

Negotiating in the Shadows of Organizations: Gender, Negotiation, and Change¹

Deborah M. Kolb*

For the past twenty-five years, I have been interested in the ways that gender matters in negotiation. I have had a great deal of company in this pursuit, as the topic has been the subject of considerable scholarly research during this period. It is probably fair to date the first comprehensive review of the topic to the 1975 classic, *The Social Psychology of Bargaining*. In it, Jeffrey Rubin and Bert Brown suggested that the sex of the negotiator was one of many individual background characteristics including age, race, nationality, intelligence, and religion that mattered in negotiation.² Rubin and Brown observed that it was the relative ease of measuring differences between men and women that prompted the extensive study prior to 1976 and it was probably the lack of consistent findings that saw an erosion of interest in the 1980s.³

More recently, the explosion of research on the topic has been prompted by concerns about the gender gap in wages and achievement—the glass ceiling effects—that have women in organizations plateauing before they reach top leadership positions.⁴ Despite the fact that they make up close to fifty percent of the labor force and graduate from college in greater numbers than men, women are still not anywhere near parity in the senior positions of corporations, professional services partnerships, or large-scale global organizations, nor are they likely to get there soon.⁵ The compensation gap has been growing recently, particularly among women of color. While there are a multitude of societal and organizational explanations for these

* Deloitte Ellen Gabriel Professor for Women and Leadership (Emerita) at the Simmons School of Management.

¹ Based on Schwartz Lecture, April 9, 2012.

² JEFFREY RUBIN & BERT BROWN, *THE SOCIAL PSYCHOLOGY OF BARGAINING* 169–170 (1975).

³ Hannah Riley Bowles, Linda Babcock & Kathleen L. McGinn, *Constraints and Triggers: Situational Mechanics of Gender in Negotiation*, 89 *J. PERSONALITY & SOC. PSYCHOL.* 951, 951 (2005).

⁴ See LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* (2003); Hannah Riley Bowles & Kathleen L. McGinn, *Gender in Job Negotiations: A Two-Level Game*, 24 *NEGOTIATION J.* 393, 394 (2008).

⁵ *Statistical Overview of Women in the Workplace*, CATALYST (June 19, 2012), http://www.catalyst.org/file/672/qt_statistical_overview_of_women_in_the_workplace.pdf.

phenomena,⁶ there are actions women can take to remedy these situations and one of them is to *negotiate* more proactively and effectively for wages and opportunity. It is in this spirit that much of this more recent work has been undertaken.

I. REVIEWING THE RESEARCH ON GENDER AND NEGOTIATION

Two theories about gender and negotiation dominate recent scholarship on gender and negotiation. The first perspective views gender as individual difference, and asks the question, what are the differences when women and men negotiate?⁷ The second perspective locates gender in the context of the negotiations themselves. In this work, scholars seek to understand what triggers gender effects in negotiation.⁸ My purpose is to review these perspectives as background to a third perspective that gender dynamics are embedded in organizational policies and practices that shape how negotiations play out in the shadow of organizations. I use the concept of a “negotiated order”⁹ to capture these organizational contexts. I want to suggest that not only are negotiators shaped by these orders but also the very act of negotiating within them contains the potential to alter gendered arrangements in organizations.

A. *Gender as Individual Difference*

In the popular view, gender is an individual characteristic. It is reflected in who people are, how they behave, and how they see themselves.¹⁰ This perspective is embodied in sex difference research, where the issue of differences between men and women overwhelms the study of intra-group difference. Studies of individual sex difference dominated early research in the field.¹¹ But the trend has continued. While the intention is merely to

⁶ VIRGINIA VALIAN, *WHY SO SLOW? THE ADVANCEMENT OF WOMEN* 2–22 (1998); Francine D. Blau & Lawrence M. Kahn, *The Gender Pay Gap: Have Women Gone as Far as They Can?* 21 *ACAD. MGMT. PERSP.* 7, 9 (2007).

⁷ See generally BABCOCK & LASCHEVER, *supra* note 4, at 1–16 (discussing this perspective and some of the differences).

⁸ Bowles et al., *supra* note 3, at 951; Laura J. Kray, Leigh Thompson & Adam Galinsky, *Battle of the Sexes: Gender Stereotype Confirmation and Reactance in Negotiations*, 80 *J. PERSONALITY & SOC. PSYCHOL.* 942, 942 (2001).

⁹ ANSELM STRAUSS, *NEGOTIATIONS: VARIETIES, CONTEXTS, PROCESSES, AND SOCIAL ORDER* 5–6 (1978).

¹⁰ AMY S. WHARTON, *THE SOCIOLOGY OF GENDER* 6–7 (2005).

¹¹ See RUBIN & BROWN, *supra* note 2, at 169–170.

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compare what individual women and men do when they negotiate, the reality is that this work tends to highlight women's general deficiencies as negotiators. They are less likely than men to ask,¹² less likely to initiate negotiations,¹³ less positively disposed toward negotiation,¹⁴ less confident,¹⁵ and more likely to set lower goals.¹⁶ When it comes to compensation, where meta-analyses show consistent gender differences,¹⁷ the problem seems to clearly lie with women. Studies show that women expect to receive less in compensation than do men,¹⁸ do not feel the same entitlement to higher salaries as men do,¹⁹ or place less value on pay than on other aspects of their jobs.²⁰ And these feelings translate into behavior that in turn affects outcomes. Researchers have observed that women demand and accept less in salary negotiations than do men,²¹ are less confident and less satisfied with

¹² BABCOCK & LASCHEVER, *supra* note 4, at 1–4.

¹³ Deborah A. Small, et al., *Who Goes to the Bargaining Table? The Influence of Gender and Framing on the Initiation of Negotiation*, 93 J. PERSONALITY & SOC. PSYCHOL. 600, 610 (2007).

¹⁴ Laura Kray & Linda Babcock, *Gender in Negotiations: A Motivated Social Cognitive Analysis*, in NEGOTIATION THEORY & RESEARCH 203 (Leigh L. Thompson ed., 2006).

¹⁵ Carol Watson, *Gender versus Power as a Predictor of Negotiation Behavior and Outcomes*, 10 NEGOTIATION J. 117, 122 (1994).

¹⁶ Cynthia Kay Stevens, Anna G. Bavetta & Marilyn E. Gist, *Gender Differences in the Acquisition of Salary Negotiation Skills: The Role of Goals, Self-Efficacy, and Perceived Control*, 78 J. APPLIED PSYCHOL. 723, 724 (1993).

¹⁷ Alice F. Stuhlmacher & Amy E. Walters, *Gender Differences in Negotiation Outcome: A Meta-Analysis*, 52 PERSONNEL PSYCHOL. 653, 670 (1999).

¹⁸ Linda A. Jackson, Philip D. Gardner & Linda A. Sullivan, *Explaining Gender Differences in Self-Pay Expectations: Social Comparison Standards and Perceptions of Fair Pay*, 77 J. APPLIED PSYCHOL. 651, 654–55 (1992); Brenda Major, Dean B. McFarlin & Diana Gagnon, *Overworked and Underpaid: On the Nature of Gender Differences in Personal Entitlement*, 47 J. PERSONALITY & SOC. PSYCHOL. 1399, 1404 (1984).

¹⁹ Vicki S. Kaman & Charmine E. J. Hartel, *Gender Differences in Anticipated Pay Negotiation Strategies and Outcomes*, 9 J. BUS. & PSYCHOL. 183, 193 (1994); John T. Jost, *An Experimental Replication of the Depressed-Entitlement Effect Among Women*, 21 PSYCHOL. WOMEN Q. 387, 388 (1997).

²⁰ Serge Desmarais & James Curtis, *Gender and Perceived Pay Entitlement: Testing for Effects of Experience With Income*, 72 J. PERSONALITY & SOC. PSYCHOL. 141, 144 (1997); Lisa A. Barron, *Ask and You Shall Receive? Gender Differences in Negotiators' Beliefs about Requests for a Higher Salary*, 56 HUM. REL. 635, 652–53 (2003).

²¹ See Stevens et al., *supra* note 16, at 724; But see Sara J. Solnick, *Gender Differences in the Ultimatum Game*, 39 ECON. INQUIRY 189, 199 (2001).

their negotiation performance,²² and feel lower self-efficacy about their bargaining abilities.²³ Consistently, in this line of research, women are compared negatively to men, who typically approach a negotiation with an offensive orientation of seeing themselves entitled to and requesting a higher salary.²⁴ Thus, when men outperform women in salary negotiations, the reasons for these differences are often attributed to “problems” that women have.²⁵

Embedded in this work is the notion that one’s gender is an essential and stable attribute of individuals. Even though the claim is typically made that the focus is on gender—hence a social, not essential, category—the effect is the same. Differences are attributed not to biology, but to socialization, role theory, or entitlements that are never explicitly tested or connected to the findings.²⁶ This individualistic treatment of gender raises a number of concerns. When the focus is on individuals and their negotiating proclivities, what is missed are the cultural and institutional mechanisms that can create gender inequities in negotiations.²⁷ Further, the focus on gender as the difference between men and women elides the ways that other simultaneous dimensions of identity such as race, class, national identity, sexual orientation, and age intersect with gender in determining who comes to the table to negotiate and how they fare there.²⁸ Finally, representing gender primarily along the lines of difference puts responsibility for change and remedying any disadvantage solely on the individual a “fix the woman” approach—limiting the possibilities for negotiating change in the cultures and institutions that potentially contribute to disparities in negotiating

²² Carol Watson & L. Richard Hoffman, *Managers as Negotiators: A Test of Power versus Gender as Predictors of Feelings, Behavior, and Outcomes*, 7 LEADERSHIP Q. 63, 79 (1996).

²³ Stevens et al., *supra* note 16, at 724.

²⁴ Barron, *supra* note 20, at 655.

²⁵ Stuhlmacher & Walters, *supra* note 17, at 654.

²⁶ Michele J. Gelfand et al., *Negotiating Relationally: The Dynamics of the Relational Self in Negotiations*, 31 ACAD. MGMT. REV. 427, 444 (2006); Robin Ely & Irene Padavic, *A Feminist Analysis of Organizational Research on Sex Differences*, 32 ACAD. MGMT. REV. 1121, 1123–24 (2007).

²⁷ Deborah M. Kolb, *Too Bad for the Women or Does It Have to Be? Gender and Negotiation Research over the Past Twenty-Five Years*, 25 NEGOTIATION J. 515, 519–20 (2009).

²⁸ Evangelina Holvino, *Complicating Gender: The Simultaneity of Race, Gender, and Class in Organization Change(ing)* 9–14 (Center for Gender in Organizations, Working Paper No. 12, 2001).

performance.²⁹ These shortcomings have prompted scholars to focus more on the social and institutional processes that might activate gendered behavior.

B. *Gender as Socially Constructed in Interactions*

The focus on gender difference treats identities as more or less fixed. A shift to the interaction moves from individual negotiators to the negotiation context as the nexus for the study of gender. From this perspective, gender is continually socially constructed, produced, and reproduced, in interactions—that is, we “do gender” in negotiations.³⁰ If the research question from the individual perspective is do men and women negotiate differently, the questions an interactive perspective raises are when and under what conditions does gender shape the course of interactions? The interactional dynamics that *trigger* gendered behavior now dominate most of the research in the field.³¹

There are a number of factors that trigger gender dynamics. The type of negotiation game seems to matter a great deal. When negotiations are distributive, that is, where parties negotiate over a single issue typically something of economic value, like price—research indicates significant gender differences,³² and this type of negotiation dominates much of the research. In a review of the gender and negotiation literature, nineteen of thirty negotiation studies that involved dyads were distributive.³³ Distributive bargaining has been seen to value a more masculine style—assertive, competitive, and analytical—over approaches that are more associated with the feminine—compassionate, intuitive, and collaborative. Because gender issues are more likely to be studied in distributive contexts, it is not surprising that women have not fared as well as men.³⁴ But surprisingly, the

²⁹ Debra E. Meyerson & Joyce K. Fletcher, *A Modest Manifesto for Shattering the Glass Ceiling*, 78 HARV. BUS. REV. 127, 136 (1999).

³⁰ See generally Candace West & Don H. Zimmerman, *Doing Gender*, 1 GENDER & SOC'Y 125 (1987) (providing a definition of “doing gender”).

³¹ Bowles et al., *supra* note 3, at 951; Kray et al., *supra* note 8, at 942; Catherine H. Tinsley et al., *Women at the Bargaining Table: Pitfalls and Prospects*, 25 NEGOTIATION J. 233, 234 (2009).

³² Bowles et al., *supra* note 3 at 957.

³³ Laura J. Kray & Leigh Thompson, *Gender Stereotypes and Negotiation Performance: An Examination of Theory and Research*, 26 RES. ORGANIZATIONAL BEHAV. 103, 114–127 (Tables. 2 & 3) (2005).

³⁴ Solnick, *supra* note 21, at 189; Stuhlmacher & Walters, *supra* note 17, at 670. See generally Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car*

findings are not that different when the game structure changes. In studies that used an integrative or mixed motive task—situations in which more feminine skills would presumably be beneficial—men still generally outperformed women.³⁵ In their review, Kray and Thompson concluded that there is no evidence to support the conclusion that female dyads are more likely to achieve joint gains in comparison to their male counterparts.³⁶ Indeed, Curhan and his colleagues found that female dyads achieved lower joint economic gains than male dyads, a finding they attributed to more pronounced relational concerns on the part of the female negotiators.³⁷ It may be that the structure of joint gain negotiation games, particularly as they are constructed in the laboratory with their focus on trade and transaction, may still privilege masculine negotiating styles³⁸ and so create additional hurdles for people who don't fit that profile.

Another approach to the study of gender and negotiations focuses not so much on the individual and what she or he does, but on how stereotyped gendered expectations affect action.³⁹ Stereotypes can enable or constrain the range of action. Patterns of subtle discrimination can be explained in part by these types of stereotypes, or what Virginia Valian calls *gender schemas*.⁴⁰ Gender schemas are implicit sets of hypotheses or assumptions about sex differences. Such schemas, although not wholly inaccurate, can inject bias into evaluations of professional women's behavior, competence, and performance relative to men and to different groups of women and men. Across a range of settings, researchers have shown how gender schemas affect perceptions of height, accomplishments, hiring, promotion, access to

Negotiations, 104 HARV. L. REV. 817 (1991) (discussing how women and people of color do not fare as well as white men in car buying—a distinctly distributive negotiation).

³⁵ Patrick S. Calhoun & William P. Smith, *Integrative bargaining: Does gender make a difference?* 10 INT'L J. OF CONFLICT MGMT. 203, 213–14 (1999); Alice F. Stuhlmacher et al., *Gender Differences in Virtual Negotiation: Theory and Research*, 57 SEX ROLES 329, 330 (2007).

³⁶ Kray & Thompson, *supra* note 33, at 142–43.

³⁷ Jared R. Curhan et al., *Relational Accommodation in Negotiation: Effects of Egalitarianism and Gender on Economic Efficiency and Relational Capital*, 107 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 192, 202 (2008).

³⁸ Linda L. Putnam & Deborah M. Kolb, *Rethinking Negotiation: Feminist Views of Communication and Exchange*, in *RETHINKING ORGANIZATIONAL AND MANAGERIAL COMMUNICATION FROM FEMINIST PERSPECTIVES* 76, 102–03 (Patrice M. Buzanell ed., 2000).

³⁹ See generally Cecilia L. Ridgeway & Shelley J. Correll, *Unpacking the Gender System: A Theoretical Perspective on Gender Beliefs and Social Relations*, 18 GENDER & SOC'Y 510 (2004) (discussing how stereotyped gendered expectation impacts actions).

⁴⁰ VALIAN, *supra* note 6, at 2.

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leadership, and roles in major symphony orchestras.⁴¹

Gender schemas also help us decode some of the performance differences observed between men and women. Work on *stereotype threat* demonstrates how stereotypes can shape perceptions of competence and identity⁴². In the negotiation context, when gender stereotypes are mobilized, they can have a direct impact on the stereotyped negotiator's performance depending on the type of stereotype invoked.⁴³ Women can internalize stereotypes such that when they take up a caring role in the public sphere of work, it can lead to "self erasure."⁴⁴ In the context of negotiation, it can cause women to become more anxious and less willing to negotiate. Indeed, this is a conclusion that some have reached.⁴⁵

The role a negotiator plays—whether advocating for herself as a principal or bargaining on behalf of others as an agent—can also trigger gender schemas in negotiations. This line of research, labeled "the social cost of asking," suggests that gender-linked stereotypes make it costly for a woman to advocate freely for herself as a principal.⁴⁶ Women who act assertively in compensation negotiations are less likely to be hired and deemed good colleagues.⁴⁷ Women who act assertively are also less likely to

⁴¹ Rhea E. Steinpreis et al., *The Impact of Gender on the Review of the Curricula Vitae of Job Applicants and Tenure Candidates: A National Empirical Study*, 41 *SEX ROLES* 509, 522–26 (1999); Claudia Goldin & Cecilia Rouse, *Orchestrating Impartiality: The Impact of "Blind" Auditions on Female Musicians*, 90 *AM. ECON. REV.* 715, 716 (2000); Susan T. Fiske, *What We Know Now About Bias and Intergroup Conflict, the Problem of the Century*, 11 *CURRENT DIRECTIONS PSYCHOL. SCI.* 123, 126 (2002); ALICE H. EAGLY & LINDA L. CARLI, *THROUGH THE LABYRINTH: THE TRUTH ABOUT HOW WOMEN BECOME LEADERS* 101–02 (2007).

⁴² Claude M. Steele, *A Threat in the Air: How Stereotypes Shape the Intellectual Identities and Performance of Women and African Americans*, 52 *AM. PSYCHOLOGIST* 613, 614 (1997).

⁴³ Laura J. Kray et al., *Battle of the Sexes: Gender Stereotype Confirmation and Reactance in Negotiations*, 80 *J. PERSONALITY & SOC. PSYCHOL.* 942, 943–45 (2001).

⁴⁴ JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* 149 (2010).

⁴⁵ Laura J. Kray & Linda Babcock, *Gender in Negotiations: A Motivated Social Cognitive Analysis*, in *NEGOTIATIONS THEORY AND RESEARCH: FRONTIERS OF SOCIAL PSYCHOLOGY* 203, 219 (Leigh L. Thompson ed., 2006).

⁴⁶ Hannah Riley Bowles, Linda Babcock & Kathleen L. McGinn, *Constraints and Triggers: Situational Mechanics of Gender in Negotiation*, 89 *J. PERSONALITY & SOC. PSYCHOL.* 951, 953 (2005).

⁴⁷ Emily T. Amanatullah & Catherine H. Tinsley, *Punishing Female Negotiators for Asserting Too Much...Or Not Enough: Exploring Advocacy as a Moderator of Backlash*

be trusted.⁴⁸ They also pay a price in terms of their bonuses, their likelihood to be appointed to important roles, and how much they are liked and admired by colleagues.⁴⁹ Women often are expected to demonstrate a high degree of concern for others and may also pay a social price when they do *not* do so. These expectations may be greater (or less) for women of color.⁵⁰ Indeed, they may risk censure and backlash when they fail to act assertively enough on behalf of others, as agents and advocates for their team.⁵¹

A major conclusion of the individual sex differences research was its characterization of women as deficient—they just don't ask.⁵² These more recent studies that catalogue gender stereotypes raise a different set of concerns. Contrasting negotiator roles—whether a woman is acting as an agent for others or negotiating as a principal on her own behalf—and style or approach—whether as a principal, she is acting competitively or accommodating, whether she is being agentic or communal—creates a new set of challenges for women negotiators. Where women had to worry about overcoming deficiencies in the past, now they find themselves tied up in double binds; forced to choose between efficacy as a negotiator and fulfilling gender stereotypes of niceness and accommodation. What is even more problematic are the lines of advice that follow from this work—telling women to tone down their agency, to avoid directness—better to be indirect and to act relationally.⁵³ These suggestions are likely to have the effect of reinforcing gender stereotypes.⁵⁴

Against Assertive Female Negotiators, ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES (forthcoming, 2013) (manuscript at 3–5) (on file with author).

⁴⁸ Mara Olekalns et al., *Mean Girls: The Social Consequences of Gender Stereotype Violations in Negotiation* 4 (2011) (unpublished manuscript) (on file with the Academy of Management, San Antonio, Texas).

⁴⁹ Elizabeth Salmon, et al., *Negotiating to No: Gender and Resistance to Undesirable Requests* 5 (2011) (unpublished manuscript) (on file with the Academy of Management, San Antonio, Texas).

⁵⁰ Aida Hurtado, *Relating to Privilege: Seduction and Rejection in the Subordination of White Women and Women of Color*, 14 SIGNS 833, 843 (1989); Evangelina Holvino, *Intersections: The Simultaneity of Race, Gender and Class in Organization Studies*, 17 GENDER, WORK & ORG. 248, 263 (2010).

⁵¹ Amanatullah et al., *supra* note 47, at 5.

⁵² BABCOCK & LASCHEVER, *supra* note 4, at 1.

⁵³ Hannah Riley Bowles & Linda Babcock, *When Doesn't it Hurt Her to Ask? Framing and Justification Reduce the Social Risks of Initiating Compensation Negotiations* 11 (December 14, 2008) (unpublished manuscript) (on file with the John F. Kennedy School of Government).

⁵⁴ Deborah M. Kolb, *Are We Becoming Part of the Problem: Gender Stereotypes in Negotiation*, 5 NEG. & CONFLICT MGMT. RES. 127, 127 (2012).

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This line of research on double binds in negotiation suffers from several limitations. First, the stereotypes that pit competency against accommodation tend to represent behaviors associated with white, heterosexual, middle class groups of women and men.⁵⁵ With some identity groups, the gender stereotype may be less likely to apply, while in others it might be more likely.⁵⁶ These distinctions have not generally been made. Status may also make a difference. Mothers, for example, may face more of a backlash than other groups of women regarding pay and promotion.⁵⁷ Status, in the sense of hierarchical position, also has an effect. Agentic behavior is seen as legitimate for both women and men in high status organizational roles and in professions like law.⁵⁸ Demography also matters—the more women there are in senior leadership roles, the less likely one style of behavior is to dominate.⁵⁹

Second, gender effects are more likely to be salient in contexts that are already culturally linked to gender or to situations where the stereotypic skills of one sex over another predominate.⁶⁰ In studies of masculine typed jobs such as operations and finance, it is more likely that women will face double binds.⁶¹ While negotiations happen everyday and routinely at work, the dominant context for studying gender in negotiations is distributive negotiations over compensation.⁶² Negotiation over compensation has been described as a masculine gendered task.⁶³ Why would we then be surprised

⁵⁵ CECILIA L. RIDGEWAY, *FRAMED BY GENDER: HOW GENDER INEQUALITY PERSISTS IN THE MODERN WORLD* 8 (2011).

⁵⁶ ELLA L. J. EDMONDSON BELL & STELLA M. NKOMO, *OUR SEPARATE WAYS: BLACK AND WHITE WOMEN AND THE STRUGGLE FOR PROFESSIONAL IDENTITY* 145 (2001).

⁵⁷ Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 *AM. J. SOC.* 1297, 1297 (2007).

⁵⁸ RIDGEWAY, *supra* note 55, at 63–64; Catherine H. Tinsley et al., *supra* note 31, at 238; Andrea Kupfer Schneider et al., *What Travels: Teaching Gender in a Cross Cultural Classroom*, in *VENTURING BEYOND THE CLASSROOM* 319, 324–26 (Christopher Honeyman et al. eds., 2010).

⁵⁹ Robin J. Ely, *The Effects of Organizational Demographics and Social Identity on Relationships Among Professional Women*, 39 *ADMIN. SCI. Q.* 203, 238 (1994); WILLIAMS, *supra* note 44, at 85.

⁶⁰ RIDGEWAY, *supra* note 55, at 90.

⁶¹ EAGLY & CARLI, *supra* note 41, at 101–02; Madeline E. Heilman & Tyler G. Okimoto, *Why Are Women Penalized for Success at Male Tasks? The Implied Communitarity Deficit*, 92 *J. APPLIED PSYCHOL.* 81, 82 (2007).

⁶² Laura J. Kray & Leigh Thompson, *Gender Stereotypes and Negotiation Performance: An Examination of Theory and Research*, 26 *RES. ORGANIZATIONAL BEH.* 103 (2005), 114–127.

⁶³ *Id.* See Bowles et al., *supra* note 46, at 956 (citation omitted).

that, without prompting to the contrary,⁶⁴ gender stereotypes will be primed? Research has shown that women do ask, and quite directly, when issues like time, flexibility, schedules, resources, job title, and access to lactation facilities, among others, are the issues.⁶⁵

It is also worth observing that that one is more likely to get gender stereotypic behavior in laboratory studies and in assessment studies where participants are not directly familiar with or implicated in the organizational processes.⁶⁶ Again, we should not be surprised that gender stereotypic outcomes result from the methods we use. Indeed, in field studies of negotiators, some of the common gender stereotypes are not in evidence. Women who are asked about negotiations in their organizations are no more likely to anticipate backlash than men, and are even more likely to negotiate when they perceive they have not been fairly treated.⁶⁷ They are also likely to negotiate about a host of issues related to their success in a new leadership role.⁶⁸

Finally, dichotomizing stylistic choices, instructing a negotiating subject to be competitive, or accommodating, or to act agentically or communally, ignores the multiple ways that negotiators blend these approaches. This dichotomizing of style draws from a “separate spheres ideology” (private vs. public) that equates accommodation, community, selflessness, and an ethic of care to women (the values of the private sphere), and public sphere competencies such as competition, agency, and self-interest with masculinity.⁶⁹ In so doing, a hierarchy of competencies is created that implicitly devalues feminine skills in workplace negotiation simulations. To

⁶⁴ Kray et al., *supra* note 43, at 956.

⁶⁵ Iris Bohnet & Fiona Greig, *Gender Matters in Workplace Decisions*, 10 NEGOTIATION 1, 4 (2007); Deborah M. Kolb & Jill Kickul, *It Pays to Ask: Negotiating Conditions for Leadership Success*, 23 CGO INSIGHTS 1, 1 (2006); Julia Bear, *Passing the Buck: Incongruence Between Gender Role and Topic Leads to Avoidance of Negotiation*, 4 NEGOTIATION & CONFLICT MGMT. RES. 47, 57 (2011).

⁶⁶ EAGLY & CARLI, *supra* note 41, at 101–02.

⁶⁷ Hannah Riley Bowles et al., Presentation at the International Association of Conflict Management: Negotiating Disadvantage: An Organizational Perspective on Gender and Negotiating for Self and Other 4 (June 23, 2010).

⁶⁸ Deborah M. Kolb & Kathleen L. McGinn, *Beyond Gender & Negotiation to Gendered Negotiations*, 2 NEGOTIATION & CONFLICT MGMT. RES. 1, 7 (2009); DEBORAH M. KOLB ET AL., *HER PLACE AT THE TABLE: A WOMAN’S GUIDE TO NEGOTIATING FIVE KEY CHALLENGES TO LEADERSHIP SUCCESS* 1–17 (2010).

⁶⁹ JOYCE K. FLETCHER, *DISAPPEARING ACTS: GENDER, POWER, AND RELATIONAL PRACTICE AT WORK* 27 (1999); JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 235–39 (2001); WILLIAMS, *supra* note 44, at 78.

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dichotomize these styles and treat them as exclusive choices can miss the purposes that may undergird them. Robin Ely and Deborah Rhode suggest that women can exhaust themselves trying to find the right balance between the two sides of a double-bind—being warm or competent as leaders, or in negotiation parlance, being competitive or accommodating.⁷⁰ The choice needs to be tied to a larger purpose—what is needed in the moment to get work done. These choices are likely to be missed, in part, because the task, typically compensation and studied in the laboratory, does not lend itself to this kind of thinking. Thus, rather than promote accommodative behavior through relational requests and indirect asks,⁷¹ it is likely to be more helpful to consider how asking can be tied to some defensible purpose. In their field studies, Bowles et al. show that negotiators have good reasons or rationales to negotiate for themselves and on behalf of others.⁷²

II. NEGOTIATED ORDERS AND GENDER

The evolution in the study of gender dynamics in negotiation has expanded from a focus on the individual, and how she and he negotiate and fare in the process, to an interactive perspective that explicitly takes into account the expectations of others. Indeed, this shift has been important because expectational effects frequently dwarf individual differences in explaining stereotyped behaviors and outcomes.⁷³ However, the field has generally not taken the next steps to consider explicitly the broader situational and institutional contexts that shape the negotiated interactions in which stereotypes are produced.⁷⁴

This has consequences for understanding the phenomena. In addressing race, for example, Glenn Loury suggests that a focus on self-confirming stereotypes conveniently encourages us to ignore the larger institutional and

⁷⁰ Robin J. Ely & Deborah L. Rhode, *Women and Leadership: Defining the Challenges*, in HANDBOOK OF LEADERSHIP AND THEORY AND PRACTICE 377–410, (Nitin Nohria & Rakesh Khurana eds., 2010).

⁷¹ BOWLES & BABCOCK, *supra* note 53, at 17; Salmon et al., *supra* note 49, at 14.

⁷² Bowles et al., *supra* note 67, at 19; Hannah Riley Bowles et al., *Claiming Authority: Negotiating Career Challenges vs. Opportunities* 16 (August 15, 2011).

⁷³ Catherine Eckel, Angela C. M. de Oliveira & Philip J. Grossman, *Gender and Negotiation in the Small: Are Women (Perceived to Be) More Cooperative than Men?*, 24 NEGOTIATION J. 429, 440 (2008).

⁷⁴ Kay Deaux & Brenda Major, *A Social-Psychological Model of Gender*, in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE 89, 97 (Deborah L. Rhode ed., 1990).

organizational contexts that produce the stereotypes.⁷⁵ As a result, curiosity is lacking to delve deeper into more contextual explanations and so the stereotypes remain unchanged. Further, to focus on stereotypes and ignore broader institutional contexts has the effect of making power relationships and inequities embedded in these stereotypes seem non problematic.⁷⁶ But they are a problem with real consequences.

Just as law provides a framework for negotiators who bargain in its shadow,⁷⁷ so too do organizational structures and cultures cast a shadow when people negotiate over organizational matters, for example, work and its compensation. These are the negotiated orders within which everyday bargaining occurs. But organizations are not gender neutral. Workplace structures, policies, and practices that appear unbiased generally reflect the values and the life situations of men who have dominated the public domain of work.⁷⁸ As such they constitute a gendered “negotiated order,” that has implications for the types of issues that are negotiated and the relative power and influence of negotiators to raise and bargain over them.⁷⁹ The first step in articulating a third perspective on gender in negotiation is to define the notion of a negotiated order.

A. *Negotiated Order*

In his important book about negotiations, Anselm Strauss took a page from Gertrude Stein’s observation about roses.⁸⁰ He criticized the negotiation field for assuming that a *negotiation is a negotiation is a negotiation*, the field’s tendency to treat all negotiations as the same and so minimize the ways they are shaped by the contexts in which they occur and the problems they address.⁸¹ His critique reflects the origins of negotiated order theory. In their work in psychiatric hospitals, Strauss and his colleagues observed how the incomplete and ambiguous structure of rules and procedures and the segmentation and hierarchy of occupations in the hospital, coupled with the need to serve patients, created disagreements and problem situations that

⁷⁵ GLENN C. LOURY, ANATOMY OF RACIAL INEQUALITY 23 (2002).

⁷⁶ RIDGEWAY, *supra* note 55, at 80.

⁷⁷ Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 950–52 (1979).

⁷⁸ Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC’Y 139, 145–46 (1990).

⁷⁹ Kolb & McGinn, *supra* note 68, at 2–3 (citation omitted).

⁸⁰ STRAUSS, *supra* note 9, at 7.

⁸¹ *Id.*

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gave rise to almost continuous negotiation about the practice and delivery of care.⁸² In this view, negotiations occur around a range of everyday activities—work, roles, resources, goals, objectives, and schedules in addition to the usual topics of compensation and employment. What constitutes the subject of negotiation is structured around the work that is done. As Strauss describes it:

[A] negotiated order on any given day could be conceived as the sum total of an organization's rules and policies, along with whatever agreements, understandings, pacts, contracts, and other working arrangements currently obtained. These include agreements at every level of organization, of every clique and coalition, and include covert as well as overt agreements.⁸³

In other words, negotiations mark the activities involved in designing jobs, doing work, avoiding work, achieving status, and establishing boundaries of authority and responsibility, among a host of other potential issues. When I teach negotiation workshops, the issues people want to negotiate reflect their organization's negotiated order and can cover the gamut from a change in title and responsibilities, to credit for work, support for a project, or the more routine resources for a new hire.

A second feature of the negotiated order perspective concerns the identity and status of the negotiators. They are organizational actors, people who work in companies, in government, in non profit and profit making institutions, and universities. What matters to them, the options they develop, and the choices they make are rooted in their status and positions in their organizations as well as their individual dispositions and interests. The power to control the definition of the situation is critical to negotiation processes and outcomes.⁸⁴ Unlike in laboratory studies of negotiation, in which the situation is mostly pre-defined, in organizations the status and power of the negotiators affects the definition of the situation, determines what is negotiable, establishes appropriate negotiation behavior, etc. Certain people or groups may, because of their position, gender, or other attributes, be accorded legitimacy to define the situation for others even if those definitions

⁸² Anselm A. Strauss, *The Hospital and Its Negotiated Order*, in *THE HOSPITAL IN MODERN SOCIETY*, 147, 147–69 (Eliot Friedson ed., 1963).

⁸³ STRAUSS, *supra* note 9, at 5–6.

⁸⁴ PETER MCHUGH, *DEFINING THE SITUATION: THE ORGANIZATION OF MEANING IN SOCIAL INTERACTION*, 7–8 (1968) (citations omitted).

fly in the face of official rules or policies.⁸⁵ To negotiate with a senior leader when one is considerably junior is not something people do lightly, especially when raising the issue is motivated by something a more senior person might not recognize as an issue worthy of negotiation.

Third, because potentially negotiable issues are part of organizational routines, they are not as readily obvious or identifiable as subjects for bargaining, the way something like a contract or a formal dispute might be. They are constructed out of people's everyday experiences of potential disagreement and discontent. That means that somebody has to recognize an issue and then raise it for negotiation. These issues can result from disadvantage or perceived lack of fairness.⁸⁶ They can result from a desire to change something.⁸⁷

The fourth feature of a negotiated order perspective that is relevant here is that organizational structure, practices, and policies are products of previous negotiations. Negotiating history provide the ongoing context within which a particular negotiation takes place. A person's experience and reputation will also influence a current negotiation. But negotiations also have the potential to change the negotiated order—what becomes negotiable can change and the very practices that are the subjects of negotiation are potentially altered as well. This is especially important when we consider how gender intersects with negotiated orders and the implications for different groups to negotiate over matters that are important to them. Over time, efforts toward change may be successful and new actors may be accorded legitimacy to raise issues that were not previously part of an organizations policies and practices. One way to understand the emergence of flexible work and family policies, for example, is as the codification of accumulated requests by first individuals and then small groups needing accommodation, and then leaders who take the lead in institutionalizing these policies. Negotiating for a family leave or flexible schedule is obviously different under these different negotiated orders. In sum, a negotiated order perspective captures what it means to negotiate in the shadow of organizations.

⁸⁵ Cecilia L. Ridgeway, *Gender, Status, and Leadership*, 57 J. SOC. ISSUES 637–55, 639 (2001).

⁸⁶ Bowles et al., *supra* note 67, at 9–11; Bowles et al., *supra* note 72, at 16.

⁸⁷ DEBRA E. MEYERSON, *TEMPERED RADICALS: HOW PEOPLE USE DIFFERENCE TO INSPIRE CHANGE AT WORK* 77–100 (2001).

B. *Second Generation Gender Bias and Negotiations.*

Our review of research on gender and negotiation has covered the work on individual difference and stereotypes. A third approach to the study of gender and negotiations is connected to a negotiated order perspective. Research on gender in organizations, in particular, work that seeks to explain women's persistent underrepresentation in leadership positions, has shifted away from a focus on actors' intentional, discriminatory efforts to exclude women to consideration of what I and others have called "second generation" forms of gender bias.⁸⁸ These are the powerful yet often invisible barriers to women's advancement that arise from cultural beliefs about gender, as well as workplace structures, practices, and patterns of interaction that inadvertently favor men. Second generation gender practices can appear neutral and natural on their face, but they can result in different experiences for, and treatment of, women and men, and, for different groups of women and men. From this perspective, gender, rather than an attribute of individuals, is seen as an institutionalized system of social and cultural practices embedded in negotiated orders.⁸⁹ In other words, institutions and organizations are not locations where gender differences just appear, but rather the sites where gendering in everyday negotiation is created. The negotiated order shapes the context for negotiation, but the fact that negotiators engage these issues, they contain the potential for altering the negotiated order itself.

Second generation gender bias can take a variety of forms. Jobs and opportunities are gendered in the sense that certain people are seen to "fit" a job and others are not and perceptions of fit can be complicated by race, class, and ethnicity. Issues of "fit" cover the gamut from shop floor supervisors to prison guards to Wall Street bankers to lawyers.⁹⁰ The second

⁸⁸ Kolb & McGinn, *supra* note 68, at 1–2 (citations omitted); Robin J. Ely, Herminia Ibarra, & Deborah M. Kolb, *Taking Gender Into Account: Theory and Design For Women's Leadership Development Programs*, 11 ACAD. MGMT. J. LEARNING & EDUC. 474, 475, 484 (2011) (citations omitted); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 460–61 (2001) (citations omitted).

⁸⁹ Acker, *supra* note 78, at 146.

⁹⁰ JENNIFER PIERCE, GENDER TRIALS: EMOTIONAL LIVES IN CONTEMPORARY LAW FIRMS, 1–2, 26 (1995); David Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms: An Institutional Analysis*, 84 CAL. L. REV. 496, 500, 555, 557 (1996); Dana M. Britton, *The Epistemology of the Gendered Organization*, 14 GENDER & SOC'Y 418, 423–24 (2000) (citations omitted); LOUISE MARIE ROTH, SELLING WOMEN SHORT: GENDER AND MONEY ON WALL STREET 71–99 (2006); Eva Skuratowicz

generation gender negotiation issues raised here are not about bargaining for a certain job and the accompanying compensation—they concern a much tougher issue of redefining the norms and expectations around what it takes to be seen as an appropriate fit and then to succeed in a given job or at a given level in an organization. In a complementary way, certain roles are seen as a more natural fit. Women are more likely to be channeled into staff roles like human resources, communication, and men into operational ones.⁹¹ At certain levels of organizations, the turning down an opportunity may not be a viable option. The challenge then is to negotiate the conditions that will make one successful so that the appointment furthers, but does not derail a career.⁹² The degree to which negotiators engage gendered opportunity structures can have the effect of shifting the negotiated order at the margins.

Second generation issues also cover what counts as work and how it gets valued. Joyce Fletcher describes the invisible work of women engineers who try to anticipate problems before they happen, seek to integrate the work of others, and try to build a team,⁹³ work that gets “disappeared.”⁹⁴ These examples, situated in contexts in which masculine approaches to work tend to be highly valued and feminine approaches to work underrated,⁹⁵ suggest that claiming the value of one’s work so that it is recognized and rewarded is part of the gendering of negotiation as it occurs in a variety of workplaces.⁹⁶ But making that value visible can shift the norms about how jobs and roles are defined.⁹⁷

A significant body of work documents the critical role of social networks in helping individuals gather information and support,⁹⁸ secure positions,⁹⁹

& Larry W. Hunter, *Where Do Women’s Jobs Come From: Job Resegregation in An American Bank*, 31 WORK & OCCUPATIONS 73, 93 (2007).

⁹¹ EAGLY & CARLI, *supra* note 41, at 18–20.

⁹² Kolb & McGinn, *supra* note 68, at 6.

⁹³ See Dennis K. Mumby & Linda L. Putnam, *The Politics of Emotion: A Feminist Reading of Bounded Rationality*, 17 ACAD. MGMT. REV. 465, 479 (1992).

⁹⁴ FLETCHER, *supra* note 69, at 1–3, 41–87.

⁹⁵ VALIAN, *supra* note 6, at 129.

⁹⁶ Joanne Martin, *The Organization of Exclusion: Institutionalization of Sex Inequality, Gendered Faculty Jobs and Gendered Knowledge in Organizational Theory and Research*, 1 ORG. 401, 412–14 (1994); Karen L. Ashcraft, *Managing Maternity Leave: A Qualitative Analysis of Temporary Executive Succession*, 44 ADMIN. SCI. Q. 240, 244 (1999).

⁹⁷ FLETCHER, *supra* note 69, at 117.

⁹⁸ See, e.g., Mark S. Mizruchi & Linda B. Stearns, *Getting Deals Done: The Use of Social Networks in Bank Decision-Making*, 66 AM. SOC. REV. 647, 649 (2001).

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negotiate compensation,¹⁰⁰ and generally influence others.¹⁰¹ To the degree that networks are homophilous according to status, those who are different can lack the social capital that enables them to negotiate for opportunities and rewards.¹⁰² Indeed, both information gleaned from social networks and perceptions about access to that information can influence compensation negotiations and their outcomes.¹⁰³ Revealing information about pay, equal pay, and comparable worth has the potential to undo some of the gendered effects of exclusionary networks and contribute to more equitable pay structures.¹⁰⁴

A final second generation issue that influences negotiation over compensation and position is the connection between work and other aspects of life, what Bowles and McGinn described as a “two level game.”¹⁰⁵ Flexible work arrangements, whether formally applied for or informally managed “under the radar,” are also within the purview of negotiations. Choices to access these benefits are shaped by assumptions about who can make use of them (likely mothers) and how careers will be affected (often negatively).¹⁰⁶ Only certain people, therefore, might be seen as legitimately able to negotiate over flexible work policies. Men are less likely to negotiate for these benefits, and these benefits have been a subject of contention

⁹⁹ See, e.g., Roberto M. Fernandez & Nancy Weinberg, *Sifting and Sorting: Personal Contacts and Hiring in a Retail Bank*, 62 AM. SOC. REV. 883, 884 (1999).

¹⁰⁰ See, e.g., Marc-David L. Seidel, Jeffrey T. Polzer & Katherine J. Stewart, *Friends in High Places: The Effects of Social Networks on Discrimination in Salary Negotiations*, 45 ADMIN. SCI. Q. 1, 1–2 (2000).

¹⁰¹ See, e.g., Daniel J. Brass, *Being in the Right Place: A Structural Analysis of Individual Influence in an Organization*, 29 ADMIN. SCI. Q. 518, 518–21 (1984).

¹⁰² ROTH, *supra* note 90, at 69; Wilkins & Gulati, *supra* note 90, at 608; Gail M. McGuire, *Gender, Race and the Shadow Structure: A Study of Informal Networks and Inequality in a Work Organization*, 16 GENDER & SOC’Y 303, 304 (2002); Boris Groysberg, *How Star Women Build Portable Skills*, 86 HARV. BUS. REV. 76, 77 (2008).

¹⁰³ Seidel et al., *supra* note 100, at 1–2; Bowles et al., *supra* note 3, at 951; Maura A. Belliveau, *Blind Ambition? The Effects of Social Networks and Institutional Sex Composition on the Job Search Outcomes of Elite Coeducational and Women’s College Graduates*, 16 ORG. SCI. 134, 134–35 (2005).

¹⁰⁴ Ridgeway & Correll, *supra* note 39, at 527–528; Susan Sturm, *Negotiating Workplace Equality: A Systemic Approach*, 2 NEGOTIATION CONFLICT MGMT. RES. 92, 101–02 (2009).

¹⁰⁵ Bowles & McGinn, *supra* note 4, at 395.

¹⁰⁶ LOTTE BAILY, *BREAKING THE MOLD: REDESIGNING WORK FOR PRODUCTIVE AND SATISFYING LIVES* 51–52 (2d ed. 2007); RHONA RAPOPORT, ET AL., *BEYOND WORK-FAMILY BALANCE: ADVANCING GENDER EQUITY AND WORKPLACE PERFORMANCE* 38–39 (2002).

between black and white women.¹⁰⁷ But as women and men negotiate over the integration of their work and personal life in the context of a negotiated order that extols the 'ideal worker,'¹⁰⁸ they have the potential subtly to shift the order itself.

Studying gender in the context of a negotiated order means not only expanding the range of issues, but also reconsidering what constitutes an agreement or a good outcome. The range of issues suggested above needs to encompass the kinds of negotiations that routinely occur in organizations over jobs, opportunities, time and resources. Women, for example, disproportionately (67% v. 18% for men) negotiate to overcome disadvantage (e.g., being passed over, having a project undermined), both for themselves and on behalf of others.¹⁰⁹ Further, these types of negotiations are not well-suited to simple formulations of stereotypical styles and clear distinctions among roles. For example, to negotiate for a job or opportunity when a job is gendered, in that its description has historically fit the work and life experiences of men,¹¹⁰ requires neither asserting one's qualifications nor accommodating to a rejection. Rather, it can involve a negotiation over what the requirements of a job should be, given the current—not traditional—needs of the organization.¹¹¹

III. GENDERED NEGOTIATED ORDERS: IMPLICATIONS FOR THEORY AND PRACTICE

Most studies of negotiation specify the issues to be bargained over and focus primarily, but not exclusively, on the outcomes achieved. Studies of gender and negotiation generally follow a similar structure. The difference in organizations is that the issues are not clearly defined but are socially constructed as part of the negotiation itself.¹¹² First, there is the issue of what is actually negotiable. Some subjects are commonly seen as negotiable—

¹⁰⁷ Maureen A. Scully, *A Rainbow Coalition or Separate Wavelengths? Negotiations Among Employee Network Groups*, 2 NEGOTIATION & CONFLICT MGMT. RES. 74, 86 (2009).

¹⁰⁸ See WILLIAMS, *supra* note 44, at 79–99.

¹⁰⁹ Bowles et al., *supra* note 67, at 12; Bowles et al., *supra* note 72, at 19.

¹¹⁰ See Britton, *supra* note 90, at 424–26.

¹¹¹ Debra E. Meyerson & Deborah M. Kolb, *Moving out of the 'Armchair': Developing a Framework to Bridge the Gap between Feminist Theory and Practice*, 7 ORG. 553, 560 (2000).

¹¹² Deborah M. Kolb & Linda L. Putnam, *Introduction: The Dialectics of Disputing*, in HIDDEN CONFLICT IN ORGANIZATIONS: UNCOVERING BEHIND THE SCENES DISPUTES 1, 8 (Deborah Kolb & Jean M. Bartunek eds., 1992).

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compensation and budgets—while others are more ambiguous. The situation becomes potentially more contentious when one considers ambiguity in the context of gendered work practices.¹¹³ In these situations, you can have a work practice that those in the majority see as normal and neutral—a non-issue—whereas a minority person experiences it as exclusionary. What this means is that before one negotiates to get to a potential resolution, it requires some buy-in to the meaning of the issue itself and positioning oneself to raise the issue.

A. *Positioning to Negotiate*

When negotiators bargain in the shadow of gendered negotiated orders, status hierarchy ranks women and men differently.¹¹⁴ Men are seen as more deserving of benefits and rewards over equivalent women, hence making it more legitimate for the former to ask. Further, those who are advantaged by gender status beliefs are often oblivious to their advantage and so are less likely to attend to information that might challenge those beliefs.¹¹⁵ Thus, it is not just that society's views of femininity and masculinity are reflected in negotiations, it is that these have material consequences for what is negotiable, how issues get raised, the legitimacy of bargainers to negotiate about them, and the outcomes that are possible.¹¹⁶

Gendered negotiated orders imply that negotiators are differentially *positioned* to raise issues and negotiate about them: women for some issues, men for others.¹¹⁷ “Positioning” means the ways negotiators construct legitimate social roles and identities for themselves, subject to the expectations and constraints of the social structures in which they are operating.¹¹⁸ Research on how and what negotiators do to enhance their legitimacy and influence when that legitimacy is challenged, has not been much studied.¹¹⁹

A second, although related, dimension of positioning is the degree to

¹¹³ Bowles et al., *supra* note 3, at 952–53.

¹¹⁴ Cecilia L. Ridgeway, *Interaction and the Conservation of Gender Inequality: Considering Employment*, 62 AM. SOC. REV. 218, 231 (1997).

¹¹⁵ *Id.* at 232.

¹¹⁶ Kolb, *supra* note 27, at 518 (2009).

¹¹⁷ Kolb & McGinn, *supra* note 68, at 4.

¹¹⁸ Bronwyn Davies & Rom Harré, *Positioning: The Discursive Production of Selves*, 20 J. THEORY SOC. BEHAV. 43, 46–47 (1990).

¹¹⁹ Deborah M. Kolb, *Staying in the Game or Changing It: An Analysis of Moves and Turns in Negotiation* 20 NEGOTIATION J. 253, 255 (2004).

which a woman (or man) negotiates from a weak or strong position. While position and power may be seen as partially a function of alternatives and hierarchical role, the power of microprocesses can silence people and therefore make it difficult, but not impossible, for them to negotiate about these second generation issues.¹²⁰ In certain contexts, gendered practices, such as client assignments and difficulty joining key networks, can mean that women can be disadvantaged when they come to negotiate for more compensation or a desired role.¹²¹ These practices can be resisted, however, through the use of strategic moves and turns and the achievement of small victories.¹²² Indeed, Boris Groysberg showed how women excluded from key relationships within their firms, created external networks that positioned them advantageously (more so than their male colleagues) to negotiate conditions for their success when they changed jobs.¹²³

Positioning is also likely to involve the other parties. Those who are advantaged by gender status beliefs and by existing organizational practices are less likely to recognize their privilege.¹²⁴ Not only are they less likely to notice information that might challenge those beliefs, they may resist dealing with them. Just because others might not recognize gendered work practices, and hence the possibility of negotiating about them, does not mean that they are bad actors or biased in the sense of intentional actions.¹²⁵ But opening a negotiation about a particular issue—say compensation or promotion—can read as implying that this is so. For example, negotiating a flexible work arrangement potentially reveals how an organization's practices make it difficult for mothers or other caretakers to succeed; negotiating for a leadership role can call attention to the fact that women have been overlooked; and claiming value for invisible work can show how bias operates in performance reviews and compensation.¹²⁶ To engage the other party in a negotiation and their possible areas of resistance requires doing so

¹²⁰ SILVIA GHERARDI, GENDER, SYMBOLISM, AND ORGANIZATIONAL CULTURE 98–108 (1996); Joanne Martin & Debra E. Meyerson, *Women and Power: Conformity, Resistance and Disorganized Coaction*, in POWER AND INFLUENCE IN ORGANIZATIONS 311, 314–15 (Roderick M. Kramer & Margaret A. Neale eds., 1998).

¹²¹ Roth, *supra* note 90, at 68; Groysberg, *supra* note 102, at 77.

¹²² Meyerson, *supra* note 87, at 101–20; *see generally* Kolb & Williams, *supra* note 119, at 319–41.

¹²³ Groysberg, *supra* note 102, at 78.

¹²⁴ Cecilia L. Ridgeway, *Gender, Status, and Leadership*, 57 J. SOC. ISSUES 637, 639–40 (2001).

¹²⁵ Sturm, *supra* note 88, at 460.

¹²⁶ Ely et al., *supra* note 88, at 475.

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in an *appreciative* way.¹²⁷ By doing so, the possibility of changing a gendered negotiated order becomes more likely.

Scholarship about gender and negotiation over the years has placed the burden on women—she has to ask, she has to work around double binds, she has to deal with the social costs of asking. These are still likely challenges. However, once gender issues are located in an organizational negotiated order, any time a negotiation about a second generation gender issue—be it about opportunity structures, unequal compensation mechanisms, assumptions about the “ideal worker”—the possibility of change is possible. As individuals negotiate in the face of second generation issues, the negotiated order itself can shift.¹²⁸

Further, when gender is located in a broader institutional frame, the possibility for more systemic change around the negotiated order is possible. The negotiated order around work and personal life has changed dramatically with the adoption of new policies and structures around careers.¹²⁹ New narratives that reveal the structure and implication of second generation issues make possible changes that can create more equitable arrangements.¹³⁰ Social networks and caucus groups can foster alliances that address systemic issues and bring a collective, potentially more powerful voice to them.¹³¹ Organizational catalysts¹³² can play a major role in shaping the contexts in which individuals negotiate, by providing them with information, and helping them make key connections and uncover the root causes of inequalities. What characterizes these forms of intervention is that they have a *dual agenda* to enhance gender equity, creating a more level playing field for different groups of men and women, at the same time as they enhance

¹²⁷ DEBORAH KOLB & JUDITH WILLIAMS, *THE SHADOW NEGOTIATION* 235 (2000).

¹²⁸ Gary A. Fine, *Negotiated Orders and Organizational Culture*, 10 ANN. REV. SOC. 239, 256 (1984); Meyerson, *supra* note 87, at 167.

¹²⁹ CATHLEEN BENKO & ANNE WEISBERG, *MASS CAREER CUSTOMIZATION: ALIGNING THE WORKPLACE WITH TODAY'S NONTRADITIONAL WORKFORCE* 35 (2007).

¹³⁰ Douglas M. McCracken, *Winning the Talent War for Women: Sometimes It Takes a Revolution*, 78 HARV. BUS. REV. 159, 166 (2000); Robin J. Ely & Debra E. Meyerson, *Theories of Gender: A New Approach to Organizational Analysis and Change*, 22 RES. ORGANIZATIONAL BEHAV. 103, 104 (2000).

¹³¹ Maureen A. Scully & W.E. Douglas Creed, *Subverting Our Stories of Subversion*, in SOCIAL MOVEMENTS AND ORGANIZATIONAL THEORY 310, 315 (Gerald F. Davis et al. eds., 2005); Scully, *supra* note 107, at 87–88.

¹³² Sturm, *supra* note 104, at 102. See also Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 HARV. J.L. & GENDER 247 (2006) (provides various examples of organizational catalysts).

organizational effectiveness.¹³³ Focusing on the negotiations that occur in the shadow of organizations opens up varied possibilities for changes in structures, practices, policies, and procedures that have the potential to *undo gender* as it manifests itself in negotiations.¹³⁴

¹³³ Deborah Kolb et al., *Making Change: A Framework for Promoting Gender Equity in Organizations*, in *READER IN GENDER, WORK, AND ORGANIZATION* 10, 13–15 (Robin J. Ely et al. eds., 2003).

¹³⁴ See generally Francine M. Deutsch, *Undoing Gender*, 21 *GENDER & SOC'Y*. 106, 113–23 (2007) (explaining how gender can be “undone” in organizational gender research).