a peace with justice” (6) and lays out a framework for understanding the many activities (including negotiation) involved in strategic peacebuilding.

² See MICHAEL L. SPANGLE & MYRA WARREN ISENHART, *NEGOTIATION: COMMUNICATION FOR DIVERSE SETTINGS* (2003), for a book that addresses the context issue in explicit terms.

³ *Polarity Management: A Concept Whose Time Has Come*, Polarity Management Associates, at <http://www.polaritymanagement.com> (last visited Mar. 8, 2006); see also, BARRY JOHNSON, *POLARITY MANAGEMENT: IDENTIFYING AND MANAGING UNSOLVABLE PROBLEMS* (1992, 1996).

⁴ Tom R. Burns, *Two Conceptions of Human Agency: Rational Choice Theory and the Social Theory of Action*, in *AGENCY AND STRUCTURE: REORIENTING SOCIAL THEORY* 202 (Piotr Sztompka ed., 1994).

⁵ See ANTHONY GIDDENS, *THE CONSTITUTION OF SOCIETY: OUTLINE OF THE THEORY OF STRUCTURATION* 281-372 (1984).

⁶ Burns, *supra* note 4 at 209.

⁷ A script is “a commonly assumed temporal ordering for some kind of event, for example, ‘a meal in a restaurant’, ‘trip to the beach.’” See ROGER C. SCHANK & ROBERT P. ABELSON, *SCRIPTS, PLANS, GOALS AND UNDERSTANDING: AN INQUIRY INTO HUMAN KNOWLEDGE STRUCTURES* (1977). Negotiations are deeply influenced by the unspoken scripts of the negotiators. See Jayne Seminare Docherty, *Culture and Negotiation: Symmetrical Anthropology for Negotiators*, 87 *MARQUETTE LAW REVIEW* 711 (2004). I am also indebted to Carol J. Gowler and Tamara Mihalic for insightful discussions about the role of scripts in peace building practice and complex negotiations.

⁸ In this chapter, I am following THOMAS P. M. BARNETT, *THE PENTAGON’S NEW MAP: WAR AND PEACE IN THE TWENTY-FIRST CENTURY* 9 (2004), in using the term rule sets to refer to “a collection of rules that delineates how some activity normally unfolds.” Rule sets are a combination of explicitly stated and referenced rules that are enforced by authorities and unconscious norms and expectations that are enforced by the tacit agreement of those who participate in a given activity.

⁹ It is important to recognize that many chapters will not answer these questions directly. But the answers can be derived from critical reading of the texts. An author may never mention the context of a negotiation, but her *assumption* of stability in the context will be apparent in the absence of any reference to outside forces that might disrupt the negotiation.

¹⁰ GIDDENS, *supra* note 5 at 373.

¹¹ For a case in which negotiating specific problems such as disarmament of a rebel group relates to renegotiating the rules that hold together social structures, see Jacqueline Nolan-Haley, *Agents and Informed Consent*, Chapter 58 in this volume.

¹² For resources that do take this approach, see PETER M. KELLETT & DIANA G. DALTON, *MANAGING CONFLICT IN A NEGOTIATED WORLD: A NARRATIVE APPROACH TO ACHIEVING DIALOGUE AND CHANGE* (2001); see also, Carrie Menkel-Meadow, *The Ethics of Compromise*, Chapter 18 in this volume for some discussion of the larger social implications of negotiation; see also, JAYNE SEMINARE DOCHERTY, *THE LITTLE BOOK OF STRATEGIC NEGOTIATION: NEGOTIATING DURING TURBULENT TIMES* (2005).

¹³ See DOCHERTY, *supra* note 12 at 9-11.

¹⁴ See RICHARD E. WALTON, JOEL CUTCHER-GERSHENFELD & ROBERT B. MCKERSIE, *STRATEGIC NEGOTIATIONS: A THEORY OF CHANGE IN LABOR-MANAGEMENT RELATIONS* (1994) and JOEL CUTCHER-GERSHENFELD, ROBERT B. MCKERSIE & RICHARD E. WALTON, *PATHWAYS TO CHANGE: CASE STUDIES OF STRATEGIC NEGOTIATIONS* (1995).

¹⁵ See MARI FITZDUFF AND CHEYANNE CHURCH, *NGOs AT THE TABLE: STRATEGIES FOR INFLUENCING POLICIES IN AREAS OF CONFLICT* (2004). See also Inventory of United Nations Resources on Women, Peace, and Security, available at

<http://www.un.org/womenwatch/osagi/resources/wps/Inventory-11Oct2004.pdf>

(last visited Mar. 8, 2006) for a summary of various United Nations efforts to ensure that women are involved in peace negotiations, peacekeeping, and peace building initiatives.

¹⁶ Collaborative law “engages in informal discussions and conferences to settle all issues” (<http://www.collaborativedivorce.com/info.html>). Collaborative divorce is a subset of the collaborative law approach focused specifically on divorce. It involves a team of professionals—attorneys, coaches/counselors, child specialists, and financial analysts—working together to help a couple (family) through the process of divorce using collaborative approaches to problem solving (<http://www.collaborativedivorce.com/cdteam.html>). For a discussion of the potential role of collaborative divorce initiatives in changing the legal system, see Jayne Seminare Docherty and David Anderson Hooker, *Evaluation Report: Collaborative Divorce Project Rapides Parish* (Sept. 2005) (unpublished evaluation report) (on file with authors).

¹⁷ See, e.g., Carrie Menkel-Meadow, *Correspondences and Contradictions in International and Domestic Conflict Resolution: Lessons from General Theory and Varied Contexts*, 2003 *JOURNAL OF DISPUTE RESOLUTION* 319.

¹⁸ Burns, *supra* note 4, at 202-03.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 203-204.

²² JAYNE SEMINARE DOCHERTY, *LEARNING LESSONS FROM WACO: WHEN THE PARTIES BRING THEIR GODS TO THE NEGOTIATION TABLE* 167-71 (2001). Weber identifies four forms of social action: goal-rational action, value-rational action, affectual (relational) action, and traditional action. Each one contains its own internal logic or rationality and actors can operate from a mixed set of social actions or logics. Instrumental rationality most coincides with RCT. The other three are all different versions of SGT rationality. MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 88 (A.M. Henderson & Talcott Parsons trans., 1947) (1964).