

Understanding Gender and Negotiation

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INTRODUCTION

Do men and women negotiate differently? Considering there is an almost universal assumption that men and women are different in more than just the biological sense, it seems that the answer would be a simple 'yes'. However, the question is much more complicated than it first appears. This field of study is filled with contradictory research results, a wide spectrum of theories, and a deeply-felt sense that there are, or at least should be, answers to questions like these.¹ It is commonly believed that in formal (i.e. competitive) negotiations women are poor negotiators because they are more cooperative and emotional than their more aggressive, competitive male counterparts. However, the characteristics that supposedly make women poor negotiators in the formal context are the very skills that are required of a successful collaborative negotiator in the alternate (or "appropriate") dispute resolution setting. This suggests that due to gender differences, men should do well in formal negotiations, but poorly in collaboration while the opposite should be true for women. While such a distinction seems simple, research on gender and negotiations is inconclusive.

Formal negotiation research suggests that gender is not a highly predictive variable and that power is the predominant factor in determining whether an individual will be a strong competitive negotiator. Collaborative negotiation research on the other hand shows gender as a powerful predictor of negotiation behaviours. While the research is clearly contradictory, it may be explained. Research suggests that the benefits of collaborative negotiating are only apparent when both parties are acting collaboratively. This benefit disappears when one party is collaborative and the other is competitive. Therefore it may

¹ Sheila, Heen, "Defining Gender Differences: Is the Proof in the Process?" (1996) 12(1) Negotiation Journal 9 at 9.

be that when a woman is in a formal negotiation setting where competitive behaviours are expected, or when the other party is negotiating in a strictly competitive manner, she will adopt the competitive approach because she knows from experience that collaboration will be fruitless in that situation. Therefore, by adopting a competitive “male” approach in formal negotiations the gender differences disappear and other factors such as power become predominant.

While this theory may explain the contradictory research results in formal and collaborative negotiations, it is problematic in that it only explains female negotiation behaviour. If this theory is correct, then women are flexible negotiators and can adapt to different circumstances by assuming the prescribed negotiation behaviours for each situation. But male negotiation behaviour remains unexplained. The answer may be that men are simply much more rigid than women and use competitive techniques in all situations regardless of the appropriate behaviour that is required. However, it is unreasonable to conclude that women are just better collaborators than men, and when it is required they are flexible enough to be equally good formal negotiators. Realistically men should also be able to be good collaborative negotiators when the situation requires it, even if it is against their “natural tendencies” (references to gender “tendencies” or “inclinations” refers to gender socialized behaviours).

It is suggested here that men have the ability to collaboratively negotiate just as well as women but there may be several reasons why men’s collaborative skills are not commonly observed. First, men have been socialized to behave competitively and aggressively; negotiations are for the most part framed in competitive terms and for a man to step outside of this framework may be risky. Others may perceive him to be weak, a sissy, incompetent, or feminine. Another reason a man’s ability to work collaboratively is

not often observed may be the way in which negotiation skills are measured. Because of the competitive frame for negotiations, success is often measured in terms of competitiveness – the more competitive the negotiator the more successful he or she is. Those studies that do measure collaborative negotiation skills typically do so indirectly. That is, researchers may present a negotiation setting which may be resolved both competitively and collaboratively and then observe who negotiates in what way. Since men may not be inclined to negotiate collaboratively they will behave in a competitive fashion. Women on the other hand may lean towards their “tendency” for behaving collaboratively, or if they feel the situation requires it, they may switch to competitive negotiating. These studies which present negotiation-style options are not designed to measure success in collaborative negotiations; what is measured is *who* negotiates collaboratively and who does not.

The aim of this paper is to clarify some of the confusion surrounding the issue of gender and negotiation with a focus on whether there are gender differences in negotiations. This paper will begin with a brief outline of what gender differences are presumed to exist in traditional or formal competitive negotiations followed by a short summary of the theoretical perspectives on gender differences in competitive negotiations. This will be followed by a description of the collaborative alternative (or “appropriate”) dispute resolution approach to negotiations and the skills which are required in this setting. Next empirical evidence of gender differences will be reviewed with a comparison of research in formal versus collaborative negotiations. Finally, there will be an attempt to explain and reconcile the conflicting evidence of gender differences.

I. GENDER AND DIFFERENCE

Identifying Gender Differences

There is a widespread acceptance in our society that men and women communicate and behave in fundamentally different ways. This is reflected in the “relationship-speak” industry of self-help books and magazines that focus on interpreting the language of the opposite sex.² A popular series *Men are from Mars, Women are from Venus*³ suggests that we are so dissimilar it is as though we are from different planets, speak different languages, and need translators in order to communicate. Given the enthusiasm for such books, there is no doubt that the masses are in agreement with this analogy. However, while the popularity of such books may be new, recognizing gender differences is not. The identification of social differences between men and women has been a part of world-wide cultural traditions for centuries. That this perception is so prevailing suggests its enormous significance. The perception of differences is critical to the way that humans identify themselves, and organize their social relations in ways that are seen as natural and normal.⁴ The likely reason for the firmness of these beliefs is that on a daily basis, men and women *do* differ in countless ways that are apparent to each of us.⁵

As implied by our much-loved pop-psych books, one of the most obvious differences between men and women is how they communicate, both verbally and non-verbally, on a day to day basis. For example, research on the differences between the way men and women talk reveals that women are more likely to use flowery empty adjective

² Annette Musolina, “Gender Expectations: Impact on Negotiators” (1998) 9 Australian Dispute Resolution Journal 103 at 103.

³ John Gray *Men are From Mars Women are From Venus: A Practical Guide for Improving Communication and Getting What You Want in Your Relationships* (New York: Harper Collins, 1991) at 9-10.

⁴ Judith O’Hare, “Negotiating With Gender” (1997) 8 Australian Dispute Resolution Journal 218 at 218.

⁵ Carol Watson, “Gender versus Power as Predictor of Negotiation Behavior and Outcomes” (1994) 10(2) Negotiation Journal 117 at 117.

such as “divine” or lovely”, qualifiers like “sort of” and “kind of” and end sentences with questions like “don’t you think?”.⁶ Men on the other hand control conversations and hold on to power by interrupting more than women, giving shorter answers, or not answering at all.⁷ Others have compared male-female conversations to a cross-cultural experience where boys and girls grow up in different worlds even if they live in the same house. It is argued that these cultural differences exist because from the time they were born, men and women were treated differently, talked to differently, and as a result talk differently themselves. As such men and women have different expectations about the role of communication in relationships, and how it fulfills that role.⁸

Empirical evidence also shows that women and men differ in their non-verbal communication. For example, women smile more than men do, are more sensitive to nonverbal cues than men are,⁹ and are better than men at deciphering the meaning of another person’s facial expressions or vocal intonation.¹⁰ Women and men also do different things with their eyes, faces, voices and bodies – for example, women engage in more mutual and non-mutual gazing at others than do males. It has even been suggested that to be recognizable as a male or female requires being able to perform these complicated nonverbal scripts.¹¹

⁶ Mary Brown Parlee “Conversational Politics” (1979) 12 *Psychology Today* 48 in John Ilich and Barbara Schindler Jones *Successful Negotiating Skills for Women* (Massachusetts: Addison-Wesley, 1981) at 4.

⁷ *Ibid.*

⁸ Deborah Tannen. *That’s Not What I Meant! How Conversation Style Makes or Breaks Your Relations With Others* (New York: Morrow and Company, 1986) at 5.

⁹ Judith A. Hall “How Big Are Nonverbal Sex Differences? The Case of Smiling and Sensitivity to Nonverbal Cues” in Daniel J. Canary and Kathryn Dindia eds. *Sex Differences and Similarities in Communication: Critical Essays and Empirical Investigations of Sex and Gender in Interaction* (New Jersey: Lawrence Erlbaum Associates, 1998) 155 at 155.

¹⁰ Marianne LaFrance and Nancy M. Henley “On Oppressing Hypothesis: Or, Differences in Nonverbal Sensitivity Revisited” in Mary Roth Walsh ed. *Women, Men, & Gender: Ongoing Debates* (New Haven: Yale University Press, 1997) at 104.

¹¹ *Ibid.*

There are several behavioural characteristics associated with each sex as well. Typical gender characterizations of males include competitiveness, independence, rationality, objectivity, reasonability and strategic thinking.¹² Men are also thought to be instrumental and task-orientated, aggressive, dominant, noisy, and loud mouthed.¹³ Females on the other hand are often characterized as dependent, cooperative, intuitive, emotional, subjective, and irrational.¹⁴ They are often thought to be gentle, sensitive to others, passive and gossipy; it is also believed that they talk more, are more emotionally expressive, are better listeners and are more aware of others' feelings than men.¹⁵

Gender Differences in Formal Negotiations

Given that there are significant gender differences in social behaviour, it seems logical to assume that there would be gender differences in the way men and women negotiate. The truth is, gender differences have been found to exist in negotiation studies as frequently as they have not been found and when they are found, they are just as likely to be weak and inconsistent as they are to be prevalent.¹⁶ The image of women that has emerged from early research suggested that women are “softer” negotiators than men, that they are more accommodating and generous, and that they are more concerned that all parties be treated fairly than they are about gaining positive outcomes for themselves. Men on the other hand are “tough” negotiators, who make more demands and less concessions and are more concerned about winning than about how the other party fares.¹⁷ Early research also found that men were more flexible and seemed to use a tit-for-tat strategy

¹² *Supra* note 4 at 219.

¹³ Nancy J. Briton. “Beliefs About Female and Male Nonverbal Communication” (1995) 32(1-2) *Sex Roles: A Journal of Research* 79 at 79.

¹⁴ *Supra* note 4 at 219.

¹⁵ *Supra* note 13 at 79.

¹⁶ *Supra* note 4 at 220.

¹⁷ *Supra* note 5 at 118.

more often than women and were better at finding rational strategies that allowed them to maximize gains.¹⁸ Later research showed that these gender differences were not consistently supported, however there still seems to be the general expectation that women will negotiate more cooperatively than men.¹⁹

Despite inconsistent research results, several theories have been proposed as to why men and women negotiate differently. The prevalence, popularity and mere fact that such theories exist suggests that researchers and academics are working from the belief that these supposed gender differences are a reality. It is interesting that so much work has been put into theorizing the “why” of the differences instead of searching for concrete evidence as to whether such differences exist or not. Understanding the basis of these theories will aid in understanding the bigger picture of gender and negotiation. These theories illustrate how society frames “good” negotiation skills as those that are characteristic of men. This emphasis also demonstrates the different values placed on male versus female attributes.

Theoretical Perspectives

Gender theory presents a wide variety of explanations for those gender differences which are thought to exist. Some say that biology is the basis of gender differences, and others argue that we are strict products of socialization. There is also the perspective that power and dominance account for gender differences, while others argue that situational and circumstantial differences themselves create the expression of gendered characteristics.²⁰ Gender theories in negotiation draw from several of these perspectives. Currently there are four theories which attempt to explain the source of presumed gender

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Carrie, Menkel-Meadow, “Teaching About Gender and Negotiation: Sex Truth and Videotape” (2000) 16(4) *Negotiation Journal* 357 at 362.

differences in negotiating behaviour: gender-role socialization, situational power, gender and power combined, and the expectation states theory perspective.²¹

According to the gender-role socialization perspective men and women will negotiate differently and differ in success because of the different behavioural expectations associated with their gender roles.²² Men and women are simply socialized in different ways and to value things differently. This produces different expectations, behaviours, perceptions, outcomes, and levels of satisfaction in negotiation. The results are gender stereotypes.²³ For example, in North American culture women are taught to be nurturing and supportive; therefore, women are expected to be softer and more accommodating in negotiations and to avoid direct confrontations. Men on the other hand are taught to be tough and task-orientated. Thus when it comes to negotiations they are expected to be harder, more competitive negotiators than women.²⁴

A more common explanation is the situational power perspective which questions the existence of gender differences and instead suggests that observed differences are due to women and men's differential access to power.²⁵ This perspective suggests that parties who have more power, regardless of their gender, should be more competitive and successful than those with less power.²⁶ Since women have less access to power and the powerful are more effective in negotiation, then power, not gender, determines negotiation

²¹ *Supra* note 5 119.

²² Carol Watson "Gender Differences in Negotiating Behavior and Outcomes: Fact or Artifact?" in Anita Taylor and Judi Beinstein Miller eds. *Conflict and Gender* (New Jersey: Hampton Press, 1994) 191 at 192.

²³ *Supra* note 20 at 362.

²⁴ *Supra* note 22 at 192.

²⁵ *Ibid* at 193.

²⁶ *Supra* note 5 at 120.

outcomes. To the extent that women achieve positions of power, they too will demonstrate characteristics of effective negotiators.²⁷

The gender-plus-power perspective suggests that giving a person power may not eliminate the effects of his or her gender status. This explanation maintains that both the situational power and gender-role socialization perspectives are correct.²⁸ This additive model argues that as a result men who have a lot of power are expected to be extremely competitive and successful negotiators where as women with little power are expected to be extremely cooperative, but unsuccessful in negotiation. Men with little power and women with a lot of power are expected to be equivalent and mid-range negotiators.²⁹

Finally, expectation states theory suggests that other's stereotypical expectations of gender-conforming behaviours will influence behavioural choices and outcomes.³⁰ This perspective is based on Berger's expectation states theory which proposes that status characteristics such as gender establish performance expectations in small groups, thus higher status individuals (i.e. men) are expected to be more competent than lower status individuals (i.e. women).³¹ As a result of these expectations, high status individuals do in fact initiate more, receive more positive reactions from others and have more influence.³²

This complex model predicts that the influence of gender and power combine with each other, but differently and under different circumstances.³³ It suggests that when men and women negotiate with each other, gender affects their power and therefore the outcome of the negotiation. Thus, the effect will depend on whether negotiators are in same or

²⁷ *Supra* note 20 at 362.

²⁸ *Supra* note 5 at 120.

²⁹ *Ibid.*

³⁰ *Supra* note 20 at 363.

³¹ J. Berger, M. H. Fisek, R.Z. Norman, and M. Zelditch Jr. *Status Characteristics and Social Interaction: An Expectation States Approach* (New York: Elsevier, 1997) in *supra* note 5 at 120.

³² *Supra* note 22 at 195.

³³ *Supra* note 5 at 120.

mixed set pairs. It is predicted that male gender is expected to enhance power, and female gender is expected to detract from power in mixed-set pairs; gender is not expected to have an impact on negotiators' power in same-sex pairs.³⁴ Thus a powerful woman who negotiates with a man will have much more difficulty controlling the negotiation than a powerful man who negotiates with a woman; but a woman's power is not diminished when she negotiates with another woman and a man's power is not enhanced when he negotiates with another man.³⁵

Each perspective offers what appears to be a sensible explanation of the sources of gender-differential behaviour in negotiations. However, each one predicts different outcomes in behaviour. Gender-socialization predicts that men, regardless of situational power will behave more competitively than women. Situational-power holds that regardless of gender, high power individuals are more competitive than those with low power. Gender-power predicts that power and gender will combine so that high-power men are the most competitive, low-power men and high power women are equivalent and intermediate, and low power women are the least competitive. Expectation-states predicts that gender and power exaggerate men's situational power and minimize women's in mixed-pairs with the result that high power men should be significantly more competitive than low power women, but high power women should not be more competitive than low power men.³⁶

All of the theories are based on the premise of explaining the sources of gender differences in negotiations. But each theory does much more than this. First each one assumes that there is one predominant characteristic of a good negotiator and that is level of

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Supra* note 22 at 195.

competitiveness. This narrow view does not leave room for the possibility that there may be other skills that contribute to a successful negotiation. Since gender research suggests that men are more competitive than women, the theories also assume that men are better negotiators than women. Even the situational power perspective which maintains that power and not gender predict level of competitiveness still suggests men are better negotiators because they have more power. These assumptions also imply that other negotiation styles or techniques have little or no value. Because these theories are comparing genders, those techniques or characteristics deemed to be of little worth are associated with the comparison group – women. In short, the theories of formal negotiations enforce gender stereotypes and the belief that characteristics that are predominantly “male” are more valuable than “female” characteristics.

The ADR Approach to Negotiation

Unlike formal negotiations, the goal of ADR processes is to focus on interests instead of positions. A position is what an individual believes would be his or her preferred outcome. Interests on the other hand are needs which a party wants satisfied. These are often expressed in terms of concerns, hopes, expectations, assumptions, beliefs, feelings and values.³⁷ While the formal approach to negotiation is a win-lose formulation, the ADR perspective seeks an outcome that meets the interests or needs of both parties. Instead of confrontation and aggression, ADR focuses on conciliation and collaboration.³⁸ The skills then for a successful negotiation in ADR are quite different from those expected in a formal negotiation. Such skills can be identified by the Thomas Killman Conflict Mode Inventory

³⁷ Constructive Problem Solving: Presentation to the Community Living Division, Social Services Conference – November 20, 2002 in Kevin Fenwick (2004) “Supplementary Class Materials” at 9.

³⁸ Angela M. Bradstreet, “Dealing With Socialized Gender-Based Behaviour in Negotiations” (1996) 38 (7) *For the Defense* 15 at 15.

(TKI) which categorizes five approaches to conflict. Each approach uses different tools to deal with conflict, but each one is best suited to certain kinds of conflict, and what works in one situation may not work in another.

The TKI proposes that individuals approach conflict resolution based on two factors: commitment to goals and commitment to relationships.³⁹ A commitment to one's goal is the extent to which that individual tries to satisfy his or her own concerns. A commitment to relationships on the other hand is the extent to which an individual strives to satisfy the concerns of the other party, and the importance of the relationship with the other party. These two factors are used to assess an individual's preference for one or more of the five conflict handling styles: competing, avoiding, compromising, accommodating, and collaborating.⁴⁰

The first four styles are distributive approaches. Competing involves high assertiveness and low cooperativeness; here the goal is to "win". This style stresses positions without considering opposing points of view. Competing can be useful when a person has to take quick action, make unpopular decisions, or when one needs protection in a situation where non-competitive behaviour can be exploited.⁴¹ The avoiding style is when one does not satisfy her concerns or the concerns of the other person. This style is low assertiveness and low cooperativeness and the goal is to delay. It is appropriate to use this style when there are issues of low importance, to reduce tensions, or to buy time.⁴² Compromising is moderate assertiveness and moderate cooperativeness; here the goal is to "find a middle ground". This style produces temporary solutions and is appropriate when

³⁹ *Supra* note 37 at 8.

⁴⁰ <http://web.mit.edu/collaboration/mainsite/modules/module1/1.11.5.html> Conflict Management Conflict Styles: The Five Conflict Styles (Thomas/Killman, 1972 with further descriptions and analysis by Bonnie Burrell, 2001).

⁴¹ *Ibid.*

⁴² *Ibid.*

time is a concern, and as a back up for the competing and collaborating styles when they are unsuccessful in resolving the situation.⁴³ The accommodating style is putting one's concerns on the backburner in order to satisfy the concerns of others. This style is low assertiveness and high cooperativeness; the goal is to "yield". The accommodating style is appropriate to use in situations when an individual wants to show that he is reasonable, develop performance, create good will, keep peace, or for issues of low importance.⁴⁴

The fifth style, collaborating, is an integrative approach – it looks to what is important to both sides to find a solution. Collaborating is highly assertive and highly cooperative; the goal is to find a "win-win" solution. Using this style can support open discussion of issues, task proficiency, better brainstorming, and development of creative problem solving. Collaborating skills include the ability to use active or effective listening, confront situations in a non-threatening way, analyze input, and identify underlying concerns.⁴⁵ Collaboration is used to find an integrative solution when both sets of concerns are too important to be compromised, to merge insights from people with different perspectives on a problem, to gain commitment by incorporating other's concerns into a consensual decision and to work through hard feelings which have been interfering with an interpersonal relationship.⁴⁶

The collaborative approach arguably is the ideal methodology for negotiation in ADR. It combines high interests in both one's own goals, and the goals of the other party and has a strong focus on relationships. Interestingly, the skills valued in collaborative negotiations appear to be those "female" characteristics which have such little value in a

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

formal negotiation setting. This suggests that while women are “poor” formal negotiators, they should be very successful at collaboration.

The Value of “Female” Characteristics in Collaborative Negotiations

Research does suggest that women do possess the skills valued in collaborative negotiating.⁴⁷ For example it has been found that women differ from men in that they are more relational – that is, they define themselves through their relationships. Women therefore consistently show sensitivity to others’ needs and include others’ points of view in their judgements. This creates an expectation of emotional connection, empathy, shared experiences, and responsibility in interactions.⁴⁸ For relational individuals, it just as important to understand and empower others as it is to be understood and empowered. This relational view is expressed in two ways in negotiation.⁴⁹ First, as a party to a negotiation a woman views her interests within the context of how her actions in one situation affect her other responsibilities and commitments in another. Second, a woman expresses her relational view in terms of relational ordering. This means that she creates a climate in which people can come to know each other, learn each other’s modes of interacting, and understand each other’s values.⁵⁰ For women, expressing feelings and learning how others experience situations is as important as the substance of the discourse.

It has also been argued that women have an embedded form of agency, beneficial to collaborative negotiation.⁵¹ Women understand events in terms of their impact on important ongoing relationships and as evolving situations with a past and a future. Thus

⁴⁷ C. Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Cambridge: Harvard University Press, 1982) in Deborah M. Kolb, “Her Place at the Table: Gender and Negotiation” in Mary Roth Walsh ed. *Women, Men, & Gender: Ongoing Debates* (New Haven: Yale University Press, 1997) at 139.

⁴⁸ Kolb *ibid* at 139.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

the boundaries between themselves and others, and a task and its surroundings are blurred and overlap. As such, a negotiation is not seen as a separate event with its own rules, rather it must be understood in terms of the backdrop from which it emerges. Men on the other hand focus on individual activities defined in terms of tasks and structure.

Another benefit is a woman's ability to empower others.⁵² Often power is considered to be the ability to exert control over others. This leads to a division between the powerful and powerless. Because women may feel that assuming this power can lead away from connection, they tend to emphasize the needs of others and allow them to feel powerful. While this may be viewed as passive, unacceptable behaviour at the formal negotiation table, during collaboration it can be considered beneficial. Empowering others allows them to feel valued and respected. This can improve the relationship between the parties and advance the negotiation process.

Another collaboration-orientated characteristic of women is that dialogue is central to their model of problem solving.⁵³ Unlike argument and debate used in competitive negotiations, women frame, consider and resolve problems through communication and interaction. Women clarify understanding through interaction by trying to engage the other party in a joint exploration of ideas.⁵⁴ This process of problem solving involves a special kind of openness in negotiation and allows parties to learn about the problem together and have a high regard for one another's interests. This process can lead to new understandings and generating more solutions than the typical positional negotiations.

⁵² *Ibid* at 140.

⁵³ *Ibid*.

⁵⁴ J.L. Surrey, "Relationship and Empowerment" Work in Progress no. 30 (Wellesley: Stone Center Working Paper Series, 1987) in Kolb *supra* note 47 140.

Women have also been found to be less “rigid” than men in conflict settings allowing for a smoother negotiation process.⁵⁵ In all interactions, and particularly conflict which is typically found in negotiations, there is uncertainty about how to act, and what the consequences of those actions will be. As such, people will respond to this uncertainty in one of two ways. Some cope with the uncertainty by identifying the situation and reacting to it in an appropriate manner. Others reduce uncertainty by becoming rigid. That is, they respond to all situations in the same way regardless of circumstances. For example, some people always become defensive and lash out, or ignore or avoid conflict at all costs. Rigid responses have the psychological benefit of reducing internal tension, but this can have negative consequences in negotiations. If the rigid individual cannot intimidate others by lashing out, or successfully stifle issues by avoiding them, their rigid behaviour intensifies and quickly shuts down the negotiation process. It is suggested that men are more likely to fall prey to this type of rigidity than women. This is because women are more interpersonally orientated. That is, they are more responsive to others’ interpersonal cues than men are and therefore tend to be more flexible. Men on the other hand tend to interpret conflicts in win-lose terms and therefore approach all conflicts with whatever strategies usually win for them.⁵⁶

From the descriptions of female characteristics above, it is clear that women do possess traits that are highly valued at the collaborative negotiation table. Thus, if women, who are poor formal negotiators, are highly skilled in collaboration, then it follows that men should be poor at collaborative negotiations since their skills tend to be those in the

⁵⁵ Joseph P. Folger, Marshall Scott Poole, & Randall K. Stutman eds., *Working Through Conflict: Strategies for Relationships, Groups, and Organizations*, 4th ed. (New York: Longman, 2000) at 196.

⁵⁶ J. Z. Rubin, and B. Brown. *The Social Psychology of Bargaining and Negotiation*. (New York: Academic Press, 1975).

formal negotiation arena. At the collaborative table there is no room for the highly competitive, abrasive negotiator who is unconcerned about the other party's feelings and seeking only to win. Instead, this is a place where an individual is free to focus on relationships, be cooperative, and use intuition and sensitivity. In short, if the gender stereotypes are true, a woman can "be herself" in collaborative negotiation. But is there empirical evidence to suggest that these gender differences in negotiations really exist?

II. EMPIRICAL EVIDENCE OF GENDER DIFFERENCES

It is commonly believed that there are gender differences in all forms of negotiations. In competitive negotiation situations men's characteristics are considered beneficial while in ADR negotiations women have the upper hand. But how accurate are these views? Regardless of how the negotiation is framed (i.e. formal versus collaborative), if there are real differences between genders, as theories and stereotypes suggest, then research studies should reveal these differences. Men should be the stars of formal negotiations, while women should be the winners at the collaborative table. However, the findings in research are surprisingly unclear.

Formal Negotiation Research

The four theories of competitive negotiation all predict different behaviour and outcomes based on gender differences. Carol Watson conducted a review of 34 research studies that address the topic of gender differences in formal negotiation, seeking to find which perspective, if any had the strongest support.⁵⁷ Her research found no support for either the gender-power additive explanation or for the expectation-states theory perspective, but she was able to draw several interesting conclusions from her review.

⁵⁷See *supra* note 22 at 196-207 and *supra* note 5 at 121-125.

First, situational power appears to be a better predictor of formal negotiation behaviour and outcomes than gender. For both genders, power generally led to greater competitiveness, dominance and successes suggesting that given a reasonable amount of situational power women are just as likely as men to be competitive. Those with situational power typically employ a “rationality” focus centering on rules, discipline, control, and neutrality – characteristics of the strong negotiator. Those without situation power usually focus on the relational context, emphasizing cooperation, compassion, and appealing to emotions – characteristics of the soft negotiator. Watson suggests that women are not the “soft” negotiators they were thought to be and as a result there is no reason to mistrust a woman’s formal negotiation abilities. This also suggests that men might not always be competitive, aggressive negotiators and that their tactics too are based on power.

Despite the general finding that higher power lead to stronger competitiveness, there were some contradictory results, especially with the tactics employed by powerful individuals. For example, in one study powerful parties were found to employ more defensive than offensive strategies. That is, these parties engaged in more retractions and accommodations than they did threats, rejections, or attacking arguments.⁵⁸ In another study the powerful parties used problem-solving rather than competitive methods.⁵⁹ In research of power and gender of managers, many similarities in negotiating abilities across genders were found.⁶⁰ The results showed that high-power managers whether male or female chose problem solving approaches more often than their low-power colleagues, and

⁵⁸ L.L. Putnam and T.S. Jones “Reciprocity in Negotiations: An Analysis of Bargaining Interaction” (1982) 49(3) Communication Monographs 171 in *supra* note 5 at 122.

⁵⁹ C. Watson and L.R. Hoffman “An Examination of the Impact of Gender and Power on Manager’s Negotiation Behaviour and Outcomes” (1992) Paper presented at the Annual Meeting of the Academy of Management, Las Vegas Nevada in *supra* note 5 at 122.

⁶⁰ Anthony, Wanis St. John. “The Gender and Power Mix for Managers as Negotiators” (1996) 12(4) Negotiation Journal 367.

that low-power managers avoided cooperation and disclosure. The researchers conclude that there appears to be no support for the idea that power and gender work to the benefit of men and to the detriment of women managers in negotiations; rather women are as likely as men to enact appropriate behaviours when in managerial positions. That these studies show powerful individuals using more collaborative techniques in certain situations suggests that with power comes the ability to be flexible and negotiation tactics appropriate for specific circumstances.

In sum, research of gender and formal negotiations indicates that power is a stronger predictor of negotiator behaviour and success. From this, the conclusion might be drawn that men are better at formal negotiations because in general they have higher levels of situational power. Moreover, women would be less competitive (and therefore rely more on their collaborative skills) because they have less power. But competitiveness is not a skill required of a successful collaborative negotiator. Therefore one does not need a high level of power to be a good collaborator. If, as is suggested by formal negotiation research, gender is not a strong predictor of negotiation behaviour then one might argue that men and women should be equally skilled at collaborating. However, research in this area suggests that there are strong gender differences.

Collaborative Negotiation Research

In one study researchers divided subjects into same-sex pairs to conduct a study that could be settled in a distributive (i.e. competitive “I win, you lose”) manner or with a more creative approach so that both sides would benefit.⁶¹ The men used distributive tactics such

⁶¹ M. Kimmel, D.G. Pruitt, J.M. Magenau, E. Konar-Goldband and P. Carnevale “Effects of Trust, Aspiration, and Gender on Negotiation Tactics” (1980) 38(1) *Journal of Personality and Social Psychology* 9 in Linda Babcock, and Sara Lashever. *Women Don't Ask: Negotiation and the Gender Divide* (New Jersey, Princeton University Press, 2003) at 168.

as making threats, insulting the other side, and staking out inflexible positions much more than the women did. The women on the other hand behaved much more collaboratively by approaching the conflict in a much less threatening way and by being more creative problem solvers. In two other studies that compared male and female managers it was found that men were much less likely to share information than women.⁶² The Thomas Killman Inventory states that collaborating is a combination of being highly assertive and cooperative. By sharing more information, not only were the women more cooperative, but they opened the floor for broader discussions and better brainstorming. A third study again separated its subjects into same-sex groups of two.⁶³ The participants here were undergraduates in a negotiations class. The pairs were asked to negotiate a deal allocating public money to build a children's playground. One member was a representative of a community volunteer organization and the other was from the Parks Department. The gender differences in this study were striking.

Males were much more likely than females to talk about their positions with all of the male pairs discussing their positions while only 17 percent of the female pairs discussed positions. Moreover, the men used confrontational tactics (making threats or posing ultimatums) nine times as much as the women did. On the other hand the women talked about personal information far more than the men (92 percent as compared to 23 percent). Interestingly, for the women this was not small talk about their personal lives. Instead the personal information they discussed was relevant to what each side wanted. Introducing this information into their negotiations helped expand their shared understanding of the

⁶² S. Hengensen, *The Female Advantage: Women's Way of Leadership* (New York: Doubleday/Currency, 1990) in Babcock and Lashever *ibid.*

⁶³ J.J. Halpern and J.M. Parks, "Vive la Difference: Differences Between Males and Females in Process and Outcome in a Low-Conflict Negotiations" (1996) 7(1) *International Journal of Conflict Management* 45 in Babcock and Lashever *ibid.*

goals of both sides. Furthermore, when the women discussed the personal information it was within the first five minutes of the negotiation (suggesting a more efficient process) while men introduced personal information after twenty minutes of negotiation and only when they were having difficulty reaching an agreement.

There was also a difference in how the teams used the case materials presented to them. Fifty percent of the female teams discussed how the playground would affect a senior citizens home nearby, while none of the male teams considered this issue. On the other hand 58 percent of the males (but only 8 percent of the females) discussed legal liability issues. The researchers considered this noteworthy because legal issues were not a part of the case materials and the participants had introduced this on their own.

The results of this study strongly suggest that men typically focus more on the competitive elements of a negotiation while women focus more on the relational aspects. That is, the women focused on the needs of both sides and how the outcome of the negotiations would affect other people (e.g. the senior citizens). The researchers conclude that women use a more productive process and are likely to produce better outcomes for both sides because they exchange more information which is essential to achieving a superior solution in an collaborative bargaining situation. This study indicates that not only are women more collaborative than men, but their style of negotiation creates a huge advantage because while the competitive approach favoured by men may produce good short-term “wins”, the collaborative approach produces superior agreements for both parties which improves negotiation positions in the future with the same party.⁶⁴ This conclusion was confirmed in another negotiation study that presented collaborative options to the participants.

⁶⁴ Babcock and Lashever *ibid* at 170.

In this study pairs of MBA's were asked to conduct a multi-issue negotiation that had high integrative potential.⁶⁵ Some agreements could be great for both parties, others terrible for both parties, with a wide range of alternatives in between. The study was designed so that in order to find a better outcome, the negotiators were required to share more information. When the outcomes were compared the all-female pairs had better outcomes for both parties than the all-male pairs. This suggests that the females shared more information than the male pairs and that they used different techniques to achieve their results. As mentioned above, this collaborative approach is a huge advantage in the sense that it maintains a positive relationship which will carry over to future negotiations between the parties. In fact, research shows that women are more likely to see a negotiation as one event in a long-term negotiation whereas men are more likely to see it as a single event.⁶⁶

Even though a collaborative approach may typically result in superior results, this is not always the case.⁶⁷ For example, in the study above the mixed-pair negotiators did not produce results that were any better than the all-male pairs. That is, when one party was collaborative and the other competitive the benefits of collaboration were lost. In fact, the collaborative parties (the women) did much worse when negotiating against the competitive men and the "pies" that were split up were much smaller than the "pies" in the all-female pairs. So, while collaboration produces better results in negotiations it is only when both parties are acting collaboratively and in these studies this was only when both parties in the negotiation were women. Does this mean that collaboration will be successful only with

⁶⁵ *Ibid.*

⁶⁶ *Ibid* at 172.

⁶⁷ *Ibid.*

women? Surely the answer is ‘no’, but this makes interpreting gender and negotiation research much more complicated.

Interpreting Gender and Negotiation Research

The results of the studies above show two important points about collaboration: first the best outcomes appear to result from situations where both parties are collaborative, and second, if one party is collaborative and the other is competitive the negotiation outcomes will be inferior.⁶⁸ The last point is important when we look back to the research results from formal negotiations. These results typically found power to be a better predictor of negotiation behaviour and outcomes, though the results were varied. Women may have learned from experience that collaborative negotiating is ineffective when negotiating with competitive party or in a formal negotiation setting where competition is expected. As such, a woman may simply adopt the techniques used by the competitive party because she knows from experience that the collaborative approach will not work. Furthermore, some argue that in a competitive-collaborative setting the collaborative party may be taken advantage of. For example because women are more relational than men they often define situations in terms of their connection to others.⁶⁹ If a woman is relational with a competitive party and the competitive party recognizes this, they may take advantage of the woman’s focus on the relationship if she is too open and discloses more information. Therefore, by adopting the typical male competitive tactics the gender variable is diminished and other factors which affect negotiations such as power become stronger predictors of negotiation behaviours.

⁶⁸ *Ibid.*

⁶⁹ Trina, Grillo. “The Mediation Alternative: Process Dangers for Women” (1991) 100 Yale Law Review 1545 at 1550.

In summary it is believed that men and women behave differently in negotiations. Men are more competitive, while women are more collaborative. Yet research on gender and negotiations has been inconclusive. In formal negotiation research, power is a stronger predictor than gender. But in collaborative negotiation research the participants' proficiency seems to be divided along gender lines with women being more skilled collaborative negotiators than men. However the benefits of collaboration are only apparent when both parties are acting collaboratively. When one party is competitive and the other is collaborative, the beneficial outcomes of collaboration are reduced to those of a competitive negotiation. Therefore, it might be that when a woman is in a formal negotiation setting where competitive behaviours are expected, or when the other party is negotiating in a strictly competitive manner, she will adopt the competitive approach either because she knows from experience that collaboration will not work in the situation, and/or because she is avoiding letting the other party take advantage of her tendency to disclose more information. Therefore, by adopting a competitive "male" approach, the gender differences found in collaborative negotiations disappears.

The above sounds reasonable, but it is problematic in that it focuses solely on differences in female negotiation behaviour. There are men who are good at collaborative negotiating, and with the growing popularity of ADR approaches, the number of men skilled in collaboration grows. Yet there is a prevailing belief that men are competitive and only competitive. Women can be both collaborative and competitive, depending on the circumstances, but men have only one role. This belief is so deeply entrenched in our society that it is not even questioned. Linda Babcock and Sara Lashever write in their book:

...a multitude of negotiation studies in the past two decades have shown that a cooperative approach, aimed at finding good outcomes for all of the parties rather than just trying to “win”, actually produces solutions that are objectively superior to those produced by more competitive tactics. The influence of this line of research has been so profound, and the behaviours it recommends dovetail so nicely with women’s strengths, that negotiation experts often joke that the goal of many negotiation courses today is to train people to negotiate like women.⁷⁰

If the above is true, then why aren’t there books for men, teaching them how to negotiate like women? Interestingly the excerpt above comes from a single chapter titled “The Female Advantage” in Babcock and Lashever’s book which otherwise is dedicated to explaining why women are “poor” negotiators. If negotiators today want to train people to negotiate like women, shouldn’t authors be writing entire books on the topic instead of a short chapter? The closest piece of writing that this author could find that teaches men to be collaborative was John Gray’s *Men are From Mars, Women are From Venus*⁷¹, and while a great book for teaching communication skills in relationships, this series is hardly a tool to teaching collaborative negotiations. The roadblock to successful negotiating is not men or women; rather it is the frame that has been neatly put around the concept of negotiations. All of these gender differences and similarities that vary in different contexts can be (at least partially) understood when we look at how negotiation is taught, researched, valued, and perceived in our culture.

III. EXPLAINING GENDER IN NEGOTIATION

The way we teach, examine, and perceive ideas or concepts are all related to how those conceptions are framed in society. These frames are positioned so that there is only a limited view of the subject, presented through a narrow, culturally-biased lens. Part of the

⁷⁰Babcock and Lashever *supra* note 63 at 165.

⁷¹*Supra* note 3.

societal gender frame is based on the assumption that women are inferior just because they are “different” from men.⁷² This assumption tells us that “maleness”, often regardless of its context, is the correct behaviour, attitude, approach, and mind-set to life. “Femaleness” on the other hand is presumed to be wrong because it is different. Consequently, in areas like negotiation, being successful (regardless of the actual outcome) will almost always be framed in terms of what success is to a man. The norms that guide competitive win-lose negotiations are designed by men for men and therefore are compatible with stereotypical gender norms for men, but not with gender norms for women.⁷³ Even if the theoretical perspectives of negotiations are examined, we find that each one frames good negotiation skills in terms of stereotypical male traits and defines success as level of competitiveness, even though research tells us that collaborative negotiation styles have high success rates.

Framing, Gender and Perceptions

Framing negotiations from a male perspective can have serious consequences for both men and women. For example, because of the “win-win” mentality some researchers have questioned women’s competence in negotiating, claiming that women’s behaviour in negotiations is similar to that of men who do not understand the rules of the game.⁷⁴ The result is that there is pressure on women, and men with less masculine personalities, to conform to the male standards of negotiations or be judged as less, regardless how skilled those individuals may actually be.⁷⁵ The pressure to act a certain way has two negative consequences. First and most obviously, the individual, whether male or female may be acting in a way that is not natural to him or her. The individual may therefore feel

⁷² *Supra* note 5 at 117.

⁷³ *Ibid* at 125.

⁷⁴ T. Caplow *Two Against One: Coalition in Triads* (New Jersey: Prentice Hall, 1968) in *supra* note 5 at 119.

⁷⁵ *Supra* note 55 at 92.

discomfort with the process and participating in it. Second, if the individual does participate in the expected manner, but those behaviours are not consistent with his or her gender-stereotypes (i.e. if women behave competitively and men behave collaboratively), then that individual will be perceived negatively, even though he or she is acting in the prescribed manner.

Falling Short of Expectations

Research shows that both men and women are viewed negatively when they behave in ways that are contrary to society's gender role expectations.⁷⁶ Unfortunately in almost all settings there are shared expectations that there are right and wrong ways of acting for men and women.⁷⁷ Thus, even when it might be appropriate for a woman to behave competitively to protect her own interests in a formal negotiation, that woman is likely to receive much more negative reactions for doing so than a man would. Therefore, the recognition of appropriate behaviours in a formal negotiation is much less clear for women than it is for men.⁷⁸ In fact, women often complain that the same behaviours that make men appear competent and assertive make women appear shrill and pushy.⁷⁹ Consequently, because they are violating societal expectations, women are seen as negatively aggressive if they look out for their own interests and expect to be rewarded fairly for their efforts.⁸⁰

The same applies to men as it has been found that they are just as likely to be judged as less effective in dealing with conflict when their behaviour was not gender-congruent (i.e. when they did not behave competitively).⁸¹ But men who behave assertively are not

⁷⁶ Watson *ibid* at 125.

⁷⁷ *Supra* note 69 at 1555.

⁷⁸ *Supra* note 4 at 220.

⁷⁹ Elizabeth Gordon. "What Role does Gender Play in Mediation of Domestic Relation Cases?" (2002) 86(3) *Judicature* 134 at 141.

⁸⁰ Babcock and Lashever *supra* note 63 at 165.

⁸¹ *Ibid* at 92.

devalued because this is consistent with what is socially expected of them.⁸² This poses a problem in collaborative settings where it may be appropriate for a man to share more information, be more relational and not act competitively. Even though this setting prescribes collaborative behaviour, if a man engages in the appropriate behaviours dictated by the circumstances he will be acting in a way that is not consistent with male gender norms and may be perceived negatively by others and even himself for not acting like a “man” and being “feminine”. Arguably because our society frames most areas of life in terms of men (or male behaviours) being superior, it is even more difficult for a man to behave in ways that are against gender norms. Women may be perceived negatively if they are competitive, but society as a whole stills values these competitive behaviours. On the other hand, not only will men be perceived negatively if they display collaborative characteristics, but society also tells men that these characteristics are not valued. Therefore, there is little motivation for a man to act collaboratively, even if it is a natural inclination, or if the circumstances require collaborative behaviour.

Perceptions can also affect how men and women will be treated regardless of how they act. For example, one researcher has found that it is commonly believed that women have a “taste for cooperation”, but the fact that people *think* that women are more likely to be cooperative is more important than whether women really are cooperative.⁸³ For example, if an employer offers a woman a job he may assume she has a taste for cooperation, so that he offers her a smaller wage than would be offered to a man. He may also think – again related to his views on her taste for cooperation – that she is the one

⁸² D. K. Ivy, and P. Backlund. *Exploring Genderspeak: Personal Effectiveness in Gender Communication*. (New York: McGraw-Hill, 1994) in *ibid* at 136.

⁸³ Carol M. Rose “Bargaining and Gender” (1994-1995) 18 *Harvard Journal of Law and Public Policy* 547 at 547.

doing the bulk of the housework and the child care at home, so she has little time to search for other employment. Even if this particular woman refuses the low wage, the employer will still perceive women to be cooperative. Beliefs do not vanish instantly and the employer will continue to make low offers to women, and at least some will accept, making him think that he was right in the first place. In a sense he may be right. If his views are widely shared the woman will know that she will continue to get low wage offers even if she refuses. Therefore there are high costs and little pay off if she breaks the pattern and she may give into the very stereotype that disadvantages her.⁸⁴

The example above suggests that a significant aspect of gender is not so much how the individual is going to behave, but rather it is the expectations that the individual's gender creates in their opponent.⁸⁵ This is an important component in negotiations where like the situation above, a woman may be perceived to be more cooperative than she really is. In the absence of actual knowledge of a person that is to the contrary, there is a natural tendency to rely on such stereotypes in forming impressions of others. These stereotypes create expectations as to what is appropriate behaviour from us towards the other party and vice versa. Thus women will be treated as though they are cooperative and men will be treated as though they are competitive regardless of how that individual actually behaves. If individuals do not meet these expectations they will be viewed negatively and this will affect whether their arguments in the negotiation are viewed as reasonable.

For example, one female negotiator has found in her experience that whenever emotional arguments are advanced, regardless of the quality, there is an expectation that the

⁸⁴ *Ibid* at 555-556.

⁸⁵ *Supra* note 2 at 105.

she should be more receptive to such arguments.⁸⁶ Taking a so-called “hard” position in response will generally invoke a criticism that her response is “unreasonable”.⁸⁷ Therefore, if a man acts collaboratively in a negotiation he may be viewed as emotional and for that reason unprofessional, even though his tactics, if responded to positively would create a better outcome in the negotiations. Thus, where gender-based expectations are not met (by both men and women), there is a tendency on the part of the opponents to view this as unnatural and in turn to view their opponent and their opponent’s arguments as unreasonable.

Conducting Research: The Effects of Framing

It has been argued that because of our perceptions and expectations, gender stereotypes create differences in how we assess what we see, thereby creating findings in research that match these gender stereotypes.⁸⁸ That is, while men and women may be equally successful at formal and collaborative negotiations our perceptions and expectations affect how gender is measured and evaluated in research. Because of the male-orientated competitive frame, negotiation success is often measured in terms of competitiveness. Those studies that have reported on collaborative negotiation skills typically do so as an offshoot to the formal negotiations. That is, researchers will present a negotiation setting which may be resolved both competitively and collaboratively, and then observe who negotiates in what way. Since men, may not be inclined to negotiate collaboratively they will behave in a competitive fashion. Women on the other hand may lean towards their tendency for behaving collaboratively, or if they feel the situation requires it, they may switch to competitive negotiating. Even when collaboration is

⁸⁶ *Ibid* at 107.

⁸⁷ *Ibid*.

⁸⁸ *Supra* note 55 at 92.

measured it is always in the context of *who* uses the collaborative skills and not the extent of those skills. Research has found that women use collaborative skills *more* than men but these studies do not measure the quality of collaborative negotiation skills. So, even though women are more often collaborative, this does not mean that they are better at it. In fact, reports of real-life negotiators' experiences show that men are as equally skilled as women at collaboration and do use these skills in appropriate circumstances.

Gender in Negotiation Outside the Laboratory

One negotiator has observed in her experiences that not all men act competitively.⁸⁹ Rather, these male negotiators appear to be more constrained by the competitive focus of the organizations they work for than by their gender. She has also observed that in collaborative negotiations gender is of little importance and in these situations male team members did not take a more assertive role or adopt stereotypical male characteristics. Another female lawyer and mediator also found it difficult to generalize along gender lines.⁹⁰ She can cite specific instances of male opponents whose negotiating behaviours were aggressive and confrontational, but says that this is by no means the rule, nor the sole domain of male negotiators. This lawyer/mediator believes that the notion that gender is an accurate predictor of negotiating behaviour assumes that human behaviour is the result of a person's fixed attributes, such as gender. This idea did not accommodate the lawyer's experiences with negotiators who are able to adapt their negotiating behaviour to the unique circumstances of a dispute, and employ non-stereotypical approaches, with a view to maximizing outcomes for themselves or their clients. In her experiences men are just as likely as women to engage in or switch to "soft" negotiating, or to appeal to emotional

⁸⁹ Kathy Sims and Clive Sefton. "Negotiation: Sex or Style?" (1998) 9 Australian Dispute Resolution Journal 106 at 110.

⁹⁰ *Supra* note 2 at 103.

arguments, especially where the opponent's bargaining power appears to be stronger.

Women in stronger bargaining positions are, in her experience, just as willing as male negotiators to criticize emotional arguments and adopt a "hard" bargaining stance.

These personal experiences show that men are just as flexible as women and that they can behave collaboratively in the appropriate circumstances. This is evidence that the way these behaviours have been measured and interpreted is flawed. The collaborative studies above focused on who engaged in collaborative behaviours. There is no indication that the participants were instructed to negotiate collaboratively. Therefore the men may have simply been unaware that this laboratory situation required collaboration. Without knowledge or direction otherwise, the male participants may have leaned towards their competitive inclinations and therefore did not have the opportunity to show flexibility in the negotiations. Since negotiations are typically framed in terms of competition there is even less reason for a man to act collaboratively as it is not the norm in negotiations. Thus there are several reasons why collaboration research does not reveal that men are just as capable of being collaborative as women are. This means we must constantly be critical of what research and theories tell us and be aware that everything in life comes from a perspective that has been framed by society.

Improving Understanding of Gender

Because of this framing problem we must learn to question and be critical how gender is taught, researched and explained. For example, the "gender" problem in negotiation is always conceptualized as "the woman" problem. Researchers often ask: why are women less effective in negotiation, less competitive, achieving lower monetary or point outcomes, rather than, why are men less likely to place value on relationship

preservation or less likely to process and hear information?⁹¹ If we are going to focus on gender in negotiation we must note that there are two genders and that “male” negotiating behaviour (if such a thing exists) is just as problematic and worth examining as “female” negotiation behaviour. The deconstruction of gender labels is often just as empowering to men (who want to be collaborative and information sharing in negotiation without the stigma of being a “sissy”) as it is to women who are strong, self-interested competitors.⁹² In questioning the negotiation frame we must ask how our negotiation models create and maintain these gender differences.⁹³ In our current model the perspective that supports male experience dominates over alternative perspectives, thereby preventing a whole range of unconsidered possibilities from being discovered. Therefore, we must critique existing practices and expose new possibilities. The challenge is to make the female values of connection and relationship building not only visible, but available to men.⁹⁴ Focusing on fixed gender differences, as is the norm, can have the effect of unintentionally reinforcing gender stereotypes that do not help individuals to become more effective negotiators.⁹⁵

In addition to questioning assumptions about gender differences we should question assumptions about negotiations. It has been noted with respect to cultural assumptions about our negotiation goals that even *Getting to YES* may be riddled with assumed universalisms like seeking “objective” criteria “separating the people from the problem” and “exploring interests”. If those “principles”, developed by male expert negotiators in particular contexts were elaborated by women, or were presented in other negotiation contexts they might look different. For example, there might be situations when subjective

⁹¹ *Supra* note 20 at 358.

⁹² *Ibid.*

⁹³ Deborah M. Kolb “More than Just a Footnote: Constructing a Theoretical Framework for Teaching about Gender in Negotiation” (2000) 16(4) *Negotiation Journal* 347 at 352.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

criteria would be more appropriate, such as when one of the parties is a loved one. Additionally, because women focus more on relationships, negotiation theories and practices may need to be re-examined in light of how both genders would define and describe their negotiation goals, purposes and implementations. Instead of looking at gender as just another variable, it should be looked at as a different point of view, one that might transform the concept of negotiation. Thus we must approach negotiations in different ways, and we must recognize that we cannot all “Get to YES” in exactly the same way.⁹⁶

Conclusion

The use of negotiation is an important tool to resolve conflicts. The outcomes of a negotiation can be said to result from the personal characteristics of each person, the interpersonal relationships of the participants and situational factors.⁹⁷ One important factor is gender. There have been a countless number of studies on gender differences in negotiation, but generally the results are uncertain. Competitive negotiation research and theories maintain that power is a significant predictor of behaviour and success in negotiation while research in collaborative negotiations maintains that there are strong gender differences. However, these differences can be reconciled. Women may naturally be inclined to negotiate collaboratively but because of experience in competitive negotiations they have learned to be flexible and negotiate both ways depending on the circumstances. Men may be naturally inclined to negotiate competitively, and while they may have the skills to collaborate, the way in which negotiations are framed may be the

⁹⁶ Carrie Menkel-Meadow. “Negotiating with Lawyers, Men and Things: The Contextual Approach Still Matters” (2001) 17(3) *Negotiation Journal* 257 at 291.

⁹⁷ K. Payne, Peter Kohler, Joseph P. Cangemi & Harold Fuqua Jr. “Communication and Strategies in the Mediation of Disputes” (2000) 29(1) *Journal of Collective Negotiations* 29 at 30.

reason men's collaborative skills are not so readily observed in research and negotiation theory.

Admittedly, the recent research cited above suggests that there may be some truth in some of the stereotypes, at least under certain conditions. Specifically men may be more inclined to behave competitively and women more collaboratively. But these inclinations are nothing more than the result of gender socialization and are not strict rules governing gender behaviour. Moreover, more men and women are breaking these gender stereotypes everyday and behaving in "non-gender congruent" ways. This is why it is so important to recognize that negotiations are typically framed, taught, researched and theorized from the perspective that gender-socialized male characteristics are superior to so-called female characteristics. Not only does this devalue women, but it traps men into masculine frames that deny them the ability to explore alternative and more productive forms of negotiation. The goal then should be to shift the negotiation perspective away from male-female characteristics to situation-appropriate skills that can be used successfully by both men and women. Both genders can be highly skilled at any type of negotiation; it is not gender, but society's frame that holds us back.

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