

Why don't they listen to us? The Marginalization of Negotiation Wisdom

“Nul n’a le privilège de toujours se tromper.”
Voltaire

"Mal nommer les choses ajoute au malheur du monde."
Albert Camus

This article is an initial effort to examine the negotiation field's apparent failure to date to influence the handling of large-scale international and public conflicts. It identifies some symptoms of this failure and calls for attention to underlying causes.

Humans have been negotiating since the dawn of time; linguist S. Pinker (2002) speculates that the emergence of language itself may be due to the need to negotiate. Through the centuries, negotiation prescriptions derived from observation and experience referred mostly to the conduct of politics and international diplomacy. In the 20th century negotiation studies expanded to description, experimentation, and prescription in international, public, business, organizational, inter-group and inter-personal contexts (Menkel-Meadow, 2006). Prescriptions disseminated through journals, books, courses, and training have “infiltrated” a broad range of practices in family, community, commercial and workplace dispute management. Terms such as “win-win” and “consensus building” have now carved a solid place with positive connotations in contemporary vocabularies of the Western world and beyond. In some countries the legal profession has embedded negotiations into its institutional structures, and has been partially transformed by negotiation theory; in the United States, still widely regarded as a highly litigious society, this process has reached the point where serious legal scholars worry now about the “vanishing trial” (Galanter, 2006).

We might expect this accumulation of negotiation wisdom to affect its initial domains of politics and international affairs. Yet large-scale domestic and international conflicts have proven resistant to theoretical analysis, prediction, or prescriptions for practice. Interventions remain difficult to design, implement and evaluate. Theory has contributed little to the practical reshaping of the decision-making bodies and institutions managing societal conflicts. Negotiation remains central to most international exchanges, but does not seem to acknowledge any debt to, draw inspiration from, or request assistance from negotiation theory. On the 25th anniversary of Fisher & Ury's seminal “Getting to YES” (1981) that has informed most negotiation research and practice since its publication, we ask why its uses have not scaled up as effectively to the political and international contexts.

We admit that there has been some progress. In the United States, the US Environmental Protection Agency, several federal land management agencies and the US Institute for Environmental Conflict Resolution have adopted negotiation-based conflict manage-

ment practices. Several U.S. states have offices promoting negotiations to resolve public disputes. South Africa's reconciliation process stands out as a large-scale conflict where negotiation prescriptions have shown practical applicability. However, the Oslo Accords, considered a showcase of prescriptions dear to negotiation scholars, have proven flawed and fragile at best. Civil war has replaced the brief negotiated peace in Darfur. Negotiations have had limited, if any, impact in Rwanda, Zimbabwe, Tibet, Nepal, Kashmir, Indonesia, Spain, Yugoslavia, Cyprus, Sierra Leone, Congo, Uganda, and much of Latin America. In some of these instances, negotiation wisdom has been largely ignored, while in others conflict persists despite repeated interventions. In still other conflicts, post-conflict institutions have fallen short of their promise to provide peace and justice (Schneider, 2006). In Sierra Leone and East Timor, for example, not nearly enough funding is provided to ensure that the tribunal can regularly hear cases. In other cases, like Guatemala and El Salvador, the truth commissions are given very little time and leeway to investigate lengthy civil wars, and are then not actually followed up with any prosecutions. Even in a relatively successful case like Bosnia, while the court moves forward, the ethnic groups are more divided than ever.

It is too soon to offer firm conclusions about why the negotiation field has (so far) failed to inform the public and international contexts effectively, and to be recognized as a source of practical advice. Serious inquiry on these issues is just beginning. So we will limit ourselves here to offering some hypotheses, which we hope will be provocative but will at least have the virtue of being brief. We have queried colleagues about this issue during a 2005 *Négocia* Conference session and at other meetings, including the 2005 IACM conference in Seville, Spain, and 2006 meetings in Washington, DC and Atlanta, Georgia. Our participating colleagues' responses, like those of others (Menkel-Meadow 2006) tended to focus on obstacles rooted in the situations themselves, as well as on the field's inability to disseminate prescriptions effectively. We propose here that negotiation scholars themselves bear some responsibility.

There is a bracing analysis of the antecedents of failure on a more general level, which we will employ as an analytical device throughout this article. In "The Logic of Failure," D. Dörner (1989) identified psychological reasons why analyses of complex situations are predictably flawed, yielding problem-solving strategies doomed to fail. They include lack of attention to context and interrelationships, failure to anticipate side effects and long-term repercussions of decisions (thinking instead in terms of isolated cause-and-effect relationships), the cumulative effects of numerous small judgmental mistakes, over-generalizations, low tolerance for uncertainty, ignoring emotions, the conviction that intentions are unquestionably good, and solving the problem we can solve instead of the one we ought to solve (akin to "solving very well the wrong problem," which Anatol Rapoport dubbed "pessimization"⁵⁷). Dörner writes (p. 10):

"Failure does not strike like a bolt from the blue; it develops gradually, according to its own logic. As we watch individuals attempt to solve problems, we will see that complicated situations seem to elicit habits of thought that set failure in motion from the beginning. From that point, the continuing complexity of the task and the growing apprehension of failure encourage methods of decision making that make failure even more likely and then inevitable."

⁵⁷ In a talk at the IACM conference, 1996.

Public and international conflicts are complex. Negotiation scholars are not immune to the pitfalls Dörner describes; our analyses and solutions are often at odds with reality, which may account partly for the seeming marginalization of researchers' findings and prescriptions by practicing negotiators. Dörner holds out the hope that we can all learn, which is why we think it important to become aware of our own shortcomings as negotiation scholars, to help mitigate them and to craft advice negotiators can use.

The analyses and prescriptions around the much-observed Middle East conflict⁵⁸ illustrate many of our general observations about negotiation scholarship and its impact on the reality of public and international conflicts.⁵⁹ We had this example in mind as we identified some shortcomings of negotiation research that track Dörner's list. We will use it here because it feels so familiar to so many of us that it obviates the need for lengthy description.

We⁶⁰ are prone to failure when:

- Our analyses focus mainly on negotiation and its dynamics. We often ignore contextual characteristics such as geopolitics, governance systems, economy, culture, or history and their contribution to observed outcomes. Our advice also tends to ignore scale effects (so we frequently tend to recommend the transfer of interpersonal prescriptions directly to international disputes). We also tend to ignore contextual sea-changes that affect the reality and the incentives of key players. In Dörner's taxonomy of mistakes that lead to failure, this amounts to the sins of ignorance and mistaken hypotheses, and he finds it essential that we figure out what other variables affect what we try to accomplish.

For example, 60 years of events in the Middle East involving several wars and a variety of negotiation and intervention episodes along several tracks provide us with a long and relatively recent history that could be a test ground for our theories and prescriptions and for understanding the effects of contextual factors on negotiated success. Nevertheless, over time we have formed a robust consensus over explanations and recommendations, focused mostly on negotiations, some of which have already proven unsuccessful and should send us back to our drawing boards, but do not.

Perhaps most surprising is the aura of success that continues to surround the Oslo Accords, although their failure began almost immediately after the heart-warming events surrounding their signing. It seems the mere signing of an agreement is valued (still) even if by now we know it has no consequences for the reality of the Middle East conflict, which has since deteriorated in terms of the parties' quality of life and their relationship.

- We ignore scale and uniqueness of public and international conflicts, which defy simple generalizations or transfer of insights from case to case. Although such conflicts are sufficiently large in scale, consequential and different from each other in key ways that warrant case study approaches, we frame them in classes that obscure the very infor-

⁵⁸ Numerous articles on a broad range of negotiation topics reach for this example, contributing to its familiar feeling compared to other international conflicts.

⁵⁹ Our list contains "modal" observations in the public policy and international contexts, though there are notable exceptions of scholarly work that does not fall into the failure traps we describe. One example is Sebenius et al.'s discussion of compensation schemes, in the April, 2005 Negotiation Journal issue focused on the Middle East Conflict.

⁶⁰ "We" refers to negotiation scholars, including the authors.

mation necessary to resolve them (causing what Dörner labeled “intrasparence”). Dörner warns against the “methodists” unable to cope with specific situations because they only have a couple of strategies to choose from in their tool bag, all the more dangerous in situations where feedback takes time to materialize.

Thus the Cyprus conflict, South Africa’s reconciliation process or the Northern Ireland peace process are sometimes held as models for what should be done in the Middle East conflict, even though differences among the situations far outstrip any similarities along almost all dimensions we consider meaningful in negotiation theory.

We also often recommend scaling up successful interpersonal communication and negotiation strategies to public and international conflicts such as the Middle East. Scholars have even contended that the reason for the continuing conflict in that region is the parties’ failure to communicate effectively.

Our diagnoses of root causes of the Israeli-Palestinian conflict – religion differences; a culture clash; identity; hatred; power imbalance – have the advantage of clarity, simplicity, and recognition (we have experienced such problems too) as well as a misleading similarity with other conflicts we simplify (identity? as in Cyprus; religion? as in Kashmir; hatred? as in Kosovo; power imbalance? as in Northern Ireland; etc.) This leads us to prescriptions and actions in the Middle East that predictably have no impact because they fail to address the real underlying complexity.

- For a variety of reasons, some already mentioned, our outcome predictions are usually no better than chance. Since we can explain any past events, we often confuse hindsight with insight. Dörner’s observes that we tend to observe and analyze situations at a single moment, instead of trying to figure out where the system is apt to go in time. He contends that we couple this with a tendency to avoid confronting our own mistakes and learning from them.

For example, in April 2005, only four months before it was implemented almost without a hitch, scholars predicted failure for the planned withdrawal of Israeli settlers from the Gaza Strip (April 2005 issue of the *Negotiation Journal*, entirely devoted to the Middle East conflict). Reasons included the unilateral nature of the move – lack of negotiations – as well as various attributions of psychological traits to the settlers, the Israelis and their leadership. It illustrated well our overconfidence in our ability to understand other cultures, stakes, scales, and circumstances different from our own. (In a departure from the usual, however, it was a rare and commendable attempt to apply our theories to the future rather than to explaining the past.)

- Besides confirmatory evidence, we should also actively seek any data that suggests our theories and prescriptions might be wrong. Nevertheless, and contrary to our own advice to others, we don’t usually seek counterevidence to test our prescriptions, and rarely if ever do we recognize or correct our errors. Instead, we prefer to believe certain actors and their actions foiled the strategies we recommended that would otherwise surely have worked. We also fail to update theory and recommendations with new information and evidence from those directly involved in events. Having attributed failure to external factors, we continue in the “methodist’s” fashion to recommend the same strategies, interventions, training programs and workshops, with predictably scant results. Dörner stresses the importance of verifying that our mental models adequately

represent the reality we are trying to affect, by challenging our own assumptions and by frequent reality checks, despite our preference for collecting only supporting evidence. Dörner's claim that we are "infatuated" with our own hypotheses and that we studiously avoid pitting them against reality has ample experimental psychology support.

For example, if the typical training we recommend worked for those who were trained according to our models at great international expense on both sides of the Israeli-Palestinian conflict, we should have reaped benefits by now.⁶¹ However, the accumulating evidence indicates that we are targeting those to whom we may have access but who do not have the least input in decision making on either side; that we are often training them for interpersonal skills or for what we diagnose as root conflict causes (hatred, intolerance, etc.), both with no discernible impact on the situation; and/or that we are teaching interaction and communication models that may not match well the Middle Eastern cultural contexts. Nevertheless, we persist in using the same approaches despite our poor success record. We account for this record in terms of obstacles external to our interventions – lack of adequate funding, traveling difficulties for some participants, or government chicanery. Rarely, if ever, do we reconsider our prescriptions and approaches and their match to the participants' needs or their decision making reality. In the same vein, we expect the United States (or the Quartet) to act as we recommend in this conflict, despite evidence of factors outside their control that affect the parties' incentives and choice of alternatives in that region.

- Ideological lenses broadly shared by our field color our analyses, confusing "is" with "should" and "because." Our shared values also guide prescriptions. We tend to believe we know what is good, just, or desirable for everyone. We frame power as inherently "bad," and lack of power as inherently "virtuous." We conflate fairness with symmetry (as in "cycles of violence" or "extremists on both sides").

For example, we wholeheartedly supported initiatives such as the Geneva accords, which were soundly rejected by both Israelis and Palestinians (having been concluded among people who represented strictly themselves, with no mandate from either side). Since those accords suited well our sense of justice and of what a good outcome to the conflict should be, and since some of the proponents are veterans of our beloved Oslo Accords and all-around good, reasonable people who speak much as we do (and in English) and advance the two-state solution many of us deem just, we are willing to ignore our own advice regarding representation, constituencies, and mandate.

We also fail to take into account the differences in politics, institutions and decision making processes of the parties to the Israeli-Palestinian conflict. We either treat them both as democracies, or both as dictatorships. Thus we mistakenly expected Sharon to make decisions by fiat as Arafat did. We mistakenly continue to expect Palestinians living in the West Bank or the Gaza Strip to speak their minds to us freely, as Israelis can in Israel, although the same act can cost Palestinians their lives.

In one of our most frequent simplifications, we speak of two populations both comprised of moderates and extremists (no nuances), and we are even quite sure that the former are many and the latter are few. However, democracies by their nature can handle their

⁶¹ We thank Jayne Seminare Docherty for this example and other useful input.

extremists if they are indeed few and unrepresentative of the majority's will; on the other hand, in a dictatorship where the extremists rule, it does not matter how few extremists there are since they are able to thwart the will of the many. (For that matter, we paternalistically discard any suggestion that the majority of Palestinians might actually agree with their current elected government which we deem extremist, and choose to ignore any Palestinian discourse disconfirming our wishful perceptions).

- Our stable framing of parties is rather impervious to information. We tend to pick heroes and villains, and their labels persist despite changes in the situation. We ignore the parties' own rhetoric, attributing to them attitudes and motives we prefer even when they deny them. We train or poll people who either lack freedom of speech, or have no actual influence or place at the negotiation table, or even lack the freedom of speech to exercise their opinions at all. They reward us with indifference to our advice. Dörner speculates that our reluctance to take in new information that might upset our beliefs is rooted in the rather paralyzing positive feedback between uncertainty and information gathering. He gives the example of Frederick the Great, who at the dawn of the Seven Years' War refused information about the modernization of his enemies' artillery.

We tend to freeze our frames of Middle East actors despite the fluid reality. Perhaps the most vivid examples are those of Ariel Sharon, whom many of us have demonized while we built Yasser Arafat into a hero. Although we are all aware that complex reality is never starkly Manichaean, these two frames, which have been remarkably off the mark, have remained steadily impervious to factual information along the years. It took their passing for some of us to partially revise our frames of Sharon and Arafat under the assault of information difficult to ignore. In Sharon's case, even in the face of the unilateral withdrawal from the Gaza Strip that he engineered, analysts continued to discuss his hidden agenda and self-serving motives that would one day become apparent and remain consistent with our old frame. In the face of the reality of the pullout, we even speculated that his heart was surely not in it, which in our eyes diminished the value of the move. On the other hand, in Arafat's case, many of us eagerly abandoned the hero frame after his death because he suddenly proved a convenient scapegoat for some societal dysfunctions that could no longer be ignored, and most importantly for the failed Camp David negotiations.

- Having diagnosed a conflict (possibly simplistically) as rooted in identity, religious differences, or interpersonal hatred, we persistently "treat these ailments" (often at the interpersonal level, regardless of how decisions are made or by whom), ignoring the real incentives inherent in the situation. This is what Dörner referred to as solving problems we can solve instead of the ones we ought to solve, rooted in a tendency to simplify complexity.

For example, when the Oslo Accords were concluded soon after the fall of the Soviet Union, credit went to the interpersonal "magic" created when the parties baked bread together. (We rarely wonder whether we would, or should be swayed by bread baking in a high-stakes conflict.) Perhaps the uncertainty (and opportunity) right after the fall of the USSR would be a better, more relevant explanation upon which to focus and from which to draw lessons. In the same vein, the breakthrough at the Camp David negotiations between Egypt and Israel, which resulted in the return of the Sinai to Egypt and an enduring (if cold) peace, has been attributed partly to Carter offering Begin autographed pictures of the par-

ticipants for his grandchildren (Fisher & Shapiro, 2005). We should all expect, however, that when our leaders negotiate on our behalf in high-stakes conflicts, the personal element, such as reminders about their families, plays but a small role in comparison to calculations about strategic advantages.

- Despite genuine effort and progress, we still lack useful knowledge about cultures different from ours. We rarely have access to literature in the language of disputants (for reality checks), and we couple this with lack of humility, believing we understand others despite evidence to the contrary. We frame parties as “like us” -- essentially good (consistent with what Dörner termed a conviction that intentions are unquestionably good), seeking the same “good life” -- or as “extremist” and “irrational,” when we fail to make sense of their interests, values and actions that differ from ours. The “extremist” label denotes our lack of comfort with parties, rather than (verifiable) levels of popular support for them. These “extremists” shoulder blame for our failed prescriptions. We also tend to believe that our approaches work for everyone (as long as we, not our less competent rivals, train them).

Most scholars who analyze the Middle East conflict, including many of those who produced the April, 2005 issue of the *Negotiation Journal*, are not conversant with either Hebrew or Arabic. Therefore they are unable to read original texts we would consider essential for understanding a conflict, its moods, trends, frames, stakes and history. When performing case studies of domestic conflicts, we attach great importance to words and often engage in content analysis of written and oral communications. However, when analyzing the Middle Eastern conflict we don't even mention language issues, let alone consider them an obstacle to our understanding. Yet this may account for one of our most dangerous illusions – that we are sufficiently like the Israelis and the Palestinians to understand them, to establish that they would wish for the same outcomes as we do, and that therefore, when they fail to pursue them they must be either extremist or irrational. Once again we forget our own advice to negotiators: that we should assume that most people are quite adept at pursuing their own interests, even if we do not happen to understand what they are; and that we should make every effort to understand these interests. So instead of continuing to misinterpret the mismatch between what we assume are the Israelis' and the Palestinians' interests and their observed actions, we should redouble our effort to understand what they really want. Often, it is as easy as accepting at face value what they tell us, even if it is at odds with our descriptions and normative views.

Although culture is by now established as a dimension needing attention in international negotiations, many of us still harbor rather limited notions of how to deal with cultural differences. To educate our students about such differences, we at times use simulations in which we ask them to role-play “the other” (invariably obtaining a stereotypical rendition of the role-played culture). Few of us – who have tried – are willing to concede that a real understanding of a culture very different from our own is pretty nigh impossible even through immersion. Nevertheless, for the purpose of negotiating business deals across cultures, for example, we have been able to identify a number of critical factors of which we need to be mindful to smooth the interactions. This is not quite as true of negotiation training, however. Many of us have taken the American interest-based negotiation model on the road and have even modified the content to some extent to accommodate the cultural dif-

ferences we are able to identify⁶². It appears, however, that this model has deep roots in Western values, ways of thinking, broad civil society rules, communication styles, and even manners. Therefore, it may require a lot more research, understanding of cultural differences, and adaptations to suit contexts that are culturally considerably different from ours. Progress begins with the small step of recognizing the evidence that our negotiation approach may not readily suit others.

- Perhaps surprisingly, we exhibit the same impatience as the public at large, and expect long-term, intractable conflicts to be resolved by a few moves we recommend at the next turn. However, Dörner considers that it is unwise to abandon an established course of action too soon, and recommends perseverance instead, especially in complex situations that take time to absorb changes and do not turn on a dime.

We choose not to give much attention to the “hard slog through transforming systems – efforts that take years or decades and involve micro-level negotiations that are every bit as important as the big negotiation.”⁶³ Indeed, the Oslo Accords may have failed in part because they were concluded among leaders who did not go through this slog and failed to negotiate with their own constituencies, to bring them along with their drastic change of rhetoric and action after years during which they had been persuaded of the contrary. Since that time, the Israeli society has reportedly undergone transformation and has changed important components of its ideological infrastructure, such as school textbooks, in order to build consensus around land-for-peace agreements – the kind we usually recommend and support. However, there seems to be no such parallel change on the Palestinian side either in rhetoric, in school textbooks, or in mosque sermons which are important makers and indicators of public opinion. Yet we rarely recommend attention to such aspects of the conflict, possibly because any remedies can be expected to work very slowly and may likely not involve negotiations.

- We fail to integrate the research and practical knowledge gained in other domains, where conflict management has been more successful, more broadly.

At least on this score, a serious effort at such integration is now underway. Its most obvious result to date is the newly published *Negotiator's Fieldbook*, (Schneider and Honeyman, eds., 2006), which seeks to make integrated sense of the wisdom of some 30 fields, using contributions from 80 writers.

Conclusion

Added together, our field's forms of wooden-headedness make for a daunting list. And yet, despite some of these limitations affecting other contexts too over the past 25 years, we have contributed to significant changes in several such contexts. Can we similarly learn to influence “political culture”? This critical hypothesizing on negotiation scholarship is in-

⁶² See, for an ambitious example, the EU-funded “ADR MEDA” project, which seeks no less than to establish commercial mediation and arbitration in ten Middle Eastern countries at once, using a lightly modified American model. (www.adrmeda.org, last visited October 16, 2006.)

⁶³ Jayne Seminare Docherty, personal communication.

tended to challenge all of us to scrutinize our own ways of thinking and to heed our own advice to negotiators when we warn them of the numerous judgmental biases and frames that detract from their ability to realize the full potential of negotiations. Since we claim to value reflective practice, we should engage in it too, learning from our previous efforts even when the lessons may be ambiguous because we are dealing with "wicked problems." We should be more critical in evaluating our own impacts.⁶⁴ We also need to continue to work with more sophistication and more determination across disciplinary boundaries, to develop robust theories and practices, especially when the stakes are high, as they are anywhere conflict is violent. One difficult challenge for the optimists among us is to recognize the scale/complexity/culture limits of applicability of our precepts and when our kind of negotiation should not be used or may fail. But the number, variety and knowledge base of scholars and practitioners available for this task is large and growing. The task may be difficult, but should not be beyond our collective capacity.

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⁶⁴ For example, should we still call the Oslo Accords a success?

