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Book review: The negotiator's desk reference

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Citation

QUEK ANDERSON, Dorcas. Book review: The negotiator's desk reference. (2018). *Asian Journal on Mediation*. 115-120.

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BOOK REVIEW

THE NEGOTIATOR'S DESK REFERENCE

Chris Honeyman & Andrew Kupfer Schneider gen eds

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1 Negotiation theory and practice have evolved at a phenomenal pace since the publication of Fisher and Ury's seminal work *Getting to Yes*.¹ The sheer breadth of topics in *The Negotiator's Desk Reference*² ("NDR") attests to how negotiation has advanced as a multi-disciplinary field. Published in 2017 to replace its predecessor *The Negotiator's Fieldbook*,³ the NDR comprises 101 chapters written by very prominent academics and practitioners drawn from a wide range of professions, disciplines and cultures. According to its editors, more than half of the contents are new, reflecting the new frontiers of the negotiation field.⁴

2 The two-volume work is probably not meant to be read sequentially. Instead, similar to an encyclopedia or commentary, the NDR could be referred to according to the particular need of the reader. The chapters have been organised under 18 broad themes. The first section provides a roadmap of the entire work and a suggested approach to learn how to negotiate. Section II discusses foundational concepts relating to negotiation styles. The differences between the integrative and distributive approaches are discussed, together with the influence of culture, tactics and negotiation strategy. A few other sections provide fascinating insights drawn from neuroscience, communication studies, culture and gender, ethics and morality, and organisational studies. Section XIII provides an enjoyable read as the chapters explore the wide spectrum of circumstances when negotiation takes place, including martial arts (written by Joel Lee, editor of this journal), the military, hostage negotiation and even the boxing ring. Notably, an entire section has been dedicated to examining the impact of using different modes of communication to negotiate.⁵ Negotiating in the digital realm is now a reality, and the chapters here provide very useful tips on using different media such as video-conferencing and e-mail effectively.

3 Mediators will find the final three sections of the book particularly beneficial. Section XV focuses on intractable and entrenched conflicts in difficult environments. The chapters provide fascinating insights on dealing with religious and political conflicts such as the long-

¹ Roger Fisher & William Ury, *Getting to Yes* (US: Penguin Books, 2011).

² *The Negotiator's Desk Reference* (Chris Honeyman & Andrew Kupfer Schneider gen eds) (Minnesota: DRI Press, 2017).

³ *The Negotiator's Fieldbook: The Desk Reference for the Experienced Negotiator* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Washington DC: American Bar Association, 2006).

⁴ Chris Honeyman & Andrew Kupfer Schneider, "Preface" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017).

⁵ *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) chs 59–65.

standing dispute between India and Pakistan over Kashmir, and negotiating with resistant counterparts including sceptical and hard-headed colleagues.⁶ In addition, there are three chapters proposing a new “dynamical systems” theory of negotiation that addresses the complex network of forces contributing to intractability of conflicts.⁷ The penultimate section discusses strategies to reach an agreement. The common challenges of bridging the final gap, handling impasses, creating a durable agreement and dealing with power dynamics have been comprehensively examined by well-known mediation practitioners.⁸ The book ends fittingly with a section on using mediators and other “helpers” including interpreters to facilitate negotiation.

4 As a practising mediator, teacher and academic, the author appreciates how this book has melded dispute resolution practice and research into a highly accessible reference tool. Each chapter has been written in bite-sized portions. Furthermore, the editors’ notes prefacing each chapter not only provide a useful summary, but also inform the reader about related chapters that should be read in conjunction with the relevant essay. There are also editorial notes throughout the book providing cross-references to ideas drawn from other chapters. There have evidently been thoughtful efforts to assist the reader to navigate this huge publication.

5 The sheer breadth of this book is necessitated by the interdisciplinary and complex nature of negotiation. There are several gems within this publication discussing the latest research that should inform our practice and teaching of negotiation and mediation. One prominent motif is the distinction between the distributive and integrative styles. Differing views have been put forward on the desirability of each style. In his introductory chapter explaining these terms, Batra notes how the latter style is also known as the co-operative, problem-solving and value-creating style. By contrast, the former style has been associated with the competitive, adversarial and value-claiming approach.⁹ However, this dichotomy has been noted by several authors to be somewhat misleading. Adler, Lax and Sebenius argue that both strategies must be used for effective negotiation because each negotiation has both value-creating and value-claiming opportunities.¹⁰ Borbely and Ohana take the view that the mindset adopted by the negotiator may shift throughout the negotiation.¹¹ In the same vein, Abramson makes the case for adjusting our negotiation behaviour along a problem-solving to adversarial continuum, in response to our counterpart’s approach. However, he emphasises how Schneider’s 2002 study showed that problem-solving behaviour that conforms to ethics, seeks

⁶ *The Negotiator’s Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) chs 83–89.

⁷ *The Negotiator’s Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017), chs 83–85.

⁸ *The Negotiator’s Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) chs 90–95.

⁹ Rishi Batra, “Integrative & Distributive Bargaining” in *The Negotiator’s Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 3 at p 34.

¹⁰ Rishi Batra, “Integrative & Distributive Bargaining” in *The Negotiator’s Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 3 at p 40, referring to David A Lax and James Sebenius, *The Manager As Negotiator* (New York: Free Press, 1986); Peter Adler, “The Protean Negotiator” in *The Negotiator’s Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 8.

¹¹ Adrian Borbely & Julian Ohana, “The Impact of the Negotiator’s Mindset, in Three Dimensions” in *The Negotiator’s Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 7 at p 96.

to achieve a fair settlement, as well as meets both sides' interests, has been perceived as more effective than competitive negotiation.¹²

6 In a chapter discussing reputation, Tinsley, Cambria and Schneider described several studies showing the benefit of having a reputation of an integrative negotiation style. When negotiators were given information that their counterpart had a co-operative reputation, the negotiation achieved an economically better outcome than other negotiations without such information on reputation. The counterparts also shared more information about their needs and interests, and were less likely to beat around the bush.¹³ Other studies about lawyers' negotiation behaviour and hostage negotiation style similarly suggest that an integrative reputation leads to more creative and satisfying outcomes, even in situations when future repeated negotiations are unlikely.¹⁴ These are invaluable insights, suggesting that the choice of negotiation style has broad ramifications, and is not simply a matter of adopting Machiavellian tactics. Ironically, the failure to look beyond one's self-interest within negotiation prejudices the outcome for the individual.

7 On this note, it is heartening to see how the book devotes considerable attention to the more intangible areas impinging on the negotiation outcome. The longest section concentrates on relationships, while other portions deal with ethics and morality, culture, cognitive biases and non-verbal communication. Academic luminaries have contributed valuable insights on the role of relationships within negotiation. Hollander-Blumoff challenges the oft-cited mantra that the problem can be separated from the people, and negotiation literature suggesting a critical tension between empathy and assertiveness. Relying on recent studies, she suggests that empathy and perspective taking help negotiators to reach better outcomes. By making positive connections with others in a negotiation setting, we are likely to increase the perceptions of fairness of the other negotiator, and overcome our cognitive biases.¹⁵ Likewise, Welsh, a pre-eminent scholar on procedural justice in dispute resolution, shows that the existence of a positive relationship with another negotiator makes the attainment of a mutually fair outcome relevant. Furthermore, people's perceptions of outcome fairness are strongly influenced by how they feel treated during mediation and negotiation.¹⁶

8 The critical importance of interpersonal treatment in negotiation results in the need to develop trust-building skills and social intuition. Regarding the former, Lewicki suggests that attention be given to initiating the development of trust, as well as managing the consequences of distrust. He provides an excellent list of strategies of managing different forms of trust including calculus-based trust and identification-based trust.¹⁷ With respect to social intuition, Schneider and Ebner have written a noteworthy chapter. They suggest that social intuition

¹² Hal Abramson, "Fashioning an Effective Negotiation Style: Choosing Among Good Practices, Tactics, and Tricks" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 5 at p 66.

¹³ Catherine Tinsley, Jack J Cambria & Andrea Kupfer Schneider, "Reputation in Negotiation" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 18 at pp 255–256.

¹⁴ Catherine Tinsley, Jack J Cambria & Andrea Kupfer Schneider, "Reputation in Negotiation" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 18 at p 263.

¹⁵ Rebecca Hollander-Blumoff, "Building Relationships As Negotiation Strategy" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 21 at p 300.

¹⁶ Nancy Welsh, "Perceptions of Fairness in Negotiation" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 38 at p 517.

¹⁷ Roy Lewicki, "Trust and Distrust" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 15 at pp 214–215.

entails self-awareness of our own emotions, biases and intuitive response; the ability to read our counterpart's behaviour; and the capability of being in tune with and affecting the counterpart through intentional acts of bridging.¹⁸

9 In this respect, Schneider and Ebner acknowledged that social intuition must involve awareness of cultural influences. However, the book probably falls short in its exploration of culture. While there are five chapters discussing the impact of culture on negotiation, they examine narrow topics such as the experience of black persons in negotiation, the pitfalls in communication between the Chinese and Westerners and the cultural complexity arising from a negotiation in Mali.¹⁹ Most of them do not provide more nuanced guidance in navigating our increasingly culturally complex societies in which variations in cultural preferences cannot be neatly classified across different ethnicities. Although early negotiation scholars like Sander and Rubin have cautioned against using the "culture" label in a reductionist manner,²⁰ it is also not prudent to ignore existing cultural differences, complex as they may be. In one chapter, Miller, an academic in the social sciences, rightly underscores the subtle influence of culture on negotiation. Culture could be an external constraint or could comprise social realities that are constructed in negotiations. He discusses the different approaches of treating culture as general patterns of meaning, which could minimise differences among people classified within the same cultural category; and treating culture as multiple codes, which recognises the diversity of values with particular cultural groups. The former may be useful at the beginning of the negotiation, while the multiple codes orientation becomes more relevant as the negotiation unfolds.²¹ The future iterations of this book could further explore some of the further research questions suggested by Miller, including how different approaches to negotiation could in themselves be cultural orientations, or how negotiators orient to culture in their communication. These and other related issues have been explored in *The Asian Perspective to Mediation*²² and the work of other scholars including Ting-Toomey.²³

10 Another aspect that could be improved is providing greater clarity on the key negotiation concepts. The introductory chapters have explained the different negotiation styles, but an overview of negotiation theories is only provided by Lande in chapter 58. Aptly entitled *Taming the Jungle of Negotiation Theories*, the chapter explains differences in defining negotiation and related theories such as stages of negotiation, interests and motivations and barriers to agreement. Although the editors state at the outset that they do not propose an overarching theory of negotiation and seek to provide multiple perspectives,²⁴ it is rather challenging for a beginner in negotiation to make sense of the different viewpoints in the 101 chapters without appreciating the theoretical underpinnings. As Lande points out, negotiation theory has been derived from multiple disciplines including identity theory, social interaction

¹⁸ Andrea Kupfer Schneider & Noam Ebner, "Social Intuition" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 10 at pp 129–131.

¹⁹ *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) chs 4 and 41–45.

²⁰ Gale Miller, "Codes of Culture" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 44 at p 608, referring to Jeffrey Z Rubin & Frank E A Sander, "Culture, Negotiation, and the Eye of the Beholder" (1991) 7(3) *Negotiation Journal* 249.

²¹ Gale Miller, "Codes of Culture" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 44 at p 610.

²² *An Asian Perspective on Mediation* (Joel Lee & Teh Hwee Hwee eds) (Singapore: Academy Publishing, 2009).

²³ See, eg, Stella Ting-Toomey, "Conflict Facework Theory" in *The Sage Encyclopedia of Intercultural Competence* (Janet M Bennett ed) (Sage Publications, 2015) at pp 325–330.

²⁴ Chris Honeyman & Andrew Kupfer Schneider, "Introduction" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017).

theory, human needs theory and rational choice theory.²⁵ The diversity of perspectives stem from the authors' adoption of very different starting points. Even in respect of foundational concepts such as negotiation style, not all practitioners agree with the dichotomy between integrative and competitive negotiation, and some like Craver and Lande have proposed hybrids or alternative models.²⁶ Lande's overview could probably be further developed and introduced to the reader at an earlier stage of the book.

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11 These are, however, minor quibbles with the publication. Overall, the book has traversed an impressive number of disciplines relating to negotiation, providing mediators with much food for thought. It has discussed negotiation strategies to advance one's interests, as well as examined other aspects contributing to complexity in negotiation, including cognitive deficiencies, the structures within which the negotiation occurs, verbal and non-verbal communication, technology, relationships and ethical principles. As mediators, we should include this book as one of our reference tools. The peace-making profession is, after all, dependent on our sound understanding of human behaviour.

²⁵ John Lande, "Taming the Jungle of Negotiation Theories" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 58 at p 90.

²⁶ John Lande, "Taming the Jungle of Negotiation Theories" in *The Negotiator's Desk Reference* (Andrew Kupfer Schneider & Chris Honeyman gen eds) (Minnesota: DRI Press, 2017) ch 58 at p 92, referring to Charles B Craver, *Effective Legal Negotiation and Settlement* (Newark, New Jersey: LexisNexis, 7th Ed, 2012) and John Lande, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* (Chicago, Illinois: American Bar Association, 2nd Ed, 2015).