



Of Babies and Bathwater

Howard Gadlin, Ian Macduff & Andrea Kupfer Schneider*

Editors' Note: The authors admit a strong preference for preservation of the baby. They present a cogent argument that contrary to the imagery sometimes used in the RNT project, there has been no sharp 1.0 to 2.0 divide, no sudden shift in our collective thinking about what our field contains or should teach. Rather, they point out, the teachings of the field have evolved steadily and gradually over several decades, with at least the better courses regularly incorporating aspects of the new research. The whole "Negotiation 2.0" concept, they argue, thus runs the risk of undermining that continuity, and implying instead that some of the core concepts that have proven to be widely applicable around the field and around the world are now to be distrusted. The authors also object cogently to a second potential consequence of this imagery: that the hard-won learning of many generations in older societies about how people should deal with each other is now to be distrusted, seen as out of fashion, and even replaced entirely by a set of imported concepts that may be largely unsuited to the culture importing them.

We shall not cease from exploration
And the end of all our exploring
Will be to arrive where we started
And know the place for the first time.
(T.S. Eliot – "Little Gidding," the last of the "Four
Quartets")

* **Howard Gadlin** is the ombudsman and director of the Center for Cooperative Resolution at the National Institutes of Health. His email address is gadlinh@od.nih.gov. **Ian Macduff** is the director of the Center for Dispute Resolution, School of Law, Singapore Management University. His email address is ian-macduff@smu.edu.sg. **Andrea Kupfer Schneider** is a professor of law and director of the dispute resolution program at Marquette University Law School in Milwaukee, Wisconsin. Her email address is andrea.schneider@marquette.edu.

Introduction

In their 2003 book, *The Innovator's Solution*, Clayton Christensen and Michael Raynor extend Christensen's notion of disruptive technologies to describe two basic types of innovation – sustaining and disruptive. Disruptive innovation refers to a product or service that overturns, or leads to the overturning of, a technology or business model that has dominated and defined an area. Personal computers, CDs, and digital cameras are all examples of innovations that were disruptive when they were introduced. CDs are a good example of a disruptive innovation that was itself disrupted by a later innovation, downloadable digital media. Sustaining innovation, meanwhile, refines and improves an already established technology or service. The various improvements over the years in automobile or laptop computers would be an example of sustaining technologies.

Marketing being what it is, we are all familiar with the efforts of manufacturers to convince us that a new product model represents a revolutionary breakthrough that renders obsolete all earlier models. The intent of these marketing campaigns is to create a desire for an alleged innovation – a model that, just by virtue of being new, surpasses the old model. One aspect of these marketing campaigns is to downplay the degree of continuity between new models and those they seek to replace. The denial of continuity is also apparent in some of the professional worlds, where practitioners, researchers and theorists sometimes make claims about innovative ideas, practices or techniques, and promote them like products competing in the market. This tendency is especially prevalent among those who, concerned that extant approaches are not adequate to address fully the complex social, political, or scientific policy problems we face, impatiently blame current theories or practices and set out to create “totally new” approaches. We have three primary critiques of this approach: 1) branding and ambiguity; 2) exclusion and history; and 3) culture and complexity.

Branding and Ambiguity

It is interesting that “Negotiation 2.0” has been taken as the battle cry for the Rethinking Negotiation Teaching (RNT) project. This labeling is a misapplication of a marketing model, which conveys the idea that “Negotiation 1.0” is obsolete while selling “Negotiation 2.0” as a superior and wholly new innovation. This model assumes that negotiation is a commodity, that negotiation training involves selling or marketing something new, and that 2.0 has to be better in every way than 1.0. This assumption then leads to the assumption that 1.0 is

flawed and out of date – that no one would want to or need to buy the original model – and that we can throw our old model out.

The implication of the claim embedded in the “2.0” model number is that this next step is both wholly new (as Web 2.0 is said to be fundamentally different from Web 1.0) and, at the same time, wholly familiar (in the way that the iPad 2 is a souped-up version of the iPad 1 that you may have come to know and love, and the “new” version is even more of the same). The marketing implication is that there is a superior quality to and a significant shift involved in buying the new version – but you are not actually changing brands.

For those committed to this model, we have prepared a flyer, suitable for framing, to be used in the advertising campaign for “Negotiation 2.0.”

Negotiation 2.0

Advanced Price \$600
Book Now
(Auto Upgrade Available)

Negotiation 1.0
Half-Off
(will be discontinued in 2012)

**Coming
Soon!!!**

**To donate your
Negotiation 1.0 to a
disadvantaged child, call
1-800-I am Superior*

The ironic risk is that the “Negotiation 2.0” label both expresses a false disruptive innovation claim and contains the possibility that the power of a “2.0” model will be diminished because of the perceived nature of such modern marketing claims. The power of the claim as to innovation and exclusiveness in dispute resolution can be seen in one further ironic way in at least some parts of Asia – for example Singapore – where mediation is a wholly traditional and embedded form of community dispute resolution, in varying forms, in the three main ethnic communities, Chinese, Malay and Indian. And yet, in professional conversations the impression is also conveyed that negotiation and mediation are somehow “new” to the region; this novelty and importation dates roughly from the arrival on those shores of the “Harvard model.” The irony is twofold: first, because the modern “alternative” dispute resolution movement owes much of its origins and

form to comparative research on non-litigious forms of dispute resolution in China, Japan, India and the Philippines; and second, the impact of the “new” product has been to render at least less visible and probably less desirable the traditional processes, which have at least a 5000-year heritage behind them. There is, in effect, a disabling impact of this marketing, in that those who once knew what negotiation and mediation involved no longer trust that knowledge or experience, as it has been displaced by the new product.

This also indicates one other aspect of the signifying power of labels, whether intentional or unintentional: to claim that a product or process, now in its second iteration, is “new,” and that its foundations lay in the newly branded version “1.0,” is to imply that there was nothing that came before. This might well be claimed, say, for Web 1.0 and 2.0, in that this is a wholly new world of communication and information management; but it seems less plausible in the case of the ancient and culturally-rich practices of negotiation and mediation. Again, the power of this claim to and label of innovation is that it disempowers those who may now discount the foundations of their own negotiation traditions.

We prefer a different stance toward efforts to develop and enhance negotiation training, one that acknowledges the ways in which new negotiation theories are built on previous theories and traditional practices, and provides continuity with ongoing negotiation training and teaching. This would be an evolutionary model, one in which even critical revisions of earlier notions acknowledge the value of earlier contributions as steps in development, and avoids claiming that the new is better because it is new, or that the old is inferior and should be discarded.

Exclusion and History

One consequence of the “branding” thinking is that it reinforces an image of the necessity, uniqueness and primacy of a mode of doing things. That has the effect of excluding those who dance to a different drummer, or whose expertise is grounded in a different ethos, culture and practice. Practitioners, trainers and scholars will be familiar with the experience of those perhaps less imaginative and flexible trainees who take a more prescriptive view of the “model” of mediation or negotiation that they encounter: the risk is that some will learn only too well the steps and sequences to be followed, thereby losing much of the beauty and flexibility of the dance of negotiation. On the other hand, the risk is that training the providers and – perhaps worse – the gatekeepers of professional standards will result in some of the less

wise among these taking the model or the process not merely as indicative but rather as normative (see Avruch 2009).

One example of this was encountered by one of the authors at an arbitrators' and mediators' conference at which leading lights in the sponsoring professional body sought to delineate the core steps in mediation "which we will all agree on." The lively and in the end divisive conversation that followed made the points very clearly that: first, this descriptive exercise (if it could be settled) was designed to be normative, so that all mediators would be evaluated according to the degree to which they actually did all of those things; and second and more important, that exercise in setting standards had the precise effect of excluding from professional recognition those who had been working in the field long before the professional body was created and the standards set. Moreover, those most likely to be excluded, to be "defined out" of the field of mediation, were senior indigenous practitioners who had earned their stripes through experience, wisdom and seniority – and had, for the most part, never heard of the new conventions.

The converse of Groucho Marx's "I wouldn't join a club that would have me as a member" must then be the risk that we define that standards of membership in such a way that those who *were* members of the club (of mediators *or* negotiators) find that they no longer meet the standards.

Perhaps a brief history of negotiation teaching would be helpful in terms of understanding why a market structure of comparing "Negotiation 1.0" to "Negotiation 2.0" is so frustrating. One of the blessings of negotiation teaching, at least from the late 1980s onward, was the interdisciplinary mix of readings and concepts provided. In fact, one could start even earlier, with either Mary Parker Follett in the 1920s (Follett 1924) or Richard Walton and Robert McKersie in the 1960s (Walton and McKersie 1965), to consider early writing on negotiation strategy in the business or labor markets. But we will start in the late 1980s, as negotiation classes become stand-alone classes at many law and business schools. A more robust curriculum was developed, and while this was concurrent with the development of alternative dispute resolution (ADR) as a field, it was not necessarily the same thing, nor was it fueled by the same goals.

Early negotiation classes included a diverse set of readings ranging from law – both the more integrative approach (Fisher, Ury, and Patton 1981; Menkel-Meadow, 1984) and the more competitive approach (White 1967) – to business (Raiffa 1982; Lax and Sebenius 1986) – to international relations (Axelrod 1984) – to classic game theory (Schelling 1980). In other words, this class was already quite interdisciplinary, and decidedly *not* narrow-minded.

Through the 1990s, more elements were added to the training mix. Cognitive barriers highlighted by one particular group, primarily composed of psychologists and economists, located at Stanford (e.g. Kenneth Arrow, Daniel Kahneman, Amos Tversky, and Lee Ross), were first compiled in *Barriers to Conflict Resolution* (Arrow, Mnookin, and Tversky 1995), and then widely translated into shorter applications and experiments through their students' efforts (e.g., Korobkin and Guthrie 2006) as well as the work of other psychologists who focused, e.g., on the elements of persuasion (Cialdini 1993). Adaptation and development also took place in the business school environment; for example, Max Bazerman and Margaret Neale's (1994) writing focused on the psychological barriers, as well as irrational mistakes that negotiators make. A sharpened focus on internal negotiations and emotions also occurred, as the well-known "interpersonal skills exercise" from the Program on Negotiation – developed with trained psychologists – led to rethinking about what makes negotiations difficult (Stone, Patton, and Heen 1999), as well as new consideration of mood (Freshman, Hayes and Feldman 2002) and emotions (Nelken 1996; Fisher and Shapiro 2005; Nelken, Schneider, and Mahuad, 2010). Similarly, experts from the education field were also consulted about adult learning, how to teach skills that stick, and other pedagogical tools (summarized in McAdoo and Manwaring 2009; Manwaring, McAdoo, and Cheldelin 2010).

By the early 2000s, negotiation training was expanding again, this time to include hard sciences (summarized in Yarn and Jones 2006), complex adaptive systems (Jones 2003), a larger array of types of psychology (Shestowsky 2006), and more from anthropology, particularly in terms of thinking about cultural differences (LeBaron 2003). In most negotiation courses today, and in those textbooks, students could well be reading the classics listed above plus an array of game theory (Brams 2003), cognitive psychology (Gladwell 2000; Levitt and Dubner 2006; Thaler and Sunstein 2009), neuroscience (Ariely 2010), emotion (Goleman 1995; Fisher and Shapiro 2005), anthropology, and more.

If one examines the evolution of negotiation courses and the negotiation textbooks that accompany them, it is clear that even defining Negotiation 1.0 should be challenging. What is "1.0"? Do we stop with the revolutionary change to a primary focus on problem-solving, as outlined in *Getting to Yes* (Fisher, Ury, and Patton 1991), *The Manager as Negotiator* (Lax and Sebenius 1986), and *The Structure of Problem-Solving* (Menkel-Meadow 1984)? Or, after that, what do you include? What do you not include?

When Christopher Honeyman and Andrea Schneider wrote about a “canon of negotiation” almost ten years ago (Honeyman and Schneider 2004), would *that* be Negotiation 1.0? The starting point for that inquiry already included items such as a personal style (Williams 1983; Schneider 2002), the use of communication skills (Putnam 2006), the idea of integrative v. distributive negotiations (Raiffa 1982; Fisher, Ury, and Patton 1991), the concept of a bargaining zone and best alternative to a negotiated agreement (BATNA) (Fisher, Ury, and Patton 1991), the use of brainstorming, and the importance of preparation. But the idea of a “canon,” as it stood at the time, only referred to the sharply limited list of items then taught across *all* negotiation classes. Logically enough, each field in which negotiation was being taught already used much more material developed within its own discipline; it just was not the same material across fields.

So we come back to the definitional problem – if we cannot even agree on what Negotiation 1.0 is, how can we define Negotiation 2.0? And, more important, what makes us think that Negotiation 2.0 will be better?

The majority of negotiation textbooks are comprised of excerpts that have morphed and grown over the last twenty years as more and more material is taught while still including the classic readings. Our argument is that the designation “2.0” makes it sound like there is little valuable from 1.0 that needs to be salvaged. In fact, however one defines 1.0, it is clear that the path of negotiation training is more evolutionary than revolutionary. There is not a dramatic shift in what one teaches – and has not been since problem-solving came on the scene – even as we add more diverse, and more nuanced material to such courses.

Culture and Complexity

As indicated earlier in this chapter, we recognize that we have borrowed much of what we do from a global supermarket of negotiation styles. What this adds to our thinking, practice and pedagogy is an obligation to “thicken” the way we practice and prescribe negotiation. The “simple” version of this is the need now to recognize cultural variation in negotiation and mediation practice. But the more nuanced version – which is obscured by the implications of the “1.0/2.0” labels – is that we are caught in a complex of narratives about the nature of disputes, relationships, process values, and acceptable outcomes. This is not the place to revisit the complex and unresolved question as to what we mean by “culture”: the answer to that question is less important than realizing that the very nature of the debate, and the heat that it raises, are themselves indications of the complexity of the issue

and the degree to which “adding” culture to our concepts of negotiation is far more than a merely additive process.

Hence one of the significant shifts involved in the move from first to second generation negotiation practice and pedagogy lies in the acknowledgement that diversity both enriches and complicates the way in which we must see and do things. “Global best practice” is now clearly a far more complex concept than it might have been even a couple of decades ago. This is hardly new – and indeed the central claimed virtues of non-litigation-based forms of dispute resolution lay in part, at least, in their flexibility. If we return to early foundations, we can be reminded of the shift in the 1970s in the United States, at which time the arguments began to emerge for process pluralism, multi-door courthouses, and eventually, “fitting the forum to the fuss” (Sander and Goldberg 1994). These arguments, we suspect, were grounded less in cultural considerations than in perceptions of the constraints on and within the system of adjudication, and the arguments were then at least neutral as to the cultural or identity issues about access.

The question then is whether there is the same degree of enthusiasm for pluralism when the claims for it are made less in the name of system efficiencies and generic access to justice than in the interests of identity politics and cultural autonomy in decision-making. If, however, the generic principle of “fitting the forum” is persuasive, then we need to think about why it might *not* be persuasive if given a multi-cultural slant. What starts out and develops as a case-management idea takes on a different coloration – as it were – when the same arguments for pluralism are advanced in the name of multiculturalism (Sander and Goldberg 1994; Lande and Herman 2004).

This is not, at the same time, an uncritical acceptance of the “cultural defense” as the reason for changing processes. One argument expressing caution about distinct, culturally specific dispute processes derives from the same line of argument raised in relation to ADR and civil justice: the importance of public norms, or shared norms. This argument – framed by, among others, Richard Abel (1981), Owen Fiss (1982), David Luban (1988), and Simon Roberts (1998) – is typically raised in a secular and jurisprudential context, raising a concern about the “erosion” of the public realm. The same argument might well apply where the claims for procedural distinctiveness are based on ethnicity or faith. This is not the place to explore the implications of multiculturalism and the “claims of culture”; our concern here is merely to acknowledge that it is the recognition of difference that – in part at least – lays behind the laudable shifts to new thinking in negotiation pedagogy. We do note, in support of the “complexity” point, that even the recognition of those claims of culture necessarily raises

a range of policy and practical questions about the impact of such recognition. For example, one cannot neglect either the problems of the impact of multicultural accommodation on the “claimant” group itself – especially risks of group recognition as a “license for in-group subordination” – or the impact of individual rights on minority communities (Shachar 2001).

The point made by Seyla Benhabib (2002: vii-viii), specifically in relation to the political “claims of culture” is that:

. . . our contemporary condition is marked by the emergence of new forms of identity politics all around the globe. These new forms complicate and increase centuries-old tensions between the universalistic principles ushered in by the American and French Revolutions and the particularities of nationality, ethnicity, gender, “race,” and language. Such identity-driven struggles are taking place not only at the thresholds and borders of new nation-states. . . [but] are also occurring within the boundaries of older liberal democracies.

The single, though hardly simple, point for our current purposes is that the epistemic and ontological shift brought about by the recognition – in a political, policy and process sense – of the fact of diversity also necessarily adds complexity. And that complexity is likely not to be captured in a rebranding of negotiation practice; nor are those whose acknowledged and included lives enrich our cosmopolitan mix likely to see themselves necessarily included in the new product line.

The development of negotiation practice and pedagogy takes place against this rich and complex backdrop of diversity and at times contentious pluralism. While that practice is enriched by the recognition of diversity, it also treads a tricky path between assimilation (“add culture and mix”) and the fetishism of cultural difference. The risk, as Terence Turner suggests, lies in the use of “culture” as a property of an ethnic group or race; the reification of cultures as separate entities; the overstatement of internal homogeneity; the use of culture to legitimize “repressive demands for cultural conformity”; and the use of culture to fetishize claims and “put them beyond the reach of critical analysis” (1993: 412). But that is a matter for another paper. The point here is that the same shift in thinking and perception that underpin the recognition of difference and the adaptation of the first iteration of negotiation pedagogy also complicates the picture: what we have added is not merely more colors and styles, but rather the normative and existential complexity of difference. And that, we suspect, is not captured by the “2.0” label – even though the intent of the shift in branding is to mark the shift in practice.

Conclusion

The idea that 2.0 can replace 1.0 thus misses the history of negotiation teaching, and collapses what has been a long and interesting development into a snapshot in time—into a straw man—that one can then attack as outdated and outmoded. Negotiation teaching is ready for the next challenge, ready for new material, and can adapt to new structures. It is its ability to add new disciplines and new information, while building on the classics, which makes negotiation teaching so interesting in the first place.

Let's not throw out the baby with the bathwater.

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