

Negotiating Wicked Problems: Five Stories

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***Editors' Note:** Sometimes the problem to be negotiated is itself both obscure and deeply unstable; everything you do to try to improve the situation turns out to create a new problem, and sometimes, a worse one. In these settings, the authors conclude, traditional negotiation training has often not been enough: we need something new. The contributors offer a series of personal and dramatic stories from very different settings, which together illustrate how a new set of concepts and approaches is developing. The rest of the chapters in this section set out to define what that might consist of, and how it just might – at a starting level, and with a great deal of needed development only barely under way – begin to work.*

Introduction

The unusual team of authors for this paper came together in stages, starting in Rome at the 2008 initial conference of the Rethinking Negotiation Teaching project. There, the first three authors (Calvin, Jayne, and Leonard) started sharing stories about their efforts to use negotiation in situations of violence and instability. In Istanbul, Jamil and Howard joined the team with stories of negotiating difficult problems in more stable and less violent settings. The sixth author, Chris, makes no claim to have negotiated wicked problems, but has served as the team's internal facilitator.

As we proceeded from discussion to writing, we agreed that the project needed to focus not only on developing new ways of teaching "Negotiation 1.0," but also on shifting the theories that support negotiation and the tools used by negotiators. We also agreed that in our experience negotiation as a term may stand for a whole array of processes which, in other contexts, are often treated separately. To choose a relatively straightforward example, when the United States and China are referred to as being in the process of "negotiating" a new trade relationship, those directly concerned are likely to understand this as involving much more than two "negotiators" sitting down at a table in Beijing or Washington. In this example, it would not be unusual to find such a bilateral meeting taking place on one issue even while the same parties are holding mediated talks on another aspect, litigating two or three more issues before the World Trade Organization, and sending complementary or contradictory negotiating signals by unilaterally enacting new import regulations on something else. In the situations we are concerned with, it is often arid and unhelpful to try to separate "pure" negotiation from the other activities; what counts is the whole package.

Experience drives our conclusion: "Negotiation 1.0" practices were designed to work best when dealing with situations where the *problem* is clear (and agreed upon by the parties) but the *solutions* are

not evident. We, on the other hand, have been working on cases where the problem is *not* clear. Furthermore, any attempt to define the problem incites passionate conflict, in part because each definition of the problem implies solutions that carry social, political and moral consequences that are valued differently by various parties. In other words, "Negotiation 1.0" practices were well suited to dealing with "tame" problems; we have found them inadequate, except as component parts of something more evolved, when dealing with "wicked" problems (Honeyman and Coben, *Navigating Wickedness*, Chapter 24). We argue in the succeeding chapters that our field needs to develop more robust and adaptive negotiation *practices*, as well as more flexible and creative methods for *teaching* negotiation, if we want to prepare our students to deal with the myriad number of problems in the world that are correctly classified as "wicked."

The concept of tame versus wicked problems is imported from public planning; we find the distinction also useful for thinking about why negotiation works well in some situations but not in others. However, the terms cause difficulty, because while "wicked" problems have a flavor all their own, the term "tame" seems insulting as well as inaccurate for problems that can include the negotiation of multi-million-dollar deals or the settlement of complex litigation. It is important to acknowledge that "tame" is not a synonym for easy, and "wicked" is not a synonym for complex.

A more useful way to think about negotiating tame versus negotiating wicked problems is to consider the types of changes negotiators need to make when dealing with a problem. Tame problems can be very complex, but they are still amenable to "technical" solutions. To the extent that "Negotiation 1.0" focuses on linear movement through identifiable steps and stages (which of course has never been *entirely* the case), it can be analyzed largely in terms of "technical" change – with the negotiator or intervener applying an external set of tools to solve a problem. Wicked problems, on the other hand, require "adaptive" responses that require negotiators or intervenors to modify their own views and behaviors, rather than merely applying tools to a problem outside themselves (Kegan and Lahey 2009). To the extent that "Negotiation 1.0" was originally "developed in large part by relatively affluent Western white males culturally situated in a free-enterprise context" (Greenhalgh and Lewicki 2003: 2) with a focus on managing transactions rather than managing ongoing relationships (Greenhalgh and Lewicki 2003: 31), it does not lend itself to dealing with problems that require the negotiators to change themselves and their relationships in order to address problems. It is also

important to acknowledge that “tame” is not another word for “nonviolent” and “wicked” is not another word for “violent.” Three of the authors (Calvin, Jayne, and Leonard) work in situations dominated by violence or the potential for violence. The other authors (Jamil, Howard, and Chris) do not deal regularly with violence. Yet we all deal with problems that appear to be wicked; each of the cases exhibits some combination of the following features (stated in the previous chapter but repeated here for convenience of the reader):

- The problem is ill-defined and resists clear definition as a technical issue, because wicked problems are also social, political, and moral in nature. Each proposed definition of the problem implies a particular kind of solution which is loaded with contested values. Consequently, merely defining the problem can incite passionate conflict.
- Solutions to a wicked problem cannot be labeled good or bad; they can only be considered better or worse, good enough or not good enough. Whether a solution is good enough depends on the values and judgment of each of the parties, who will inevitably assess the problem and its potential solutions from their respective positions within the social context of the problem.
- Every wicked problem is unique and novel, because even if the technical elements appear similar from one situation to another, the social, political, and moral features are context-specific.
- A wicked problem contains an interconnected web of sub-problems; every proposed solution to part or the whole of the wicked problem will affect other problems in the web.
- The only way to address a wicked problem is to try solutions; every solution we try is expensive and has lasting unintended consequences. So, although we have only one shot to solve *this* wicked problem, we will have plenty of opportunities to develop our skills as we deal with the wicked problems that we create with our attempted solutions.¹

A tame problem, by contrast, can be – more or less – separated from the surrounding context and dealt with as a discrete issue. (Again, we must emphasize, this does *not* mean that “tame” should be confused with “easy”; problems meeting this definition can include the settlement of complex litigation or the negotiation of multi-million-dollar deals.) As summarized by Ritchey (2005-2008: 1), a tame problem:

- Has a relatively well-defined and stable problem statement.
- Has a definite stopping point, i.e., we know when a solution is reached.
- Has a solution which can be objectively evaluated as being right or wrong.
- Belongs to a class of similar problems which can be solved in a similar manner.
- Has solutions that can be tried and abandoned.

Wicked problems cannot be separated from the surrounding context; any engagement with a wicked problem has its own implications for the larger social, political, and cultural order. But contexts are not all alike. Some are more or less stable while others are highly unstable. Consequently, we see wicked problems at work in several differing contexts in our stories.

Some wicked problems arise in situations where the context surrounding the specific problem for which one might consider using negotiation is unstable and, in some cases, prone to violence. Other wicked problems arise in situations where the context is more stable – perhaps even too stable. In other cases (see Jayne’s story below), the context is a complicated mix of unstable and overly stable (or “stuck”) features. Contextually-driven factors that should be investigated when dealing with a wicked problem include:

- It is difficult for the parties to sustain a stable definition of the problem.
- It is also hard to demarcate the boundaries of the negotiable problem in ways that prevent other issues from encroaching on the negotiation process.
- The negotiating parties find it difficult to reach agreement about the relative goodness or badness of the proposed solutions.
- Individually, the participants have difficulty articulating their best and worst alternatives to a negotiated agreement because it is difficult to calculate risk and opportunity against an uncertain future.²
- Deep-seated problems exist, but they are not being addressed.³
- Individuals who “see” the problem are dismissed as doom-sayers, comparable to the hysterical protagonist in the Chicken Little fable who keeps proclaiming “the sky is falling!”
- The system or parts of the system may have to be destabilized – by leaders, mass movements, violence, or catastrophic events – before the wicked problem will be adequately recognized.

- The beneficiaries of the unsustainable or violent systems resist change or threaten to resist change that alters their privileges.

Common to all wicked problems is the need for negotiators to proceed with careful attention to both the processes and the ethical implications of social negotiations which they choose to engage, as well as an appreciative mindfulness of those social negotiations which are already in play. The reasons why will become evident as we examine the stories which follow.

Wicked Problems: Five Stories from Different Worlds

The following stories illustrate our varied attempts to use negotiation in response to wicked problems. Each story is followed by a brief analysis of specific problems associated with using “Negotiation 1.0” in that particular context.

Wicked Problems in Unstable Contexts

Negotiating prisoner of war and body exchanges, and kidnapping cases (Calvin Chrustie)

In the early 1990s, Calvin Chrustie was deployed with the United Nations Protection Force (UNPROFOR), the peacekeeping force mandated by the United Nations (U.N.) on February 21, 1992 to ensure conditions for peace talks and security in three demilitarized “safe-haven” enclaves designated as United Nations Protected Areas (UNPAs) located in the Republic of Croatia, in Western Slavonia and Krajina. As the situation deteriorated, the UNPROFOR mandate was expanded to include:

- Controlling access to the UNPAs and control of the demilitarization of the Prevlaka peninsula near Dubrovnik;
- protecting the Sarajevo airport, protecting humanitarian aid in the whole of Bosnia and Herzegovina, and protecting civilian refugees;
- interdicting military aircraft in the Bosnia and Herzegovina airspace in coordination with NATO forces;
- monitoring the “security zones” of Bihać, Sarajevo, Goražde, Žepa, Srebrenica and Tuzla; and
- in 1994 and 1995, monitoring cease-fires.

On March 31, 1995 UNPROFOR was restructured into three coordinated peace operations and the forces of UNPROFOR were incorporated into the NATO-led Implementation Force (IFOR), whose task was to implement the Dayton Peace Accords. We include this brief history of UNPROFOR within the former-Yugoslavia to illustrate the fact that negotiators in volatile contexts are often working

in situations where the overarching mandate of the organization they work for is subject to constant revision in response to issues and circumstances that are far removed from their control.

Calvin's story involves a little-known but common use of negotiation even in the context of an active war. As in other war settings, the warring parties in the former Yugoslavia – working with the International Committee of the Red Cross (ICRC) as facilitator – had created formal negotiating structures called Exchange Commissions, to manage negotiations about the return to their home communities, or exchange, of prisoners of war (POWs), detainees, hostages, and the bodies of deceased individuals. Legally, these situations fall under Chapter II of the Annex to the 1907 Hague Convention and its updated version known as the Fourth Geneva Convention of 1949, which covers the treatment of prisoners of war and detainees and clearly states that even where there is not a conflict of international character, the parties must at a minimum protect those persons described as noncombatants; members of armed forces who have laid down their arms; and combatants who are *hors de combat* (out of the fight) due to wounds, detention, or any other cause. These persons shall in all circumstances be treated humanely, with the following prohibitions (Fourth Geneva Convention of 1949, Article 3, Section 1):

- 1) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- 2) Taking of hostages;
- 3) Outrages upon personal dignity, in particular humiliating and degrading treatment.

The ICRC and the warring parties wanted UNPROFOR to participate in and support the Exchange Commissions, but the UNPROFOR response was indifferent at best. Many U.N. representatives either viewed the issues as “off mandate” or as so complex and politically risky that they had no desire to involve themselves in the work of the commissions. The political risks included being blamed by the parties for any failed negotiation, and being used as a scapegoat if the failed negotiations resulted in further escalation of tensions. At an organizational level, many key U.N. peacekeepers and negotiators were working under contract, and failure in exchange negotiations – particularly if such failures were seen as the cause of escalating violence – could result in nonrenewal of their contracts, or hinder personal advancement within the U.N. system. In other words, the negotiations involved high risks, including the potential loss of life, and the organizational and personal consequences for failure were so high that UNPROFOR personnel adopted a “risk averse” mindset that led them to avoid working with the Exchange

Commissions. This left the ICRC with the lead role in a “facilitated mediation process” for managing the exchange issues, but ICRC personnel quietly recognized their inability to advance the process towards resolution in many instances. Consequently, they solicited non-sanctioned support from individual negotiators assigned to UNPROFOR. These UNPROFOR personnel sometimes provided the pressure or expertise necessary to secure and implement agreements about exchanges. However, the ambiguity of the process often created situations where a public negotiation process acted as a screen, “covering” real negotiations in closed rooms or in the hallways outside of the negotiation rooms. Achieving success in the exchange negotiations was not easy.

The warring parties themselves were ambiguous in their commitment to resolving the exchange issues during the course of the conflict. Many warring military and paramilitary groups continued to capture, kidnap and withhold the casualties of war because the prisoners and even the deceased were seen as valuable commodities at the various negotiation tables within the larger context of the conflict. In some instances, the warring parties would collect human beings and even the remains of casualties in order to build their own power vis-à-vis other negotiations. They used the fate of the human beings (alive or dead) under their control to advance their interests in negotiations over freedom of movement, ceasefires, claims to territory and other issues.

Even though some leaders of the warring factions were clearly violating the Geneva Convention, others among the leaders exhibited independent thinking similar to that shown by UNPROFOR personnel who tried to assist with the exchange negotiations. These leaders were genuinely seeking the international community’s support and assistance in the mediation and resolution of the exchange issues. But the net result of the pressures against negotiating issues of exchange was the creation of a fragile and tenuous negotiation process that was subject to numerous negative influences.

The issues were not easy to resolve or even to frame effectively for negotiation. For example, the parties, including individual negotiators directly involved in the process, were torn between their long-term and short-term interests. POWs and hostages, if released and turned over, were potential witnesses to war crimes and other human rights violations. Even the deceased could provide evidence of mass murders and genocide. And the allegations were likely to be leveled at some of the key military and civilian leaders, including some individuals associated with the exchange process. Achieving the release of one’s own people was a political coup, but releasing the people held by one’s own group had the potential to create other

problems, including an escalation of tensions and further violence when the evidence carried by the released individuals (alive or dead) came to light. Whether the resolution of a POW, kidnap or body exchange was defined as the “end game” or as a “means to an end,” serving other negotiation objectives was also fluid. Most often, it was difficult to ascertain what the interests of the parties really were, due to the complex web of influencing factors that were ever-changing and unpredictable.

Generally speaking, negotiators are taught that a certain level of transparency and information sharing is one key to the negotiation process. But the exchange negotiations were complicated by the high levels of risk associated with sharing information. It is difficult to negotiate effectively when, as happened to Calvin, even telling Side A whom he was meeting with on Side B resulted in Side A mounting a large special forces operation to capture friends and family of the negotiator for Side B. This was a dramatic situation, but overall it was not unusual to have a negotiation process lead to other kidnappings or loss of life, as each party tried to use coercion and threats to alter the decision-making of the other party.

The behaviors described above are difficult to comprehend if they are not set in the context of history. Many of the parties involved as either hostages or family to the hostages, and even many of the negotiators, were survivors or first generation children of individuals who had survived the concentration and POW camps of World War II, including the extermination camp of Jasenovac. And if they were not affected by historical traumas, many of the negotiators had witnessed recent violence and experienced deep personal loss, including the murder of relatives, as a consequence of the ongoing war. The relatively fresh memories of death camps, torture, and brutality and the immediate experience of violence gave rise to intense feelings of fear and hatred amongst the parties. For example, a senior Serb civilian was kidnapped in a small village near Rajic. The brother of the elderly Serbian male kidnapped, his only living relative, sought Calvin’s assistance in securing his brother’s release. Both the hostage and his brother were in their late sixties.

Months of negotiation ensued, during which the brother of the hostage shared with Calvin that both he and the hostage were orphans from a local WWII concentration camp. When the camp was liberated in 1945 by the Allies, a Yugoslavian couple adopted them, because the boys had lost their family in the concentration camp. Half a century later in 1993, one of them *again* found himself in a detention camp. The tools of active listening and expression of empathy seemed wholly inadequate for working with such traumatized individuals. And the task of negotiating a resolution or series of

resolutions capable of bringing the POW and kidnap crisis to an end seemed well out of reach of individuals equipped only with the toolkit of negotiation skills provided in typical "Negotiation 1.0" courses and trainings.

Furthermore, a victim image frequently invoked by language used in discussions of negotiation teaching (e.g., in the paragraph above, deep personal loss/trauma/fear) can be inadequate or misleading to describe some of the people one must negotiate with, who may be better described in terms of "players." For example, Calvin recalls attempting to secure the release of a certain high-ranking Croatian military officer who was kidnapped in 1992. A meeting was set up with a senior Serbian military intelligence officer to secure a response from the Bosnian Serbs as to their willingness to release the Croatian general, then being held in a detention center. The meeting was with one of the aides to the infamous top Bosnian Serb General Ratko Mladic – to this day, wanted for war crimes in the Hague, but uncaptured. The Serbian Colonel started by asking, "Who was the first victim in World War II?" Calvin responded, "I don't know." The Colonel looked across the table and asked "Who was the first victim in the Korean War?" Again, Calvin responded, "I don't know."

The Colonel continued on with several more wars over several more decades, with the same response. He then sat up, and with a serious and respectful tone, through the interpreter, stated, "The first victim in all these wars is the same, the *truth*." A thirty-minute discussion ensued, which Calvin quickly realized would be unproductive. What emerged (i.e., the message that General Mladic, via his aide, effectively delivered that day) was characteristic of Calvin's experience not only in the former Yugoslavia but in other conflict zones, including Iraq, Israel and East Africa: there is often layer upon layer of lies and misinformation, to protect the truth for a multitude of strategic reasons. The implication for conflict practitioners is that in these conflict-ridden environments, the ability to analyze the issues, the interests, the positions and most important, the truth is often difficult, if not impossible.⁴

Analysis: Calvin's wicked problem was set in an ongoing violent conflict. But that conflict was only one of the contextual features that made Calvin's efforts to assist with body exchange negotiations difficult. Other types of contextual instability and uncertainty affected the negotiations from start to finish.

First, while Calvin tells his story in reference to international humanitarian law, a 1993 ICRC publication noted that "in situations of internal disturbances, the rules of the international humanitarian law can only be invoked by analogy."⁵ There was no clearly and fully

legitimized guidance about the applicability of humanitarian laws in general or the Geneva Convention specifically as they might apply in the situation of a disintegrating state. Consequently, individuals were often left to decide on their own whether these negotiations were “on or off mandate.” Their decisions may not only have been influenced by the merits of the claim or the needs on the ground; they may also have been shaped by another, somewhat unpredictable set of realities – the U.N. system for hiring, firing, and evaluating peacekeeping personnel. Faced with this wicked problem, individuals and groups likely made different choices. Some chose to help the ICRC try to carry out their perceived mandate; others chose to ignore the problem.

It is worth noting that the ICRC was viewed at times as taking something of a technical approach to this problem, applying the procedures they had developed elsewhere to the current situation. They may or may not have adequately considered the local contextual features that would make their standard procedures less than helpful in relation to the overall war. In this situation, unlike others, the war was raging between neighbors, and the groups still harbored hopes of driving the enemy out of the community they had been sharing. The exchange negotiations became one venue in which to advance that overall strategic goal. This was likely one of many strategic goals that were being considered.

These elements reflect only the experience of the individuals who were trying to facilitate the negotiations. The actual parties were experiencing similar contextual turbulence. They were involved in other negotiations to settle the larger conflict – or they were at least invested in the outcome of those negotiations. Consequently, they had a difficult time sustaining a stable definition of their negotiable problem. Were they trying to solve this immediate exchange problem or were they trying to gain advantage in other negotiations for the purpose of winning a larger conflict?

Even if they were able to craft a potential agreement, the contextual turbulence made it difficult for the parties to assess its costs and benefits. The consequences of reaching agreement would depend in large measure on the resolution of the larger conflict and the ways that individuals and groups would be held accountable for their actions during the war. So their best and worst alternatives to a negotiated agreement (BATNAs and WATNAs respectively) fluctuated in response to decisions taken elsewhere and in response to the vagaries of an ongoing war and stop-and-start negotiations to end that war.

Negotiating in a counter-insurgency operation (Leonard Lira)

Leonard Lira and others deployed in Iraq experienced similar complexities in local negotiations as part of their effort to end a violent insurgency and help local leaders develop governance systems capable of overcoming decades of inter-group hostility. The policy failures that created a situation in which U.S. Army personnel and civilians deployed to Iraq were left trying to manage complex, entrenched and rapidly shifting situations of violence have been well documented (see e.g., Ricks 2006). There is also a growing body of literature about efforts to “win the peace” in Iraq after the fall of Baghdad. The stories include studies of life in the Green Zone, where private contractors negotiated contracts to administer the post-war reconstruction projects for Iraq (Chandrasekaran 2007), as well as front-line accounts of civil affairs units trying to rebuild Iraq one community at a time (Schultheis 2005) and stories of civilian government administrators such as Rory Stewart, who was sent by the British Foreign Office to serve as the deputy governorate coordinator of Maysan, a province on the border with Iran that is occupied by the “Marsh Arabs” who were treated brutally by Saddam Hussein (Stewart 2006). At all of these levels of organization, negotiations were the pervasive means by which policies set in faraway places were executed. As Stewart argues (2006: xii), “it was not grand policy but rather the meetings between individual Iraqis and foreigners that ultimately determined the result of the occupation.”

As it was in the former Yugoslavia in the 1990s, so it was in Iraq. The mandate, mission and goals of the occupying forces changed significantly over time. The goal of removing Saddam Hussein, establishing an Iraqi government and getting out quickly gave way to other realities, and everyone on the ground had to shift strategy and tactics to meet changing political goals. This was particularly difficult for the U.S. military, which was well equipped and staffed for war-fighting but poorly equipped and staffed for stabilization, reconstruction, and state-building activities. Nor was the shift from a combat to a reconstruction mission smooth and clear. The ever-morphing insurgencies and factional violence required a continued focus on security, and involved ongoing combat missions while the longer-term political goals of establishing a legitimate Iraqi government demanded a focus on development, infrastructure repair, and establishing effective governance mechanisms. The entire experience became a classic example of the initial failure to recognize a wicked problem, and only after failure on-the-ground, coming to see the problem in a new light. At the core of this recognition is attending to and learning from the unanticipated consequences of the initial in-

tervention. Those consequences helped to reveal how the initial statement of the problem or task represented a misunderstanding of the nature of the problem.

The lack of clarity about how to execute a reconstruction effort as large as Iraq set off complex negotiations among political leaders and top military commanders (Ricks 2006; Cloud and Jaffe 2009), negotiations that have led to a reorganization of various branches of the U.S. military, the development of an updated military doctrine on counterinsurgency (U.S. Army Field Manual FM 3-24; Marine Corps Warfighting Publication No. 3-33.5), and parallel attempts to articulate guiding principles for civilian agencies and organizations operating in Iraq and similar situations (United States Institute of Peace and United States Army Peacekeeping and Stability Operations Institute 2009).

Leonard's personal stories about negotiations in Iraq (see Lira, *Design: The U.S. Army's Approach*, Chapter 27) parallel those of Stewart, who recounts a tale of multiple rounds of negotiations with different sheiks. The goal was to gain support for the newly elected council and bring a local militia group under control. Stewart and his colleagues shuttled among various sheiks gathering support for their plan, making promises and trades along the way. After nailing down the support of the last sheik necessary, they arrived at the final meeting, where they expected everyone to ratify the agreement to support the council and help bring the militia under control. They were greeted by thirty middle-aged Iraqis who had been invited to resolve the problem, only to have all thirty men present, including those with whom they had reached agreements to support the council and oppose the Sadrist leader, Ali Zeidi, declare the council unacceptable and form a new council supported by Ali Zeidi himself (Stewart 2006: 306-313).

It is not that the Iraqis did not know how to negotiate. Stewart (2006: 402) shares some success stories where Iraqi political leaders "proved their capacity to compromise, control their militias, and cut deals with their armed opponents." We may or may not agree with Stewart's argument that the problem was the identity of the coalition forces, not the inability of the Iraqis to govern their own communities. He says the coalition forces lacked any legitimacy to serve as negotiating partners in the overall process of rebuilding Iraq. If this is true, it is clearly a significant issue. Nevertheless, until the troops are withdrawn, they are going to need to continue to use negotiation to work with local communities. Leonard is now working to develop training programs that can help members of the military prepare to achieve more successes than failures in unstable situations such as Iraq.

Analysis: Leonard and Rory Stewart faced wicked problems which were also set in unstable conditions of violent conflict, albeit in later stages than Calvin's situation. In Leonard's and Stewart's cases, the effects of a wicked problem show up in several ways. The lack of clarity about the mission and the nature of the problem itself parallel the situation in Calvin's story. Also similar is the way in which a change mandated at the top level impacts the local negotiations, for good or for ill, by reshaping the parties' assessment of the value of negotiating and their cost-benefit analysis of any possible agreement.

In this situation there was an added problem created by "competing venues" for negotiating problems. As Stewart learned, you can negotiate well only to discover you were negotiating in the wrong venue; your carefully crafted agreement has been set aside in favor of an agreement reached elsewhere using different negotiating processes.⁶ Not only was the venue for real negotiation invisible to Stewart; its rules, methods and assumptions were equally opaque.

Competing social norms about negotiating difficult conflicts also appear in Leonard's story (in *Design: The U.S. Army's Approach*, Chapter 27) about trying to facilitate the negotiations to form a local reconciliation committee in Iraq. There, the nationally mandated decision to form reconciliation committees in every community ran up against the socially negotiated norms for dealing with violence. The parties could not articulate the past harms as part of the reconciliation process because in their culture acknowledging those wrongs evoked a requirement for blood retribution.

The need for the U.S. military to *remake itself* in order to deal with the task of negotiating ground-level implementation of the rebuilding of a country is further evidence that they were dealing with a wicked problem.

Preparing to negotiate an end to a protracted civil conflict (Jayne Docherty)

Jayne Docherty was asked to work with armed Burmese groups that have not signed cease-fire agreements in one of the longest-running civil conflicts in the world. They wanted to understand negotiation better as a possible strategy for achieving their goals. After two consultations, she agreed to spend twelve months (later extended to eighteen months) working with representatives from the armed groups. The primary goals were to increase their understanding of negotiation, improve their negotiation skills, and explore ways to use negotiation to advance their goal of creating a society and government that were not based on cultural assimilation by an ethnic majority population. Three weeks before her first consulting visit,

the leader of the organization she was scheduled to meet with was assassinated, not by the regime in power, but by a rival splinter group from his own organization. Such infighting, it turns out, is not uncommon, even if assassinations are not the norm. This kind of internal conflict and inability to negotiate within each ethnic group and among the ethnic groups is common to all of the armed groups that continue to resist the government.

Jayne suggested, and the groups agreed, that the workshops, trainings and consultations would focus first on learning to negotiate within their ethnic groups and between different ethnic groups, and only secondarily on negotiating with the regime they oppose. They also agreed that part of the consultation would involve figuring out together how to use negotiation to actually change systems, rather than just resolve discrete problems, and that participants would be drawn from both senior political and military leaders and their own civil society organizations.

All of these approaches contravened the existing norms of the ethnic groups. The participants in the first workshop included top political and military leaders, representatives from the ethnic group civil society organizations, and young interns from a program that brings emergent leaders out of the country for training. The participants had never participated in a discussion of their future that included these hierarchically differentiated groups; few had been exposed to the differences in perspective between those living inside the country and those in the bordering countries. They quickly discovered that while they came from the same ethnic groups, they did not necessarily see the world the same way. They had serious internal divisions that needed to be addressed in order even to think about dealing with "the enemy." The divisions were inter-ethnic and intra-ethnic based on generational, philosophical, and geographic location differences.

A new constitution passed in a referendum (May 2008), which most observers agree was flawed and incomplete, called for elections in 2010 and provided a plan for a "disciplined transition" to democracy, including the reduction of military control of the government. The issue of how the groups should respond to the constitution and impending elections created a constant undercurrent of conflict in the workshops. Taking this as a teachable moment, Jayne invited the groups to practice using some of their negotiation skills around the problem of devising an effective response to the upcoming elections. The groups were stuck in polarized camps regarding how they *should* respond to the constitution and impending elections. One camp argued: "We must resist this illegitimate constitution and boycott the elections or we will lose

everything.” The other groups said: “The constitution is flawed and the elections will not be fully fair, but this is an opportunity to increase ethnic group participation in governing the country. We should participate and use the opportunities that will come from participation to promote greater change.”

Factors that appeared to influence (but not rigidly predict) an individual’s position on the elections included location and generation. Generally speaking, group members living “far inside” the country and under the rule of the regime were more prepared to adopt a pragmatic approach to the elections. Group members living in the internal border areas (which are contested and usually ruled only indirectly by the regime) and in bordering countries were deeply divided about the issues. And group members living in “far exile” in Europe, the United States, or elsewhere were the most likely to demand that their compatriots boycott the elections completely.

Generational differences were less clear, and they manifested differently in various ethnic groups. In some groups the leaders were willing to be more pragmatic and the young people were more militant; in other groups these positions were reversed. However, in all of the communities, generational differences were difficult to address because the groups are organized hierarchically. Small groups of senior leaders who do not operate transparently and do not typically elicit the opinions of “junior” leaders make policy; junior leaders exercise authority under the constant corrective scrutiny of their elders. Whatever view was held by the younger people, it was typically marginalized within the groups.

Efforts to reconcile the divisions within each ethnic group were exacerbated by the actions of others, most notably donors. For twenty years, most donors had assumed that citizens inside the country living under direct control of the regime were unable to assert any autonomy, so they supported the groups in bordering countries. But in May 2008, when Cyclone Nargis struck the country, civil society groups inside Burma/Myanmar took the lead in early relief and recovery activities, often in direct opposition to government directives. In response to this previously unrecognized capacity, donor organizations were starting to shift their efforts to supporting internal groups, promoting incremental political change, and increasing the capacity of citizens to make the most of the opportunities presented by the upcoming election.

As the workshop participants focused on negotiating among the ethnic groups and within their respective groups, they suggested that the tools from “Negotiation 1.0” were not well suited to their problem. After watching them struggle, Jayne agreed with them.

The problems they were facing were not just about conflicting interests. They were attempting to address deep identity conflicts, exacerbated by individual and group experiences of trauma that kept them frozen in an oppositional stance in relation to the regime and sometimes to one another. The instinct to focus her intervention on the internal conflicts of the ethnic groups was a good one, but “Negotiation 1.0” tools had little to offer for addressing those conflicts.

Jayne got direct feedback on “Negotiation 1.0” methods, because the workshop participants had also agreed to help her develop a set of culturally appropriate negotiation training materials. They pushed for two significant changes. First, they inserted a strong emphasis on developing self-awareness, self-management, and empathy in the negotiators. They call this S.A.M.E., and they argue that their own cultures do not lay these basic foundations for negotiation.⁷ Secondly, based on a trial workshop, they have asked for help developing culturally appropriate interventions based on techniques used in narrative mediation (Winslade and Monk 2000; Winslade and Monk 2008). Some of them have recognized that creating a new future will depend, in part, on telling a new story about the past and the present.

Analysis: Jayne’s story is actually an interesting combination of several “wicked” elements which combine to form an overall wicked problem. Violence between the regime and the ethnic groups, between ethnic groups and within ethnic groups continues. Neither the regime nor the ethnic groups can win militarily; they have reached a mutually hurting stalemate. (See Zartman 2006.) The inter- and intra-ethnic violence is widely recognized as playing into the hands of the regime. Yet many of the ethnic organizations are stuck in patterns of internal conflict. They have been fighting for so long that they have developed rigid patterns of thinking; they are also responsible for allocating access to resources within their groups, and some members are now benefiting from continued conflict. One element of the wicked problem is that these groups are stuck and unable to respond effectively to current challenges and opportunities.

Another subset of the larger wicked problem centers on the lack of stability in the context, which complicates their cost-benefit analysis when they think about how to respond to opportunities. The context has been destabilized by the regime’s scheduling an election and donor organizations altering their funding patterns. The armed groups cannot participate in the elections, but others can. They need to decide whether to support or condemn their compatriots who choose to run for office. But it is not easy to assess

the relative merits of these choices when outside parties pressure them to “stand firm” against the regime – and promise rewards for doing so – and some inside parties and the regime pressure them to be pragmatic about change – and point out that they will be left behind and marginalized if they block this opportunity for change. How do you assess your BATNA and WATNA when you have no idea what will happen and what kind of system will be in place to reward or punish your choices?

As the workshop participants who developed the S.A.M.E. framework have noted, these problems require a renegotiation of relationships, self-identities, patterns of communication and privilege, if the ethnic groups are going to develop a robust coalition capable of grasping new opportunities and facing emerging challenges. This is a problem of “social negotiation” (see Honeyman and Coben, *Navigating Wickedness*, Chapter 24) that might benefit from problem-focused negotiations *if* the parties can identify useful problems on which to focus. But “Negotiation 1.0” techniques will not be adequate for this situation without the kinds of changes we are advocating for “Negotiation 2.0” theory, practice, and pedagogy. (See, in particular, Docherty, *“Adaptive” Negotiation*, Chapter 26.)

Wicked Problems in More Stable Contexts: Getting Systems Unstuck

In contrast with the Myanmar/Burma, former-Yugoslavia and Iraq examples where physical violence has been used in war contexts, Jamil Mahuad and Howard Gadlin next examine whether the concepts expressed in this chapter could be applied to understand complex “domestic” disputes. They posit that even mundane matters can present wicked problems – at least to a degree, and in the sense of the initial obscurity of the problem and the requirement for adaptive thinking, if not the potential for violence or sudden change in the underlying conditions such as the legal system or who controls the government.

High drama in a high city (Jamil Mahuad)

In 1992, the more than one million inhabitants of Quito defined public transportation as the preeminent problem of the city. Constrained by a range of mountains on the west and a river cliff on the east, at 2800 meters (9200 feet) above sea level, Quito’s long and narrow shape resembles a centipede crawling at the foot of the Pichincha volcano. At that altitude, with less ambient pressure than at sea level, gas or diesel combustion is incomplete, generating emissions that cause the unique old city walls and temples to deteriorate, not to mention people’s lungs. In the middle of Quito, the city’s Co-

lonial Centre – a U.N. Educational, Scientific, and Cultural Organization (UNESCO) Heritage Site that harbors the Presidential and Municipal Palaces – is crossed by most of the public transportation lines, an immense, disorganized, privately owned fleet of very old, highly polluting buses.

Quiteños were tired of traffic and congestion. There was an increasing public health concern due to the unacceptable levels of lead found in blood tests. Bus passengers felt abused and disrespected for other reasons; they complained about lack of service to many barrios, and up to three hours of commuting to work.

Public transportation, however, was not actually regulated by the municipality. Instead, it was within the purview of the minister of the interior and the national police. In the midst of public allegations that some retired generals of the police had vested interests because they owned buses, there was no perceived moral authority to regulate and control the system. Historically, the *transportistas* had also been the most powerful union; their rather frequent strikes have overthrown some Ecuadorian governments. They used organization and strikes to obtain increments on the tariffs, which otherwise, even in moments of high inflation, were only authorized when there was current political viability. Tensions and open confrontations have characterized the relationship between bus drivers and *quiteños* for decades.

In that context, Jamil campaigned to become mayor of Quito, promising an integrated public transportation system, with new rules, new routes, a fleet of trolleybuses, and changes in the law to give the municipality the exclusive right to regulation and control. The drivers' union was openly against Jamil and favored his main opponent. "Your rival will win, because he has the support of the powerful drivers' union," Jamil was told in a radio program. "I'll win, because I have the support of the passengers," he replied. He was subsequently elected.

The "too good to be true" proposed solution. Jamil's promise represented Quito's most complex public construction project ever attempted. The solution needed to be modern, technically functional, non-polluting, and economically viable. A subway was out of the question for both technical and economic reasons. New buses would not answer the pollution concern, and would have a "more of the same" flavor. A gas/electric dual-power trolley bus, however, would satisfy all the concerns except the need for fast movement. Exclusive dedicated lanes in the narrow streets in the Centre would resolve that hurdle.

This type of system is known today as Bus Rapid Transit (BRT), and by now, more than 300 cities in the world are building versions

of it. A subway is considered a financial capital intensive product, while a BRT is a political capital intensive one – as the then-pioneering implementation of such a project in Quito was about to demonstrate.

Quito's trolley bus project required the application of overlapping decision-making, communication, and leadership skills along with the negotiation skills described in this chapter, though the latter were not yet circulating in teaching, or indeed even as theory except in a few specialized fields. Like the China-U.S. trade negotiation discussed at the outset of this chapter, the actual "negotiation" here involved multiple ancillary (and even contradictory) processes. Furthermore, success depended on leaders who could identify and negotiate tame problems inside of the overall wicked problem, while also managing a larger cultural change process that resulted in revisions of the "socially negotiated" patterns of power, privilege and influence tied to the existing bus system (Docherty, *"Adaptive" Negotiation*, Chapter 26.)

Problems that were part of the interlocking web of sub-problems that made up the overall wicked problem included relatively tame problems, such as:

- Organizing many simultaneous national and international bidding processes, covering everything from construction work (which interrupted Quito's main street traffic for months) to buying the trolleys;
- creating and staffing an office in charge of writing the new rules, drawing the new routes, awarding the operational permits and managing the system; and
- creating a public enterprise from scratch to *operate* the fleet of trolleys.

Other parts of the web of interlocking problems required facing much more complicated and adaptive challenges. These included:

- Overcoming the lobbying and resistance of the Police, to persuade the Ecuadorian congress to pass legislation creating the *Distrito Metropolitano de Quito*, with exclusive regulatory powers and control over Quito's public transit and transportation;
- profusely disseminating factual information about the whole project, its feasibility and benefits, in the face of a disinformation campaign; and
- creating a new culture (socially constructed) to give *quiteños* (as distinct from the municipal offices) moral ownership of their trolleys.

Still other problems required both technical and adaptive tools, to:

- Design the most efficient and effective project (technical aspect) and to get from the national government – controlled by a different political party – its commitment to finance the project (adaptive aspect); and
- establish the tariffs for the new integrated system (technical aspect) and get the city council's approval, as well as the acceptance of the population (adaptive aspect).

The trolley project faced innumerable risks. It was crucial for the daily life of hundreds of thousands of people, who were unofficial supervisors of the daily advance of the public works. At the same time, Ecuador has a prolific history of aborted bidding processes; unfinished public projects were numerous even when easier and smaller, and the country had conspicuous and traumatic experiences with "white elephants." The trolley project also had intrinsic difficulties.

It was a counterintuitive solution: there was no cultural understanding of what an integrated transport system even meant, and no popular understanding of what a "trolley" is (there had been no trolleys in Ecuador since the early 1900s). It required a leap of faith based on trust in the new mayor. And originally, it was seen as the "mayor's pet project," without local ownership and clear champions.

It also did not serve established Ecuadorian commercial interests: they were in the business of selling bus units, and did not approve the decision to build a new system without them. To top these off, there was political calculation: people's fear of the unknown and of suffering yet another frustration were exploited by certain politicians.

The action plan is formulated. The plan demanded simultaneous political, economic, social, and international actions across very different fronts. It was considered crucial to build alliances with both a wide variety of actors and agents (NGOs, environmental groups, opinion leaders, professional associations, engineers). This required carefully identifying beneficiaries and patiently explaining the benefits to them, in one-on-one or town hall meetings. Through an education campaign, the team consistently disseminated information to the population; corrected the most frequent errors; and answered "FAQs" with patience. Consultants were hired to help with both the technical and adaptive work. Finally, in the days leading up to the inauguration of the service, the mayor's office launched an advertising campaign targeted to children and teenagers highlighting this efficient, green and clean alternative. The strategy spilled over to whole families, rooting the project deeply in the

public imagination and developing a sense of ownership of the project in the population at large.

An unexpected adaptive challenge: Quito is hijacked. Using its recently acquired legal authority, the municipality produced a new route plan; refused to extend operating permits to bus units that did not pass the emissions test; and negotiated, with many drivers, new contracts as “feeders” of the trolley. But the opponents were not done. They had one last “tour de force” available, and used it. The narrow streets of the Centre in Quito only have two lanes. One was needed for the exclusive dedicated trolley lane; the other was to be open to all traffic *except* buses – because they would have blocked the traffic. The drivers had been resisting this decision for weeks, but the municipality had been able to enforce all the technical decisions. One day, however, around noon and executing a well coordinated plan without any forewarning, the buses stopped wherever they were at that moment; the drivers asked the passengers to step down to the street. They turned off the engines, locked the doors and left the scene. In a masterstroke, the city was suddenly paralyzed. All cars were trapped, because the buses chose intersections to block all over the city, and there was no way around them.

The bus drivers demanded that Jamil agree to keep the bus routes as they were and give the buses the right to use the second lane in the Centre’s narrow streets, as a precondition to moving the units and reestablishing general traffic and bus service. Had Jamil accepted, the trolley would never have begun service, and the authority of the municipality would be severely eroded.

The people, in the hope of enjoying better transport service, initially supported Jamil’s stand. But when the situation became prolonged, after a few days this support began to dwindle. Ministers could not get to the Presidential Palace. Schools were suspended. Hospitals had difficulties with ambulances and supplies; patients could not reach their health services. Gas and food scarcity became a factor because freight could not be delivered. The municipality, however, lacked the technical means to move the units by force (there were just two tow trucks in the city with enough power to move a bus, and they could not reach most of the buses anyway because of gridlock). The police did not want a confrontation, and avoided acting; the national government (which was not under the control of the mayor’s political party) simply did not know what to do, and suggested a “negotiated solution” – meaning, in this instance, a backing down of the mayor. It was the moment of decision; the turning point in whether Quito would move forward as a city, or back.

In Jamil's analysis, the only solution was to pressure the drivers to come back, turn on the buses and go, accepting the municipality's decision. But the drivers had a very strong BATNA. The only potentially game-changing move was in the hands of the national government: an ultimatum, threatening to bring in the armed forces and open the streets by force if the drivers did not back down. The government was hesitant at best. With the tensions compounding, Jamil "went public" and invited the people to make their voices heard. Radio stations were overwhelmed by telephone calls, letters, and people coming in directly to participate in live programs. In the end, the government agreed to issue the ultimatum. Threatened with the real possibility of having their buses shoved roughly out of the way by tanks, the drivers moved their units. The trolley was saved, and the new system and its rules were implemented.

Analysis: Jamil's story demonstrates that dealing with wicked problems requires strong leaders who are able to marshal support for a complex process of managing multiple interconnected change initiatives simultaneously or in sequence. This is true for all contexts, but in less stable contexts (the stories told by Calvin, Leonard, Jayne, and Rory Stewart), the difficulty of identifying leaders who are considered legitimate across deeply divided sectors of society makes the other problems even more difficult to address. The people of Quito knew they had a problem, but they could not see a solution. They could have been stuck in grumbling mode for decades. Jamil marshaled the energy and passion of the *quiteños* and resources from inside and outside the city while simultaneously taking actions that controlled the resistance of special interest groups in order to "pick off" specific elements of the problem. These smaller problems were handled in ways that resulted in significant changes in systems, institutions, patterns of behavior, and political norms. It was the cumulative effect of smaller negotiations and other activities that addressed the wicked problem.

The relative stability enabled Jamil and others to demarcate problems and isolate them from external disruption. They were also able to sustain stable definitions of discrete problems. In addition, the parties were able to identify and act on their interests and assess their respective BATNAs and WATNAs against a clearly delineated set of alternatives – fix the transportation system and reap all of the benefits of doing that, or continue to live with a broken system and pay the price associated with inaction. When an entrenched interest group attempted to prevent resolution of the larger conflict, Jamil was able to mobilize another party (the people) around a *narrative expression* of a desirable future. Rational, calculated statements of interests do not mobilize the masses; stories and images can.

**Down to earth: In the depths of a U.S. federal agency
(Howard Gadlin)**

Anyone who has worked in an organization has experienced or witnessed failed attempts at producing organizational change. The example that follows comes from an effort by the U.S. National Institutes of Health (NIH) to cure an epidemic of problems with employee evaluations by adopting a pass-fail system of evaluation.

As an ombudsman, Howard Gadlin has responsibility, in addition to addressing grievances, problems and conflicts, to identify systemic problems within the organization, bring them to the attention of the appropriate people in the organization, and make recommendations for ways in which these problems might be addressed.

After he had been at NIH for some years, Howard included the following passage in a report to the NIH community:

Another striking feature of the organizational culture at NIH is the dissatisfaction that both managers and employees feel with regard to a range of administrative personnel issues. Most significant of these is the adoption several years ago, partly as a response to a variety of problems, of a pass-fail system of employee evaluation. While a pass/fail system might reduce the number of rating related conflicts and grievances it is our impression that it creates problems in the long run. A probably unintended consequence of this system is that it has severely reduced the requirement for managers to provide serious meaningful, substantive feedback to employees about their performance and their conduct at work. Consequently, when a manager does raise issues regarding an employee, it is often experienced as a personal attack, even when delivered in a thoughtful and sensitive way, which, we might add, is not always the case. A pass-fail system, then, removes a formal occasion for the sort of critical exchange between manager and employee that is the responsibility of every good manager. Further, supervisors' effectiveness as managers has to be evaluated at least as seriously as the other aspects of their performance. Thus, to the extent that managers lose an opportunity to be evaluated in a meaningful way in their capacity as managers, an unfortunate ripple effect commences throughout the organization. The pass-fail system minimizes the kind of effective feedback that supervisors critically need to develop comfort and skill in their managerial roles.

In a related vein, it is a matter of some concern that supervisors are more often promoted into management responsibilities as a result of their skill in substantive and technical areas as opposed to careful consideration of their fitness to assume, or interest in handling, supervisory responsibilities. Moreover, they typically receive little or no

training on how to manage effectively, and they are most extensively evaluated on their handling of issues and concerns within their area of substantive expertise as opposed to their performance of supervisory responsibilities, including providing employees useful feedback and effective mentoring.

The original problem with the evaluation system was linked to a more widespread problem of difficulty in addressing poor employee performance in federal agencies generally. Naïvely, Howard's office assumed that if the employee evaluation system could be improved, the difficulties in addressing underperforming employees could be reduced or eliminated. Such an assumption that there is a straightforward technical fix to what is in actuality a complex organizational issue is fairly common within organizations, especially when a particular practice or policy can be identified as the apparent culprit for what is generally a problem deeply embedded in an organization's culture and structure.

Among the recommendations of the ombudsman's office that year were a call for a serious evaluation of the pass-fail system and a call to establish a system in which managers provide more detailed feedback and evaluation than a mere pass or fail. Although these recommendations were not initially met with widespread agreement by upper management, over the next several years several other sources of organizational feedback converged with them. Along with related changes in managerial philosophy, this did lead to the further overhaul of the employee evaluation system. The new system included a four-point grading system (unsatisfactory, minimally satisfactory, fully satisfactory, and outstanding), and it linked year-end bonuses and awards to performance evaluation ratings. Under the new rules, the highest bonus awards were reserved for employees with "outstanding" ratings and considerably lower awards were available for some, but not all employees who received "fully satisfactory" ratings. The new system also required managers to provide meaningful mid-year evaluations and guidance to lower level managers as to how to give substantive feedback to employees.

However, it would be hard to find many people in the organization today who see the new evaluation system as a significant improvement. In addition, there have been many unanticipated consequences of changing the policy. Under the old pass-fail system, a "fail" rating was rare, and was often responded to with a grievance or an EEO complaint. Under the new system, there are still few "fail" ratings; but unexpectedly, there are many grievances from people who receive "fully satisfactory" ratings, but who believe they deserve an "outstanding." In some ways this new system has intro-

duced a level of tension and antagonism between managers and their *best* employees, because the new system limits the number of “outstanding” ratings that can be distributed.

There are other unanticipated consequences of the change in evaluation practices. In some units, aware of the discrepancy in the size of bonus awards between those with “outstanding” and those with “fully satisfactory” ratings, decisions were made to rotate the distribution of “outstanding” and “fully satisfactory” awards from year to year, thereby ensuring that everyone who is performing at a satisfactory or higher level benefits relatively equally from the reward system. In still other units the professional staff has decided to accept “fully satisfactory” awards so that the “outstanding” awards can be reserved for the lower paid support staff. These reactions illustrate one of the key features of complex organizational problems: the components of the organization are semi-autonomous, and it is not possible to predict fully how any particular change in policy or practice will be interpreted or implemented within those semiautonomous units.⁸

Although some aspects of this change in policy did not have the desired effect, other features of the change did. For example, management realized from the beginning that managers would need support and training in order to fulfill their supervisory functions better. Consequently, some excellent support materials and training programs were developed and delivered, and there have been, among many of those in supervisory positions, noticeable improvements in the sorts of evaluative feedback they provide to employees.

The effects of these changes also ripple through the entire organization, as employees come to appreciate that someone is aware of what they are doing and how they are doing, and that it matters. This change also improves the ability of supervisors, at least those who have begun to provide substantive feedback, to address problems with underperforming employees, because they now have on record detailed accounts of problems and managerial efforts to address them.

The entire episode well illustrates that organizations are incredibly complex. It is very rare that one can address a problem without also taking into account the organizational context in which it occurs, and the interconnections among the various constituencies within the organization which will be affected by the new policies and procedures. Put simply, the problem is almost never as straightforward as it seems to be.

Analysis: Howard’s story is an interesting example of what happens when the parties address a wicked problem as if it were a tame problem. Each time we try to define a wicked problem, we implicate

the solution to that problem *and* we also mask parts of the problem. Every way of seeing is also a way of not seeing. The relative stability of systems and structures in some contexts of wicked problems lures protagonists into framing their issues in terms of tame and technical problems. But formulating the problem as technical means we do not see it as moral, political and ethical. So, when NIH decided to treat problems with employee evaluations by adopting a procedural change (a technical fix), they failed to recognize that correcting wicked problems requires self-change (adaptive solutions). Furthermore, wicked problems implicate moral and ethical dilemmas, not merely technical problems. The failure even to ask the participants about issues of fairness and justice when constructing the new employee evaluation procedures left individuals and groups to take these issues into their own hands by administering the procedures in unforeseen ways.

Conclusion: Wicked Problems are Not New

The trolley system in Quito, dramatic as the case is, does not stand alone as a wicked problem in “domestic” affairs generally or civic life in particular. Quite the contrary: many of the larger problems faced by political leaders at all levels and in many countries (certainly, in all democracies) are wicked problems that have something of the qualities of this story. Indeed, many local and regional conflicts do, too – and experience negotiating and mediating such environmental and public policy conflicts has been building up over decades (see, e.g., Forester 1980; Bingham 1986; Carpenter and Kennedy 1991; Forester 1999; Susskind, McKernan, and Thomas-Larmer 1999; and Carpenter and Kennedy 2001).

Wicked problems arising in unstable (and sometimes violent) contexts have come to our attention in recent decades with the development of peacebuilding interventions designed to meet the problem of violent conflict as it emerged in the post-Cold War era. Most violent conflicts are now *intranational* (within a single country) conflicts that have tended to *internationalize* “to the degree that some conflictants, particularly opposition movements, inhabit neighboring countries; weapons and money for the conflict flow in from the surrounding region and from more distant locations; and displaced refugee populations cross immediate and distant borders” (Lederach 1997: 11). The problem of violent conflict was no longer seen as primarily an inter-state issue that could be addressed using diplomatic negotiation practices, and many different actors started to improvise responses to this pressing problem.⁹ They have learned many lessons about using negotiation to increase stability and peace, and

they are building a repository of knowledge and skill sets that can be incorporated into “Negotiation 2.0” practices.

The stories we have shared here, and others like them, formed the basis for our consideration of negotiating wicked problems and have helped us frame the following questions:

- What role can negotiation play when we are dealing with wicked problems, and how does it need to be coordinated with other activities?
- What does “Negotiation 2.0” practice need to include if we want to use negotiation to address wicked problems?
- How do we teach others about using negotiation to address wicked problems?

In the next chapter (*“Adaptive” Negotiation*), Jayne Docherty takes on the second question. She suggests that problem-focused negotiation must be understood as more than just a way to handle discrete problems. Every negotiation encounter is a location where the participants choose to reinforce, change, or ignore socially negotiated norms, values and mores. As such, every negotiation is a potential location for the adaptive changes required when dealing with wicked problems, but only if we understand the constitutive role of culture and meaning-making in negotiation. She also argues that negotiators need to be taught about social ethics and not just their own professional ethics. This is particularly important when facing wicked problems which combine technical problems with moral, social, and ethical dilemmas.

Leonard Lira (*Design: The U.S. Army’s Approach*, Chapter 27) shares one organization’s efforts to help leaders know when and where to use negotiation effectively, when the overall goal is managing wicked problems of the most challenging variety: bringing stability and security to situations that are unstable and violent. “Design” is only one way to handle this problem. We still have numerous questions about when, where, and how to use negotiation as a tool for dealing with wicked problems, and this chapter ends with some of those questions.

Our conclusions, as the reader will see, are far from fully formed. Indeed, we have begun, but not yet completed, at least two further writings, to match Leonard’s military “Design” discussion with a peacebuilding/civil society equivalent, and to pull together some ideas for teaching these new approaches to negotiation. By way of explanation, we offer simply that our subject is itself emergent. We look forward to having more to say in the concluding book of the *Rethinking Negotiation Teaching* series.

Notes

¹ This composite set of characteristics of wicked problems is derived from Rittel and Webber (1973), Ritchey (2005-2008) and Conklin (2005).

² Michael Wheeler and Gillian Morris (2002) have garnered some useful ideas for making decisions in the face of uncertainty by studying the U.S. Marine Corps Warfighting Manual. Ideas worth following up on include: managing friction (indecision or time pressure for example); preparing a Plan B for every scenario in order to manage uncertainty; developing balance and agility to benefit from the fluidity of negotiation; and learning to improvise in the face of disorder (3-5).

³ The complex reasons why wicked problems go unidentified and unaddressed include, but are not limited to: a) the costs of an unsustainable situation are being externalized to parties that lack voice and power; b) the costs are being delayed for future payment; and c) well-meaning individuals and groups keep applying “technical fixes” to parts of the problem, thereby keeping the situation from reaching a crisis that would spur awareness.

⁴ This, of course, is not unique to conflict professionals: anyone trying to analyze major conflict has the same problem. (See Knightley 2004.)

⁵ See <http://www.icrc.org/Web/eng/siteeng0.nsf/html/57JMJ9> (last accessed July 30, 2010).

⁶ It is not that such things do not happen in stable contexts; “forum shopping” is often a problem when dealing with complicated conflicts. However, the parties are usually aware of the various venues, and they understand the options that are open to themselves and the other parties. Parties may have venue preferences, but overall the venue options are all considered legitimate. In Iraq, the venues for negotiation were unclear to the coalition forces (and perhaps to some of the locals), and various venues had been “captured” by interest groups so that they lacked widespread legitimacy.

⁷ Jayne had shared a story about her father’s return from Vietnam and her own involvement in the anti-war movement. She talked about their arguments, but also about their continued love and respect for one another. A top military leader said privately, “The most important thing you have told us was the story about your father. Our culture does not allow us to disagree and maintain our relationships. If we don’t figure out how to do that, I don’t think we can resolve our conflicts.”

⁸ Chris offers a story he witnessed as a junior professional at the Detroit office of the U.S. National Labor Relations Board (NLRB) in the 1970s. At the time, General Motors (GM) was the world’s largest industrial corporation, and it epitomized the concept of a hierarchical corporate structure – on the surface. Its employees were mostly organized by the United Auto Workers (UAW). One year during that period, however, a single employee (who was not even in the union, but in an ancillary function) nearly triggered a nationwide auto strike.

A specialized union, that year, had petitioned for an election to “carve out” the company’s skilled-trades employees, during a legal “window” for such challenges. There were thousands of skilled trades workers, spread across many dozens of plants. The head office did not even know who they were – the lists were kept plant by plant. The law was such that if GM and the UAW continued to bargain while the challenge was open, the challenger arguably could charge both of them with violations of federal labor law. So bargaining ground to a halt – in the face of a strike deadline. If the challenger could not show that it had authorization cards from thirty percent of the employees affected, however, it had no right to an election. The NLRB demanded a list of all the employees arguably involved, broken down in various combinations to allow for different legal scenarios. GM, or at least its upper management, credibly stated that it was eager to comply. And then everything ground to a halt – for weeks, while the strike clock continued ticking.

The NLRB’s daily calls received answers that seemed evasive. Eventually it came out that the plant-by-plant records were, on each site, under the control of the computer people – still, in that era, a priesthood of technicians. Some of them turned out to have other priorities than responding to the increasingly strident screams of rage emanating from head office in distant Detroit.

Of course, no one in their right mind would have deferred to any such individual the power to cause a nationwide strike. But delay is not explicit deferral, and one or two such individuals were all it took to make the dynamic of the legal process grind to a halt, while the dynamic of collective bargaining continued to press toward a crisis. By the time the last part of the list was supplied, even though the challenger was then quickly knocked out of the box by proving to have less than thirty percent support in any relevant combination of plants and skills, the remaining time for bargaining was very nearly not enough. Thus may one supposedly low-level technician, in practice, have almost enough inadvertent power to cause a shutdown of the world’s largest industrial company.

⁹ Many of the so-called “new” conflicts were not new at all, but had been repressed and distorted by the superpower rivalry of the Cold War. Once that pressure was removed, the conflicts became more violent and more prone to expansion.

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