

## IT'S COMPLICATED: REFLECTIONS ON TEACHING NEGOTIATION FOR WOMEN

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What does it mean to be a woman negotiator? In the two decades that I have been teaching negotiation, I have encountered a wide range of human behavior in the negotiation setting. Individuals run the gamut in terms of their strategies, tactics, worldviews, charisma, perspicacity, flexibility, and other factors that affect negotiation behavior and negotiation outcomes. But one area that negotiation students are always curious about—be they top executives, law students, government employees, lawyers, or doctors—is the role of gender in negotiation. The maddening but intriguing answer to this question is the same as the answer to many other questions about negotiation: it's complicated. The most important quality of negotiation is its dynamic and fluid nature, each encounter completely unique to its own participants and its own contexts, yet always with the possibility of analysis along a set of identifiable dimensions.

The role of personal identity in negotiation, and the idea of a focus on women negotiators versus men negotiators in particular, has always presented a challenge for teaching negotiation. Of course, personal identity along a spectrum of dimensions influences negotiation behavior. And yet there is no one way that women do—or should—approach negotiation, any more than there is any one way that women do anything else; so, too, for members of any race, ethnicity, religion, and culture.

The idea of identity groupings forming the basis for decisions about how to approach negotiation—whether for members of a particular identity group themselves or for those who might be negotiating with members of that group—can be deeply troubling, because it may lead to stereotyping and objectifying. That is to say, if I plan to negotiate in “X” way based purely on seeing that I am negotiating with a person of “Y” gender, race, religion, or culture, I am making decisions based on one dimension, the

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impact and import of which I may not even fully understand. Gender, racial, religious, and cultural identities are not monolithic and preset; individuals' behaviors may be influenced by, but not predetermined by, these factors. Essentializing negotiation behavior down to any one identity component, be it gender or another dimension, is not only offensive to the idea of multifaceted and complex individuals, but also highly likely to be ineffective and counterproductive in the face of such complexity.

But does that mean that a scholar of negotiation can or ought to close her eyes to differences that may be present along a notable dimension? What if there is a collective societal intuition that gender may play a role in negotiation behavior and outcome? What if research reveals negotiation differences along gender or other lines? What can a careful student and teacher of negotiation do?

In my early years as a negotiation scholar, I appreciated the complexity of the question, but I did not give the issue of identity differences a great deal of airtime in my classes. Indeed, I resisted efforts to focus my own research on questions involving gender or other identity characteristics. In my own research, for example, I studied negotiation behavior of hundreds of negotiating dyads, but did not do any analysis that was based on the gender (or racial) identity of the negotiating parties.<sup>1</sup> In my semester-long law school courses, I was always sure to include at least one class session on issues around gender, race, and culture. But I focused the bulk of my course materials on developing an understanding of a set of flexible tools to analyze negotiation processes and outcomes, tools that could be used irrespective of issues of identity. In part, I subsumed these questions in a broader fabric of negotiation analysis, suggesting that the tools for breaking down negotiation strategies and tactics had to include an examination of a variety of dimensions, which should encompass questions of identity but not be overwhelmed by them. But it was also hard to develop a shared vocabulary for analysis of gender, race, and other factors. Some students might embrace a stereotype about gender and negotiation, for example, only to get strong pushback from another student. And the behavior that (anecdotally, to be sure) I observed among my negotiation students did not

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1. See, e.g., Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 L. & SOC. INQUIRY 473 (2008); Rebecca Hollander-Blumoff, *Formation of Procedural Justice Judgments in Legal Negotiation*, 26 GROUP DECISION & NEGOT. 19 (2017).

reliably conform to any gender stereotype and did not appear to consistently break down along any kind of gender lines.

However, about a decade ago, I began to get a steady stream of requests to teach “special” negotiation sessions for women: women faculty, women executives, women physicians, and so on. And this consistent demand required me to rethink my largely “gender-free” approach to negotiation. Over time, I have developed an approach to teaching negotiation courses to women audiences, and to mixed audiences interested in gender and negotiation. In the remainder of this essay, I discuss that approach and some of the issues and challenges that underpin my efforts.<sup>2</sup>

For a full-day course on negotiation, I focus my energy first on developing a shared set of terms and ideas about the structure of negotiation and basic negotiation theories and tactics. I also spend time addressing key psychological principles at play in the negotiation setting. I then segue into the role of gender in negotiation. First, I present the research about gender pay disparities. Pay disparities have been the subject of quite a bit of press recently,<sup>3</sup> with high profile cases like Michelle Williams’s dramatically low pay for reshoots compared to Mark Wahlberg’s garnering attention and outrage. She received \$1,000 for the same work for which he received \$1.5 million.<sup>4</sup> The general statistic—women earning \$.805 on the dollar compared to men in 2017<sup>5</sup>—represents roughly \$10,000 on average per year of lower gross income, resulting in a significant disparity over the course of

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2. I do not mean to exclude from the subject of this essay those who do not embrace a gender-binary identity; however, the types of courses I have consistently been asked to teach have specifically been labeled as “women’s” negotiation courses. For that reason, and because the research in the area has, to date, largely been focused on distinctions that are binary in nature, I focus my essay in that space. But I hope that future research in this area will be more inclusive of those outside the gender binary.

3. For a few examples among many, see, Grace Hauck, *When Will Women Get Equal Pay? Not for Another 257 Years, Report Says*, USA TODAY (Dec. 20, 2019), <https://www.usatoday.com/story/news/nation/2019/12/20/gender-pay-gap-equal-wages-expected-257-years-report/2699326001/>; Josh Schrock, *Megan Rapinoe Slams FIFA Over Gender Pay Gap, Scheduling*, NBC SPORTS (July 6, 2019), <https://www.nbcsports.com/bayarea/earthquakes/womens-world-cup-megan-rapinoe-slams-fifa-over-gender-pay-gap-scheduling>; *Gender Pay Gap*, BBC NEWS, <https://www.bbc.com/news/topics/cg41ylwvxy5t/gender-pay-gap>.

4. Jack Shepherd, *Michelle Williams Felt “Paralysed” by Mark Wahlberg Pay Row*, INDEPENDENT (Apr. 3, 2019), <https://www.independent.co.uk/arts-entertainment/films/news/michelle-williams-mark-wahlberg-pay-gap-gender-all-money-world-sexism-a8852066.html> [https://perma.cc/L6R4-KVZT].

5. ARIANE HEGEWISCH & HEIDI HARTMANN, INST. FOR WOMEN’S POL’Y RES., *THE GENDER WAGE GAP: 2018 EARNINGS DIFFERENCES BY RACE AND ETHNICITY* (2019), <https://iwpr.org/publications/gender-wage-gap-2018/> [https://perma.cc/XF92-SJAA].

a forty-plus-year career.<sup>6</sup> Of course, these numbers are unadjusted, meaning that they include disparities that may stem from fewer hours, concentration in lower paying professions, and potential differences in time off for parental leave, among other factors. Yet even adjusted wage gap data often shows an ultimate gap; for example, as part of a lawsuit, Princeton economist Henry Farber performed an analysis of Microsoft's wage data over six years and found that such adjustments took the pay gap from a gross disparity of 8.6% to 2.8%.<sup>7</sup>

In 2003, Linda Babcock and Sarah Laschevar published their groundbreaking book *Women Don't Ask*, providing both anecdotal and research data supporting the idea that many women simply failed to engage in negotiation, producing subpar results merely by virtue of failing to speak up to ask for what they wanted.<sup>8</sup> This and other works produced a wave of sentiment to empower women to be more assertive and effective in negotiation. Public service announcements telling women to "Ask4More," featuring celebrities ranging from Maria Shriver to Sarah Silverman to Mariska Hargitay, have gained prominence.<sup>9</sup> The American Association of University Women offers a free online course to help women learn how to negotiate their salaries.<sup>10</sup> Carnegie Mellon started a Program for Research and Outreach on Gender Equity in Society (PROGRESS), teaming up with

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6. *The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap*, NAT'L CMTE. ON PAY EQUITY, <https://www.pay-equity.org/info-time.html> [<https://perma.cc/AL7G-52GH>]. For example, over a forty-seven year career, the wage gap can amount to \$700,000 for a high school graduate, \$1.2 million for a college graduate, and \$2 million for a professional-school graduate. *See id.*

7. Corrected Expert Report of Henry S. Farber, Ph.D., *Moussouris v. Microsoft*, No. 2:15-cv-01483 (W.D. Wash. Mar. 18, 2018), ECF No. 384; *see also* Claire Suddath, *New Numbers Show the Gender Pay Gap Is Real*, BLOOMBERG BUSINESSWEEK (Mar. 28, 2018, 11:01 PM), <https://www.bloomberg.com/news/features/2018-03-29/the-gender-pay-gap-is-real-say-new-numbers-from-the-u-k> [<https://perma.cc/K8R7-J468>]. Note that Microsoft disputed Farber's findings, claiming that the ultimate gap was only 0.2%. *Id.*

8. LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* (2003).

9. Zoë Henry, *Chelsea Clinton and Sheryl Sandberg Teach Women How to 'Ask4More,'* INC. (Apr. 6, 2015), <https://www.inc.com/zoe-henry/chelsea-clinton-sheryl-sandberg-chime-in-with-ask4more-campaign.html> [<https://perma.cc/G7KJ-BHBY>].

10. *See Work Smart*, AM. ASS'N U. WOMEN, <https://salary.aauw.org/> [<https://perma.cc/KFC9-VGSQ>].

the Girl Scouts to teach girls ages eight to thirteen how to be effective negotiators, and even offering a “win-win” badge in negotiation skills.<sup>11</sup>

Indeed, the most persistent effort to bring about pay equity through legal mandate, the proposed Paycheck Fairness Act, not only calls for more forceful elimination of pay disparities along gender lines than the Equal Pay Act of 1963, but specifically funds programs to teach girls negotiation skills.<sup>12</sup> In particular, the Paycheck Fairness Act provides that grants may be provided to “carry out negotiation skills training programs for the purposes of addressing pay disparities, including through outreach to women and girls.”<sup>13</sup> The Paycheck Fairness Act has been introduced in every Congress over the past twenty years, although it has failed to pass in each one.<sup>14</sup>

This effort to include gender-specific training for negotiation reveals a consistent message: if women did a better job with their negotiations, gender pay equity would be closer to realization. At the same time, legal rules also have developed that acknowledge how difficult information can be to acquire in the workplace. For example, when Lilly Ledbetter filed a case against Goodyear Tire and Rubber Company alleging pay discrimination, the Supreme Court dismissed the case because the statute of limitations had long passed on the initial pay disparity.<sup>15</sup> In response, Congress enacted the Lilly Ledbetter Fair Pay Act of 2009, which provided that the statute of limitations for pay discrimination would reset with each new paycheck.<sup>16</sup>

This variety of efforts to empower women to negotiate largely stemmed from the popular and pervasive “women don’t ask” paradigm. Yet the “common wisdom” surrounding this paradigm has recently become subject

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11. Jenni King & Susan Orr, *Carnegie Mellon Students to Teach Girl Scouts How to Make a Deal*, CARNEGIE MELLON TODAY (Sept. 22, 2006), [https://www.cmu.edu/cmnews/extra/060922\\_gs.html](https://www.cmu.edu/cmnews/extra/060922_gs.html) [<https://perma.cc/43BH-R62P>].

12. *See* Paycheck Fairness Act, H.R. 7, 116th Cong. (2019).

13. *Id.* § 5.

14. Claire Zillman, *The Protracted Battle to Strengthen the Equal Pay Act Enters Its 22nd Year—and the #MeToo Era*, FORTUNE (Apr. 2, 2019), <https://fortune.com/2019/04/02/equal-pay-paycheck-fairness-act/>.

15. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

16. Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (2009) (codified in scattered sections of 29 U.S.C. and 42 U.S.C.).

to some degree of skepticism.<sup>17</sup> The world is always evolving, and it may be that times have changed for women in the workplace, and the dearth of “asking” and the disempowerment prominently in evidence in 2003 has altered in the current workplace. There has certainly been rapid change in gender issues on a variety of fronts, including discrimination and sexual harassment in the workplace. “Time’s up” and “#MeToo” are now everyday terms, and prominent lawsuits have been filed against figures such as Harvey Weinstein and Roger Ailes for inappropriate and allegedly criminal behavior towards women.<sup>18</sup> Changes in norms and behavior may mean that the “women don’t ask” paradigm is outdated or less prevalent than it was previously. However, even these findings still suggest that gender disparities in negotiation remain meaningful. In one recent study, researchers found that women and men negotiated at the same rate, but women received fewer concessions and lower outcomes.<sup>19</sup> Another study’s findings suggested that men negotiate more than women when there is ambiguity about whether negotiation is possible, but that men and women negotiate at equal rates when there is an explicit cue given that wages are negotiable.<sup>20</sup>

In addition, some research does suggest that there may be “rational” reasons that women who “don’t ask” choose to avoid negotiation, namely that they face backlash for doing so, including poor ratings by colleagues and bosses, and an expression of lack of interest in working further with the “asker.”<sup>21</sup> Microsoft CEO Satya Nadella made headlines in 2014 when discussing, at an event focused on women in computing, how wonderful it was to work with women. He stated, “It’s not about asking for a raise, but

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17. For example, Andrea Schneider offers a variety of rebuttals to this premise in recent work. See Andrea Kupfer Schneider, *Negotiating While Female*, 70 SMU L. REV. 695 (2017).

18. Yohana Desta, *Yet Another Accuser Has Filed a Lawsuit Against Harvey Weinstein for Alleged Rape*, VANITY FAIR (Aug. 22, 2018), <https://www.vanityfair.com/hollywood/2018/08/harvey-weinstein-another-lawsuit-alleged-rape> [https://perma.cc/XFT8-UP5Y]; Kevin McCoy, *Roger Ailes’ Death Complicates Sexual Harassment Cases Against Him*, USA TODAY (May 18, 2017), <https://www.usatoday.com/story/money/2017/05/18/roger-ailes-sexual-harassment-lawsuits-and-investigations-continue-despite-his-death/101828918/> [https://perma.cc/4XKD-PUMQ].

19. See Benjamin Artz, Amanda H. Goodall & Andrew J. Oswald, *Do Women Ask?*, 57 INDUS. REL. 611 (2018).

20. Andreas Leibbrandt & John A. List, *Do Women Avoid Salary Negotiations? Evidence from a Large-Scale Natural Field Experiment*, 61 MGMT. SCI. 2016 (2015).

21. See Hannah Riley Bowles, Linda Babcock, & Lei Lai, *Social incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes it Does Hurt to Ask*, 103 ORG. BEHAV. & HUM. DECISION PROCESSES 84, 89-91 (2007).

knowing that the system will give you the right raise as someone goes along in their career. And that, I think, might be one of the additional super powers, that, quite frankly, women who don't ask for a raise have. Because that's good karma. It will come back."<sup>22</sup> His commentary suggests that women are expected not to ask, and that they may be perceived positively for their reticence and negatively for deviating from this norm.

Even while acknowledging that the data on "women don't ask" is subject to temporal evolution, I also focus on some of the data about how well women perform in negotiation. These data are mixed, with some studies showing disparities and others showing no distinction.<sup>23</sup> As with all studies, they capture a microcosm of a wider set of behaviors and outcomes, and here, we have a highly subjective process and a field of research with a set of conflicting vectors. There is no clear takeaway that can guide women in all negotiation settings.<sup>24</sup> "Stereotype threat," where reminding individuals of a particular stereotype can foster behavior that is stereotype-congruent, may also play a role in how women behave in negotiation, suggesting that highlighting gender as an issue in negotiation may yield worse results for women.<sup>25</sup> But "stereotype regeneration," the association of stereotypes with positive behavior, may be a way to highlight positive stereotypes about women and negotiation behavior, thereby improving their performance.<sup>26</sup>

What are ways to respond to these conflicting, confusing, and also sometimes troubling data? Linda Babcock and Hannah Riley Bowles have proposed "relational accounts," a method of negotiation that stresses efforts to legitimize requests by tying them to institutional identity and fabric.<sup>27</sup>

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22. Blair Hanley Frank, *Microsoft CEO Under Fire for Saying Women Should Trust HR Systems to Deliver Pay Raises*, GEEKWIRE (Oct. 9, 2014, 4:09 PM), <https://www.geekwire.com/2014/microsoft-ceo-fire-saying-women-trust-hr-systems-deliver-raises/> [<https://perma.cc/MB4W-VEVB>].

23. See, e.g., Jens Mazei et al., *A Meta-Analysis on Gender Differences in Negotiation Outcomes and Their Moderators*, 141 PSYCHOL. BULL. 85, 98 (2014) (looking at 123 studies and concluding that "differences between men and women in economic outcomes are not inevitable but strongly depend on the context").

24. See, e.g., Deborah M. Kolb, *Too Bad for the Women or Does It Have to Be?: Gender and Negotiation Research over the Past Twenty-Five Years*, 25 NEGOT. J. 515 (2009).

25. See, e.g., Claude M. Steele & Jason Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797 (1995).

26. Laura J. Kray, Adam D. Galinsky & Leigh Thompson, *Reversing the Gender Gap in Negotiations: An Exploration of Stereotype Regeneration*, 87 ORG. BEHAV. & HUM. DECISION PROCESSES 386 (2002).

27. See Hannah Riley Bowles & Linda Babcock, *How Can Women Escape the Compensation Negotiation Dilemma?: Relational Accounts Are One Answer*, 37 PSYCHOL. WOMEN Q. 80, 82 (2012);

Andrea Schneider has pushed back on what she calls the “myths” that women don’t negotiate, that women shouldn’t negotiate because of backlash, and that women can’t negotiate (or can’t negotiate as well as men), but nonetheless offers a host of gender-aware approaches for women negotiators that include recognizing, breaking, and/or working within stereotypes.<sup>28</sup>

In my own teaching, I too focus largely on awareness and navigation of stereotypes. Being alert to the possibility of negative stereotypes regarding negotiation behavior can help individuals maneuver around the shoals of these preconceptions. I consistently rely on some of the pillars of “principled negotiation,”<sup>29</sup> popularized in Roger Fisher and William Ury’s *Getting to Yes*, but highlight how they are significant for problems that may stem from gender-based stereotype. For example, separating the people from the problem is one of the central principled negotiation tenets. Because one stereotype about women is that they have more interest in relationships and place more value on interpersonal connection,<sup>30</sup> women who appear indifferent to personal relationships, or willing to sacrifice personal connections for other goals, may suffer. Indeed, the existence of this stereotype means that some women may fear even raising substantive issues because they fear that such issues will be perceived as threatening to the relationship, and that some negotiation counterparts may in fact perceive substantive issues as threatening to the relationship. Being explicit about the value of the personal connection but explicitly uncoupling the substantive issues from the personal relationship can be very effective for women in this situation. That is, explaining or honoring the value of the personal relationship and then deliberately “turning” to the substantive issues for discussion on the merits can be a successful strategy. The upside of this strategy is that it can be effective regardless of whether a stereotype is playing a role.

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Suzanne de Janasz & Beth Cabrera, *How Women Can Get What They Want in a Negotiation*, HARV. BUS. REV. (Aug. 17, 2018), <https://hbr.org/2018/08/how-women-can-get-what-they-want-in-a-negotiation> [https://perma.cc/2RPG-J99P].

28. Schneider, *supra* note 17.

29. ROGER FISHER & WILLIAM URY, *GETTING TO YES* 21-39 (Bruce Patton ed., 1991).

30. Laura J. Kray, Jochen Reb, Adam D. Galinsky & Leigh Thompson, *Stereotype Reactance at the Bargaining Table: The Effect of Stereotype Activation and Power on Claiming and Creating Value*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 399, 406 (2005).

Similarly, another stereotype that women sometimes face relates to what motivates them to negotiate. Women who are perceived as “greedy” are acting counter to a community-focused stereotype where women are not ambitious for their own sake.<sup>31</sup> One principled negotiation tactic that can help ameliorate this problem is using objective criteria.<sup>32</sup> Pointing to external benchmarks to bolster the legitimacy of a particular interest takes the attention off of a “need” or “desire” by a woman negotiator, instead focusing on an external market or precedent-based figure or policy.<sup>33</sup> Again, this is an effective strategy regardless of whether the negotiation partner holds the bias. Because negotiation is so consistently inconsistent in how it unfolds, I try to focus on strategies that can be effective across a variety of circumstances. And although gender is hardly the only factor at play in negotiation, it can be more or less salient in some settings.

In using this approach, I do not mean to suggest that women do not encounter bias and discrimination in work or other negotiation settings. Accounts of sexism and discriminatory behavior based on gender, as well as race and other factors, are not limited to anecdotes (which are legion); well-publicized lawsuits and media accounts are too numerous to list here. For this reason, I think it is incumbent upon a negotiation professor to address these issues, and I have increasingly moved towards including these concerns as a fundamental part of my teaching.

But I have also increasingly felt obligated to remind my audiences that teaching negotiation skills to women is not the only—or even the most desirable—method to end the pay gap and other inequities in the workplace. Laws that mandate fair pay are one method, and individuals who insist on fair pay for others when *they* are the decision-makers are another. It is simply not enough to say that we hope women will become better negotiators in order to get what is fair. We must also remember that those in positions of authority and negotiation power, whether they are men or women, must keep an eye to such fairness as a commitment if real change is ever going to occur.

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31. Laura J. Kray, Leigh Thompson, & Adam Galinsky, *Battle of the Sexes: Gender Stereotype Confirmation and Reactance in Negotiations*, 80 J. of PERSONALITY & SOC PSYCHOL. 942, 944 (2001).

32. *Id.* at 81–94.

33. *Id.*

