

2017

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### Recommended Citation

Adrian Borbély, Noam Ebner, Chris Honeyman, Sanda Kaufman, and Andrea Kupfer Schneider, *A “Grand” Unified Negotiation Theory . . . in Context*, 2017 J. Disp. Resol. (2017)

Available at: <http://scholarship.law.missouri.edu/jdr/vol2017/iss1/11>

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# A “Grand” Unified Negotiation Theory... in Context

*Adrian Borbély\**, *Noam Ebner\*\**, *Chris Honeyman\*\*\**, *Sanda Kaufman\*\*\*\**, and  
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## I. INTRODUCTION

Negotiation research began in the 20<sup>th</sup> century<sup>1</sup> and is continuing apace. It is pursued from the perspectives of several disciplines including psychology, organizational behavior, labor relations, decision sciences, game theory, communications, legal studies, international relations, public policy, and others. Added to these are best practices from several fields engaged in intervention in conflicts. By now we have accumulated a considerable volume of wisdom regarding what drives people and entities to negotiate, how they behave when doing so, how they should handle negotiations to obtain specific results, and how to help disputants resolve to come to joint, mutually satisfactory decisions. However, negotiation wisdom remains rather distributed in its disciplines and practices of origin. Arguably, negotiation as a field of practice has yet to come together under a shared theoretical umbrella, with a shared vocabulary, and broadly agreed-upon propositions and prescriptions valid across the board. In this Article, we ask whether such a unified “grand” theory can be constructed, and if so, how.

In searching for a unified theory of negotiation, it might be useful to start with limitations inherent in such an endeavor. The exact boundaries of the negotiation field are not yet definitively set, and will likely evolve as those exploring it progress in their discoveries. At this developmental stage, it is difficult to identify the field’s backbone, or a core set of principles that would, to everyone’s satisfaction, constitute negotiation’s “Unified Theory.” Most negotiation thinkers, from their respec-

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1. We are speaking in general terms and deliberately omitting treatises on diplomacy and politics, which have a much longer history.

tive disciplinary perspectives, would probably find any given set of principles wanting. Many might even disagree regarding the more basic question of what a “theory” is, let alone what negotiation’s “grand” theory would be.

One challenge to finding a unified theory is the multitude of disciplines from which negotiation theories and practices are derived. Another challenge is identifying the variety of practices around the world that involve negotiation, or even all of the multitude of contexts in which negotiation is employed. Therefore, even if we could assemble a “grand” theory, one concern would be that the theory might have to be *so* general that it might not work well in specific contexts.

On the other hand, pointing out that context must be considered does not mean that a unified theory cannot be useful. It raises the question, however, of the boundaries of such a theory. We have been wondering, therefore: how can a unified theory take due account of context? Perhaps a metaphor or two might be helpful here.

One such metaphor is a two-stage rocket. One stage represents ideas common to all negotiation settings, and can contain elements of the “grand” theory that we deem relevant to all negotiation settings. This would include items such as interdependence, mutual gains and beneficial tradeoffs, the necessity to prepare for negotiation, the importance of discovering interests behind positions, the potential gap between intent and impact in communicating with the other party, the role played by one’s best alternative to a negotiated agreement (BATNA), and the potential value-added of an intervener in certain situations.<sup>2</sup> But the first stage gets a rocket only part of the way. The other stage of our rocket would contain context-specific elements—the norms, processes and habits of negotiation in particular contexts, such as sales, procurement, management, public decisions, plea bargaining or international settings. For practitioners and their trainers, the “grand” theory would need to be presented *with* the specificities of the setting where they are to be applied.

Another metaphor that might describe how a unified theory with context-specific bells and whistles could work is culinary: the tart. Its crust, whose ingredients are generally the same (flour, eggs, and butter) represents the negotiation essentials. The filling added to the crust represents the context-specific elements. Just as tart fillings can be made of chocolate, apples, pecans, vegetables, or strawberries and cream, prescriptions for negotiations in different contexts can be tailored for different practice settings. Just as not all crusts go well with all fillings without some adaptation—e.g. by varying the proportion of butter to flour—general theoretical concepts must be combined in different ways *and* adapted to the context in which they are applied. All crust ingredients will be necessary every time, but perhaps in different proportions for different fillings.

## II. FINDING THE “CRUST” FOR THE NEGOTIATION TART

The sheer variety of academic disciplines and areas of practice generating understanding of negotiation theory and practice is remarkable (game theory, social psychology, geopolitics, law, communication, public affairs, sales, etc.). Some of us realized that the expertise base of practitioners and scholars across our far-flung field had become deep and varied enough that no one person was looking at the

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2. ROGER FISHER, WILLIAM L. URY & BRUCE PATTON, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (3d ed. 2011).

whole picture.<sup>3</sup> We describe below one effort to identify and assemble the many research contributions and practice experiences into something approaching a unified whole.

#### A. *The Canon of Negotiation Initiative*

The Canon of Negotiation Initiative began in 2003,<sup>4</sup> initially to explore whether there existed research and teaching in one professional domain that might be applicable in other domains.<sup>5</sup> Program directors Chris Honeyman and Andrea Schneider invited a group of about 20 scholars and practitioners to a small conference to address this question. A first task produced an immediate revelation: the group could identify only six topics that were already taught under the heading of negotiation in all of the disciplines represented. In other words, these subjects formed a rudimentary but clearly interdisciplinary negotiation canon.<sup>6</sup> This 2003 nucleus contained the following items:

- (1) The idea of personal style or strategy or personality in a negotiation (including the concepts of competitive or adversarial v. interest based or principled or problem-solving);
- (2) The use of communication skills—both listening and talking—in negotiation;
- (3) The concept of integrative v. distributive negotiations;
- (4) The concept of a “bargaining zone” between the parties as well as the concepts of BATNA and reservation prices;
- (5) The use of brainstorming and option creation in a negotiation; and
- (6) The importance of preparation before negotiation.

The 2003 symposium resulted in 25 essays, published as a special issue of the *Marquette Law Review*.<sup>7</sup> The fields of scholarship from which the essays drew included law, psychology, behavioral economics, cultural studies, urban planning, and philosophy; practice areas included labor mediation and arbitration, ethnic and tribal disputes, and civil and criminal disputes involving the U.S. Department of

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3. See Christopher Honeyman & Andrea Kupfer Schneider, *Introduction: A “Canon of Negotiation” Begins to Emerge*, in *THE NEGOTIATOR’S FIELDBOOK* 1-6 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).

4. *Canon of Negotiation*, CONVENOR, [www.convenor.com/canon-of-negotiation.html](http://www.convenor.com/canon-of-negotiation.html) (last visited Apr. 30, 2017).

5. Honeyman and Schneider focused at first on law, public policy, business, and international relations. Honeyman & Schneider, *supra* note 3.

6. See Christopher Honeyman & Andrea Kupfer Schneider, *Catching Up with the Major-General: The Need for A “Canon of Negotiation”*, 87 MARQ. L. REV. 637 (2004) (as noted below, today we would define and group some of these terms differently).

7. Symposium, *The Emerging Interdisciplinary Canon of Negotiation*, 87 MARQ. L. REV. 637 (2004).

Justice.<sup>8</sup> Interestingly, even this group's initial two dozen articles outlined far more research, ideas, and practical experience that seemed broadly useful, on themes extending beyond the six core topics listed above.<sup>9</sup> Each selected topic was increasingly well-known in its original domain. Yet almost every one of these subjects had, up to that point, failed to cross over in any meaningful degree into any of the other domains the group was studying. Clearly, domains had much to offer one another, yet the bridges were lacking.

### B. *The Negotiator's Fieldbook*

By 2004 Honeyman and Schneider realized that if one venture on a twenty-scholar scale could find this much scholarship ripe for cross-disciplinary use, there might be considerably more such material to be uncovered—if they could engage a larger variety of scholars and practitioners in looking for it. So, starting in 2004-05, they gathered almost 60 senior scholars to hold recorded “what if...?” and “what else...?” discussions, tracking subjects that were not initially considered.<sup>10</sup> With the recruitment of more contributors, within a year they expanded the number of topics to 80.<sup>11</sup> Also by then, the array of academic disciplines and practice specialties they drew on numbered almost thirty.<sup>12</sup> In 2006, when the American Bar Association published the resulting “Negotiator's Fieldbook”, the 80-contributor, nearly 800-page volume stood as the most comprehensive reference in the negotiation field.<sup>13</sup>

From 2007 to 2013 the *Canon* directors' focus shifted back<sup>14</sup> to the challenges of teaching, and particularly, to how best to address the dominance of American cultural influence in the field, under the Rethinking Negotiation Teaching (RNT) project.<sup>15</sup> The *Canon* directors saw the American dominance of the negotiation field as confounding because of the likelihood of missing negotiation issues present in other cultural contexts, as well as the possibility of a mismatch between prescriptions developed in the American context and their application in different situations. To mitigate this problem, the RNT project located its three meetings in Rome (2008), Istanbul (2009) and Beijing (2011), largely to inspire (and challenge) the participating scholars to re-evaluate the concepts they were developing in a different cultural setting each time, and to facilitate the inclusion of participants—researchers and practitioners—from around the world. By the time the RNT project was completed, it was clear that this more international approach was also needed for a new phase of the *Canon* initiative.

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8. *Id.*

9. *Id.*

10. Honeyman & Schneider, *supra* note 3.

11. *Id.*

12. *Id.*

13. THE NEGOTIATOR'S FIELDBOOK (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).

14. A precursor to both the *Canon* and the RNT project was a special journal issue of nine articles, based on a 2002 symposium. See Christopher Honeyman, Scott H. Hughes & Andrea K. Schneider, *How Can We Teach So It Takes?*, 20 CONFLICT RES. Q. 429 (2003).

15. The RNT project, directed by Honeyman and James R. Coben along with (at different phases) Giuseppe De Palo, Sharon Press and Andrew Wei-Min Lee, eventually involved more than a hundred scholars from more than twenty countries. It produced a series of four books (free for download in PDF) as well as special issues of several journals. See *Rethinking Negotiation Teaching*, CONVENOR, [www.convenor.com/rethinking-negotiation-teaching.html](http://www.convenor.com/rethinking-negotiation-teaching.html) (last visited Apr. 30, 2017).

C. *The Negotiator’s Desk Reference*

With Honeyman as a co-director of both the Canon and RNT projects, and Schneider as co-director of the former and a steering committee member of the latter, the ongoing Canon initiative was informed by the RNT project throughout. Starting in late 2013, the Canon project directors canvassed participants at three workshops (held in the U.S., Europe, and Asia).<sup>16</sup> Based on their input, they set about recruiting scholars and distinguished practitioners in a process that ultimately replaced more than half of the 2006 *Fieldbook* with entirely new material.<sup>17</sup> More than a hundred people have contributed to this new stage of the Canon initiative, resulting in the *Negotiator’s Desk Reference* (NDR).<sup>18</sup>

The NDR reflects the increasingly field-wide realization that cross-fertilization is not only theoretically justified, but also a positive force for improving our working understanding of negotiation. This is evident in the book’s table of contents and the diverse backgrounds of its authors. The book’s substance and writing style try to implement this consensus, in the form of connections drawn from one topic to another, and from one discipline in which negotiation is a key element to other such disciplines, as well as to other fields of research and practice.<sup>19</sup> The NDR contributors demonstrated a willingness to cite book chapters that emanate from fields vastly different from their own, and in turn, to enthusiastically accept citation across similarly vast chasms of professional specialty.<sup>20</sup> In a two-volume, 101-chapter work, a thorough list of these citations would be tedious, so we confine ourselves here to a few examples. Thus:

- A chapter by a Chinese business school professor on how style and culture interrelate in negotiation is related to two chapters by American law professors on style, and on relation to good practices—and tricks.<sup>21</sup>
- A chapter on reputation—itsself an example of cross-field unification, authored by a business school professor, a police officer and a law professor—interrelates with two chapters on trust by another business school professor, and a chapter on relationships by another law professor.<sup>22</sup>

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16. Christopher Honeyman & Andrea Kupfer Schneider, *Preface* to THE NEGOTIATOR’S DESK REFERENCE (Christopher Honeyman & Andrea Kupfer Schneider eds., forthcoming 2017).

17. *Id.*

18. *Id.*

19. *Id.*

20. Christopher Honeyman & Andrea Kupfer Schneider, *Introduction* to THE NEGOTIATOR’S DESK REFERENCE, *supra* note 16.

21. Eko Yi Liao, *Style and Culture in Negotiation*, in THE NEGOTIATOR’S DESK REFERENCE, *supra* note 16.

22. Catherine Tinsley, Jack J. Cambria & Andrea Kupfer Schneider, *Reputation in Negotiation*, in THE NEGOTIATOR’S DESK REFERENCE, *supra* note 16.

- Negotiation ethics are featured in a chapter by two law professors addressing psychological aspects, and in a chapter on ethics by a philosopher.<sup>23</sup>
- A law professor's analysis of how to keep hired experts off the dueling field is juxtaposed with the conclusions of a leading mediator of scientific disputes—on how some facts, are, in fact, negotiable.<sup>24</sup>
- Finally, an American law professor's survey of the experience of "Negotiating While Black" dovetails with an analysis of Westerners' typical errors when negotiating in Chinese culture, contributed by a Chinese-Malaysian professor working in Australia.<sup>25</sup>

We could cite many more such examples from just this one work. Thus, we believe that at least among a key group of the field's most active intellectual contributors, cross-fertilization across disciplines and geographic borders is now not only accepted, but encouraged, expected, and celebrated.<sup>26</sup>

#### D. What Comes Next?

The project directors, veterans of the negotiation field, note that the entire, almost 15-year span of the Canon of Negotiation Initiative has been a humbling exercise in discovering how much they did not know.<sup>27</sup> For participants in one or more of its phases, the project has provided a sense of being a part of a formative, ongoing process. For all of us, these are also sources of our continued excitement about our field's potential. But some way of organizing this continuing process, of course, is still necessary. The NDR's electronic edition (as distinct from the print version) is designed in part to serve this need. On the date of publication, it will have two volumes, identical in content to the print edition.<sup>28</sup> Thereafter, however, a third volume, necessarily in electronic format only for the time being, will be filled gradually, as the editors discover and recruit scholars and expert practitioners from cultures (and in specialties) about which they know little or nothing yet. In that process, we all look forward to continuing to educate ourselves, as well as other readers. We can only guess at what our field has yet to discover.

23. Art Hinshaw, *Negotiation Ethics*, in THE NEGOTIATOR'S DESK REFERENCE, *supra* note 16; Jennifer Robbennolt & Jean Sternlight, *Drawing on Psychology to Negotiate Ethically*, in THE NEGOTIATOR'S DESK REFERENCE, *supra* note 16; Kevin Gibson, *The Ethical Bedrock Under the Negotiation Landscape*, in THE NEGOTIATOR'S DESK REFERENCE, *supra* note 16.

24. John Wade, *Shadow of the Tribe*, in THE NEGOTIATOR'S DESK REFERENCE, *supra* note 16; Peter Adler, *Negotiating the Facts*, in THE NEGOTIATOR'S DESK REFERENCE, *supra* note 16.

25. Michael Z. Green, *Negotiating While Black*, in THE NEGOTIATOR'S DESK REFERENCE, *supra* note 16; Bee Chen Goh, *3 Typical Errors in Chinese-Western Negotiation*, in THE NEGOTIATOR'S DESK REFERENCE, *supra* note 16.

26. It has not always been so. See Chris Honeyman et al., *Here there be Monsters: At the Edge of the Map of Conflict Resolution*, CONFLICT RESOL. PRAC. 1 (2001), [www.convenor.com/the-conflict-resolution-practitioner.html](http://www.convenor.com/the-conflict-resolution-practitioner.html).

27. See Honeyman & Schneider, *supra* note 16.

28. *Id.*

And this, we submit, underlines our central premise. The Canon initiative can be considered an example of our field’s development into a (somewhat) integrated whole, but it is certainly not the only one. If parallel or otherwise unrelated efforts augment this trend, its evidence will strengthen. But even the one chain of events we have described here should show how negotiation’s subject fields, theories and knowledge bases are even now becoming more interlinked. “Grand” the resulting theory of our field may never be; simple it almost certainly will never be; but “unified” seems within our future, collective reach.

The list of six “original” elements in the canon of negotiation was based on twenty scholars’ understanding of the field as of almost 15 years ago.<sup>29</sup> To the best of our knowledge, no one has yet replicated such an analysis to show what has been added to these “core six” since 2003. But certainly, over that time the list has grown. One example is a large body of psychological and behavioral-economics research, showing (e.g.) various cognitive elements that impact people’s willingness to negotiate, and ability to do so to their best advantage.<sup>30</sup> Though known to many researchers by 2003, this material was not widely taught at the time; anecdotally, we believe it now is.

Perceptions of some of the elements noted in 2003 have also been sharpened since, so we would expect a contemporary list to be both longer and better stated. It would be interesting to survey negotiation teachers from different professional and geographical origins to see what the “common core” or nucleus would look like today. (This could be done either through interviews—we do not believe surveys to be appropriate here, since there may be variations in how people interpret questions—or a thorough content analysis of syllabi.)

Of course, each field will continue to develop its own important concepts. Nevertheless, an attempt to collect the “widely or universally-taught” concepts would inform our bottom-up approach to building a comprehensive perspective on our field. As Noam Ebner has suggested,<sup>31</sup> the result would remain unstable and subject to change. So, periodic updates should become a regular habit of the field.

Would this collection of core concepts amount to a “theory”? We doubt it would pass muster with a purist’s definition of what a theory is. We have already admitted a certain lack of elegance, in addition to an absence of finality, in the outcome of any such inquiry. However, we hope that the different core elements, nested together, can constitute the closest thing to what a theory *can* be for a field as complex and multifaceted as negotiation.

### III. FILLING THE CRUST, OR THE ROCKET’S SECOND STAGE

While the bottom-up process of constructing the Canon, as described here, is valuable for organizing negotiation knowledge and teaching it, the ultimate effectiveness test is how useful it can be to negotiation *practice*. Therefore, along with the initial bottom-up effort, we need a complementary approach, to help pull together and translate the general to the specific. This is where context comes into play. (If the crust cannot contain the filling, or clashes with it, nobody will want to

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29. Honeyman & Schneider, *supra* note 6, at 643-44.

30. The single most influential publication in this domain is BARRIERS TO CONFLICT RESOLUTION (Kenneth Arrow et al. eds., 1994).

31. See Noam Ebner, *Negotiation is Changing*, 2017 J. DISP. RESOL. (forthcoming 2017).



eat the tart; or if the rocket's second stage isn't aligned properly when the first has done its heavy lifting, the rocket crashes.)

The need to make our theoretical insights useful to a variety of contexts requires looking at the "unified" theory project as having an equally important counterpart that simply is not subject to unification. We could, perhaps, take the generally valid theoretical propositions, and translate them into collections of *stratified* propositions that meaningfully fit specific contexts and can guide practice in specific fields and cultures. Figure 1 shows (across the top) several examples of theoretical concepts relevant across contexts (along the left side). Each cell in this table represents the specific way in which each concept at the column heading applies to the context listed in the row heading. For example, at the intersection of the risk column with the interpersonal context, we would find how the risk concept plays out in interpersonal disputes. We could ask what representation means in public disputes. We could engage in comparisons across the rows.

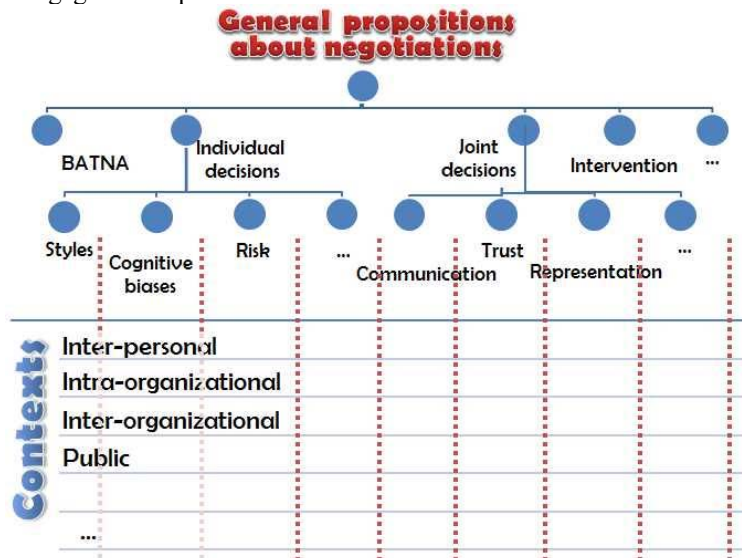


Figure 1: a stratified view of a unified theory of negotiation

In the bottom-up Canon process discussed earlier in this Article, we are trying to identify the nucleus of our field, i.e. what would constitute a central theory of negotiation—or the set of elements the entire field seems ready at any given date to agree on. Figure 1, however, is a graphic effort to outline how such "general" negotiation theory might be applied to the teaching of negotiation in context-specific domains, and to the practical issues faced by practitioners in the discrete contexts in which they negotiate. The object is to put the general theory into practical perspective, and identify different ways to incorporate context with theory.

In Figure 1, the columns represent theoretical constructs that meet with broad-based agreement across disciplines (the crust, in our tart metaphor). These constructs intersect with the various contexts, arrayed along the rows. In each cell, we obtain the way in which a theoretical construct plays out in each context (the specific filling of the tart). Note that the concepts and contexts we selected in Figure 1

are just for illustration. A carefully constructed theory (along the columns) would have a more intricate, hierarchical structure, and there would be many more contexts.

A. *Putting our Unified Theory through the Test of Context: or, Can the Crust Hold the Filling?*

Any supposedly unified negotiation theory must be assessed for its relevance to each of the many contexts in which negotiation is practiced. But what does ‘context’ mean? Here, there seem to be several noteworthy defining elements—the stakes, the setting with its rules and practices, and the scope of the negotiation. Let’s explore each of these.

The first context-specific characteristic relates to the *stakes* of the negotiation. What is the substance under discussion? For example, managers negotiate, daily, productive relations among their teams, budgets for their department, and other aspects of running an organization. Salespeople negotiate contract terms with prospective clients. Lawyers negotiate the legal terms of business deals and the resolution of disputes that would otherwise go to trial before a judge. Planners and policy makers negotiate around change initiatives in the public arena. The technicalities in each of these contexts make the negotiations sufficiently different to warrant context-specific attention.

Second, the *settings* in which those negotiations take place entail different negotiation practices. For example, in purchasing, there is usually a two-step negotiation: potential suppliers are often initially selected by written communication; then a face-to-face negotiation may take place among the shortlisted participants. In legal practice, court-annexed dispute resolution mechanisms offer specific frames for negotiation (communication mechanisms, specified types of third-party interventions, etc.); or the litigation process itself imposes time constraints on less formalized negotiation processes. In both examples, processes are defined and known to the parties. By contrast, public decision negotiations are held outside any existing or pre-defined organizational framework, hierarchy, or set of rules, which must be negotiated by the stakeholders in each case. The latter must be identified through a convening process preceding the negotiations. Similarly, international negotiations have few predetermined rules and vary from case to case.

Third, the *scope* of the negotiation will vary in different contexts. One difference relates to the degree to which negotiations are almost purely transactional (as in business, or legal disputes), some mix of transactional and relational (as in labor relations or public disputes), or more relationship-laden (as in some interpersonal disputes in organizations and families). In these negotiations, the scope can range from a one-time deal to a lifetime of iterated negotiations. From the perspective of the disciplines of origin of those who teach and research negotiation, commonly studied contexts (other than interpersonal in the home and family) include private, public, and nonprofit management (with an organizational behavior perspective), labor relations, business (sales and purchasing, from an inter-organizational perspective), legal (negotiating “in the shadow of the law”), public decision processes (planning, public policy, lobbying), and international relations (geopolitics). Scholars in these different fields tend to look at negotiation through rather different lenses, which color different conceptualizations of the very definition of negotiation. Some consider it a one-time event that can be entered in a calendar, when two

or more people meet to discuss a matter of common interest; commercial sales and purchasing fall in this category. Others, in labor relations, public decisions or international conflict resolution, for example, examine negotiation processes spanning extended time periods and entailing many meetings among representatives of several interest groups. And some go so far as to cast negotiation as an approach to social regulation, with resulting *quid pro quos* found almost everywhere in our social systems.<sup>32</sup> This latter view is found in some organizational behavior research, drawing on Simmel's concept of conflict.<sup>33</sup>

### B. *Why Does Context Matter? Or, Developing a Feeling for Filling*

The interaction between theory and context is omnipresent in our understanding of negotiation. Reverting to our tart metaphor, when we teach future professionals in college, or experienced lawyers, managers, salespeople, HR professionals, or community representatives we include a set of elements likely to be present in all of these contexts. Depending on whom we teach, the contextual filling is often added by means of the specific examples and cases we select to fit our audience. For example, we talk about agency in negotiation very differently, depending on the audience (e.g. law or MBA students), because the agency relationship will play out differently for them when they negotiate professionally.

The *amount* of filling required in our tart may also vary depending on whether we are teaching college students or training practitioners.<sup>34</sup> In other words, the crust-to-filling ratio may vary. In college, we may focus our teaching on negotiation features applicable to a wide array of situations (fat crust, slim filling). When we train practitioners in a specific field, however, we are expected to include more context-specific elements relevant to that field of practice (slimmer crust, heavier filling). Practitioners' interest in theory may be rather limited if it is not *immediately* relevant to their challenges.

Another variable, regarding the crust/filling ratio, must do less with the diner's needs than with the baker's skills and preferences. We can expect the amount of context-specific content to vary depending on the instructor, her field of origin and amount of practical experience with negotiation. In this sense, any individual negotiation teacher's "theory of her field" is perhaps more dissimilar from other negotiation teachers than we might expect in other subjects, such as the teaching of anatomy across medical schools, biology, physical anthropology, and other relevant departments. We might discover these differences if we invited negotiation teachers to reflect on their own theory of the field and on their own assumptions about what is general or context-dependent. One good place to begin this exploration is the set of examples teachers reach for to explain negotiation principles and dynamics. Some teachers might use an episode from an Israeli-Palestinian negotiation to exemplify one point, and an interaction they had with a taxi driver on the way to class to demonstrate the next. What do our examples imply, regarding our view of context?

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32. See HENRY MINTZBERG, *THE NATURE OF MANAGERIAL WORK* (1973).

33. Georg Simmel, *The Sociology of Conflict*, II, 9 AM. J. SOCIOLOGY 672-89 (1904).

34. See Roy J. Lewicki & Andrea Kupfer Schneider, *Instructors Heed the Who: Designing Negotiation Training with the Learner in Mind*, in *VENTURING BEYOND THE CLASSROOM: VOL. 2 IN RETHINKING NEGOTIATION TEACHING SERIES* (2010), [http://open.mitchellhamline.edu/dri\\_press/2/](http://open.mitchellhamline.edu/dri_press/2/).

In research, the interplay between theory and practice is also telling. At one end of the spectrum, the bulk of current negotiation research is taking a context-neutral approach to empirical data, and hence to theory-building.<sup>35</sup> Research in experimental psychology, for example, is mostly context-free and isolates a few variables in *ceteris paribus* conditions. Implicitly, such research lays generalizability claims for the findings to all negotiation settings, because of both the experimental conditions and the lack of context specificity. (Up to a point, generalizability is legitimately grounded in the fact that negotiation in any context is practiced by people. Therefore, individual perception and cognition characteristics—and strategies to correct likely biases in them—*should* be relevant to all negotiators regardless of context. But only up to a point; for instance, a long series of studies in other contexts—Law & Society Association scholars come to mind particularly—have demonstrated how deeply the socialization process of the professions can take over from a “lay” mindset, let alone a young student’s still-malleable one.)<sup>36</sup> Theory is then often built based on data collected about undergraduate students (young and inexperienced in negotiation) playing assigned roles in context-neutral laboratory studies.<sup>37</sup> The translation from such settings to the reality of actual negotiations, especially among professionals, is *hypothesized*, but rarely proven empirically. We derive from such research some “clean concepts” or “labels” that may lack traction in practice.<sup>38</sup> John Lande’s reflections on Ordinary Legal Negotiations,<sup>39</sup> where he confronts some of our main labels (namely the distributive – integrative framework) with the practice of his interviewees, is telling of such a gap between theory and legal practice, for instance. This should lead us to question the impact that context-neutral theories can have on real negotiations in specific contexts.

A second large segment of negotiation research activity, at the opposite end of the spectrum from lab research, using both case study and statistical approaches, focuses on specific single contexts. Such is the case with research into legal negotiations, labor relations, or public and international disputes.<sup>40</sup> In these studies, any effort to apply the findings across contexts is generally either implicitly or explicitly disclaimed. For example, political science research on negotiation takes a very context-centered approach, from which it derives few generalizable theoretical statements.<sup>41</sup> It teaches us how specific geopolitical and political negotiations took place, but provides little insight into negotiation as a whole. In another article in

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35. For a critique of this method of psychological research in general, see Joseph Henrich et al., *The Weirdest People in the World?*, 33 BEHAV. & BRAIN SCI. 61-83 (2010), <https://www.cambridge.org/core/journals/behavioral-and-brain-sciences/article/div-class-title-the-weirdest-people-in-the-world/div/BF84F7517D56AFF7B7EB58411A554C17#>.

36. For a foundational work in this line, see ROBERT DINGWALL & PHILIP LEWIS, *THE SOCIOLOGY OF THE PROFESSIONS: LAWYERS, DOCTORS AND OTHERS* (1984).

37. For examples, see Henrich et al., *supra* note 35, at 66.

38. See Andrea Kupfer Schneider, *Teaching a New Negotiation Skills Paradigm*, 39 WASH. U. J. L. & POL’Y 13 (2012).

39. See John Lande, *A Framework for Advancing Negotiation Theory: Implications from a Study of How Lawyers Reach Agreement in Pretrial Litigation*, 16 CARDOZO J. CONFLICT RESOL. 1 (2014).

40. See, e.g., Sanda Kaufman et al., *Multiparty Negotiations in the Public Sphere*, in THE NEGOTIATOR’S DESK REFERENCE, *supra* note 16; Sanda Kaufman & Eric Blanchot, *Theory Meets Reality: Negotiation and Mediation in Mali*, in THE NEGOTIATOR’S DESK REFERENCE, *supra* note 16.

41. Arnaud Stimec, *Vers une ingénierie des négociations dans les organisations*, 102 RECHERCHES EN SCIENCES DE GESTION 195, 195-212 (2014).

this special issue, David Matz and Adrian Borbély look at how book-length accounts of famous negotiations may help build theory in negotiation.<sup>42</sup> One of their conclusions is that context, including the negotiators' "ghosts and histories", is at the forefront of the author's account.<sup>43</sup> In other words, context is not the background of a negotiation, it is an important part of it.<sup>44</sup> In international relations, Zartman<sup>45</sup> pleads for an "integrated approach" that would enable us to build theory in the context of specific negotiations; through a case study methodology, Zartman *has* succeeded in examining together behaviors and processes in the field of international negotiations<sup>46</sup> – an approach that has yet to be adopted in other fields' negotiation studies.

Arguably, neither of these streams is very effective in advancing a more general understanding of how negotiation practices unfold "out there." For example, along what dimensions is a sales negotiation different from a legal one? If we find (for instance) that *under certain conditions*—all else being equal—a negotiator's gender matters to process or outcomes, or that certain cognitive "tricks" enhance a stakeholder's cooperative inclination, should we, and how would we, include this information in a complex, multi-party, high-stakes process? While we know negotiation contexts are diverse, we admittedly have yet to develop theoretical prescriptions that can effectively guide practice across specific conditions. As a field, we are still missing a critical link in operationalizing research findings and theoretical constructs to assist in the practice of negotiation.

A notable attempt at integrating cognitive biases research with a field of practice is Dietrich Dörner's<sup>47</sup> set of simulated scenarios for decision making in complex settings with low feedback, such as environmental problems. A more recent attempt by Kaufman, Elgoibar and Borbély<sup>48</sup> focused on the concept of interdependence, considered a necessary condition for willingness to negotiate.<sup>49</sup> That study examined how interdependence affects processes and outcomes in public decisions, labor relations, and inter-business disputes. Although interdependence is present in all negotiation settings, it plays out somewhat differently in each. This is an example of a general theory component that can then be analyzed for its differing strategic consequences in each setting, as we described in Figure 1.

A cautionary note: 'contexts' are themselves unstable and shifting. In another article in this issue, Noam Ebner has suggested that *people* are changing—behaviorally, physically, emotionally and cognitively—in part, in response to technological upheaval.<sup>50</sup> Therefore, they are changing as *negotiators* as well.<sup>51</sup> This, he suggests, justifies a re-examination of negotiation theory, including the elements that

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42. David Matz & Adrian Borbély, *Learning from Book-Length Accounts of Historical Negotiations*, 2017 J. DISP. RESOL. (forthcoming 2017).

43. *Id.*

44. *Id.*

45. I. William Zartman, *Common Elements in the Analysis of the Negotiation Process*, 4 NEGOT. J. 31-43 (1988).

46. *Id.*

47. DIETRICH DÖRNER, *THE LOGIC OF FAILURE: RECOGNIZING AND AVOIDING ERROR IN COMPLEX SITUATIONS* (1996).

48. Sanda Kaufman et al., *Context Matters: Negotiators' Interdependence in Public, Labor and Business Disputes*,

49. THOMAS C. SCHELLING, *THE STRATEGY OF CONFLICT* (1980).

50. Ebner, *supra* note 31.

51. *Id.*

have been deemed ‘generally accepted’ in this Article.<sup>52</sup> This same approach extends to context as well. Change leaves no context untouched. But not all contexts have been affected equally or in the same ways. For example, lawyers might say that their practices have only changed slightly over the past decade; in contrast, real-estate brokers might say that their practice has changed dramatically. Thus, as we examine contexts, we should pay heed to the ways in which they are shifting even as we write.

Taken to an extreme, overly privileging context can utterly confound theory development. One of the authors once knew a group of mediators whose entire theory of practice seemed personal to each of the repeat-player negotiators they faced: “Here’s how you negotiate with Joe....” Such poverty-stricken definitions of a working theory, of course, are virtually useless as soon as you walk into another room, with other people.

For now, most of our negotiation theory-building efforts tend to stop where context begins. However—given that any gap in theory can be reframed as an agenda for reflection and research—a helpful next step may be to *conceptualize the gap* between the current state of general negotiation theory and any context’s own perspective. Between a general theory of “Negotiation, wherever” and highly context-dominated theories such as “Negotiating with your boss for a raise in the IT industry” or “Negotiating oil production quotas with fellow OPEC ministers”, we might be able to identify a general-contextual *bridging* theory, to address *the ways in which context matters*. This might develop a framework of stakes / setting / scope such as we have suggested above, or other models for looking at matters of context. Central to this “attention to context, that is not context-specific” is the notion that while each context might be unique, there may be commonalities between them regarding *which* elements of negotiation they affect and *how* they tend to affect them.

#### IV. CONCLUSION

We conclude that a “grand” theory whose context-free principles are difficult to adapt to different contexts is likely to be ineffective for both scholars and practitioners. Conversely, an atomized negotiation theory, or developing one (different) theory per context, would ignore the elements shared by most negotiation practices, and would lead to wasteful duplication of research efforts. To make sense of our field, we must acknowledge, and work with, the conundrum between the general and the context-specific. Whether we adopt the rocket, the tart or some other metaphor, maintaining a balance is key. Learning to cook only the crust or only the filling will not be satisfying; similarly, having only one stage of your rocket won’t get you where you want to be.

In this Article, we have summarized developments in the negotiation field along the path to a formulation of a unified theory. We have discussed the *possibility* of developing a general theory of negotiation, and suggested next steps an evolutionary process might take. We have identified the theory-context obstacle course, suggested a stratified perspective on the merging of general principles with specific context, and highlighted the need for a ‘theory of context’ generalizing contextual

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52. *Id.*

impacts on negotiation, beyond any specific context. We look forward to the next steps of our field's theoretical evolution—and invite colleagues to join us in working to implement them.