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NEGOTIATION: WOMEN'S VOICES

By Morial Shah*

"The real tragedy of our postcolonial world is not that the majority of people had no say in whether or not they wanted this new world; rather, it is that the majority have not been given the tools to negotiate this new world."¹

— Chimamanda Ngozi Adichie, *Half of a Yellow Sun*

INTRODUCTION

Gender shapes the way we communicate. Using legal theory, case studies and intercultural analysis, this paper explores the way women's self-identity interacts with negotiation processes and outcomes. Part I examines social, psychological, cultural and political factors shaping women's identity, voice and participation in negotiations. Part II explores the way women's view of themselves impacts their participation in negotiations. Lastly, Part III studies the impact of formal training on gender-based differences in negotiations. Through investigating gender's impact on negotiations, this paper finds that gender and context interact with negotiation process and outcomes. Through gaining more insight on gender's context-specific impact, negotiators can equip themselves to better manage their negotiation processes and outcomes.

PART I. WOMEN'S IDENTITY

A. *Context: Gender Identities*

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¹ CHIMAMANDA NGOZI ADICHIE, *HALF OF A YELLOW SUN* 129 (2006).

In his influential work on human identity, Amartya Sen critiques the solitarist fallacy concerning human identity.² He argues that viewing human identity as fixed and binary is as dangerous as it is wrong.³ Boxing up shifting, fluid identities into singular constructs miniaturizes humanity.⁴ People do not always see themselves as immutably and exclusively Hindu or Muslim, Hutu or Tutsi, Shia or Sunni at all times, under all circumstances.⁵ For our purposes then, it is important to note at the outset that women's gender association and self-identification is neither immutable nor solely determinative of all their behavior during negotiations.

Art Hinshaw and Jess K. Alberts study the way that male and female children are socialized into gender identities and roles from birth.⁶ Parents dress their male and female children differently and have different expectations from them.⁷ Studies suggest that within twenty-four hours from birth, parents develop different expectations for their male and female children.⁸ These gender identities, expectations and roles tend to broadly impact the way male and female children interact with each other and the world around them.⁹

Several studies examine gender's impact on communication. Some studies suggest that women's communication style is generally more supportive, personal, egalitarian and discursive, while men's style tends to be more confrontational and competitive.¹⁰ Other studies, however, posit that there is no statistically significant difference between male and female communication patterns.¹¹ However, for this study, the difference in expectations and women's self-association with those different expectations is relevant.

B. Cultural Factors Impacting Women's Negotiation Performance

In her work exploring gender differences in salary negotiations, Julia Johnson identifies five socio-cultural factors that can potentially impact some women's

² See generally AMARTYA SEN, *IDENTITY AND VIOLENCE: THE ILLUSION OF DESTINY* (2006).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Art Hinshaw & Jess K. Alberts, *Gender and Attorney Negotiation Ethics*, 39 WASH. U. J.L. & POL'Y 145, 145-46 (2012).

⁷ See generally Susan D. Witt, *Parental Influence on Children's Socialization to Gender Roles*, 32 ADOLESCENCE 256 (1997).

⁸ See Jeffrey Z. Rubin et al., *The Eye of the Beholder: Parents' Views on Sex of Newborns*, 44 AM. J. ORTHOPSYCHIATRY 512, 514-17 (1974); see also Katherine Hildebrandt Karraker et al., *Parents' Gender-Stereotyped Perceptions of Newborns: The Eye of the Beholder Revisited*, 33 SEX ROLES 687, 697-700 (1995).

⁹ *Id.*

¹⁰ Anthony Mulac et al., *Empirical Support for the Gender-as-Culture Hypothesis: An Intercultural Analysis of Male/Female Language Differences*, 27 HUM. COMM. RES., 121, 141-43 (2001).

¹¹ Daniel J. Canary & Kimberly Hause, *Is there Any Reason to Research Sex Differences in Communication?*, 41 COMMUN. Q. 129, 140 (1993).

negotiation performance.¹² They are: (i) masculinity and its association with competitiveness and assertiveness; (ii) the perception that women tend to identify communally while men tend to behave more individualistically; (iii) women's tendency to place strong emphasis on fairness, trust and reciprocity; (iv) perceiving public and private spheres as gendered realms; and (v) women's tendency to think themselves less powerful than their male counterparts.¹³ In addition to exploring her five factors, we also examine the role of (vi) women's responses to ethical behavior and (vii) women's cultural experiences.¹⁴ The rest of this section addresses each of these factors in turn.

i. Competitiveness and Expectations

Stereotypically masculine behaviors include being assertive and individualistic while stereotypically feminine behaviors include being sensitive, soft-spoken, sympathetic, and understanding.¹⁵ While the extent and circumstances in which women manifest these behaviors differs, there exists a social cost to straying from these expectations.¹⁶ As a consequence of these different societal expectations, women often feel a greater need to save face than men.¹⁷

In linguistic terms, men are more likely than women to use "highly intensive language" to persuade others.¹⁸ Women are more likely to employ less intensive language and include disclaimers such as "I think," "you know," etc.¹⁹ This may make listeners think of women as less forceful than men.

In terms of expectations, women are expected to present themselves in a more modest manner, while men are expected to behave in more masculine, self-

¹² See generally Julia Johnson, *Gender Differences in Negotiation: Implications for Salary Negotiations*, 23 UCLA WOMEN'S L.J. 131, 139 (2016).

¹³ *Id.*

¹⁴ See generally *id.*

¹⁵ Hannah Riley Bowles & Linda Babcock, *Gender as a Situational Phenomenon in Negotiation* 24–25 (Harv. Kennedy Sch., Working Paper No. RWP02–037, 2002).

¹⁶ Maria Konnikova, *Lean Out: The Dangers for Women Who Negotiate*, NEW YORKER (June 10, 2014), <http://www.newyorker.com/science/maria-konnikova/lean-out-the-dangers-for-women-who-negotiate>.

¹⁷ To "save face" generally refers to people's desires or strategies aimed at avoiding embarrassment or preserving reputation. Hannah Riley Bowles & Linda Babcock, *Relational Accounts: An Answer for Women to the Compensation Negotiation Dilemma* 3 (Harvard Kennedy Sch., Working Paper No. RWP08-066, 2008).

¹⁸ See Michael Burgoon, James P. Dillard & Noel E. Doran, *Friendly or Unfriendly Persuasion: The Effects of Violations of Expectations by Males and Females*, 10 HUM. COMM. RES. 283, 284, 293 (1983); see also Charles B. Craver, *Formal Training Does Not Always Eliminate Gender-Based Negotiation Differences*, 18 CARDOZO J. CONFLICT RESOL. 1, 11 (2016).

¹⁹ Linda L. Carli, *Gender and Social Influence*, 57 J. SOC. ISSUES 725, 732–36 (2001); see also Charles B. Craver, *supra* note 18.

promoting ways.²⁰ Women who try to emulate masculine authority tend to be viewed negatively.²¹ In situations where women try to assert themselves, they may be viewed with negativity, but men asserting themselves in a similar fashion may not be viewed negatively.²² These expectations and stereotypes impact the way women negotiate and create gender-based differences in negotiation processes.

ii. Community vs. The Individual

Women tend to view themselves in communal, interdependent ways.²³ This generally makes them more concerned with overall gains for both sides and may result in their accepting low offers.²⁴ Men are more likely to have an agentic self-concept, whereby they tend to view themselves as independent and competitive, stressing individual success over group gains.²⁵ Society socializes women to place greater emphasis on shared successes, while men are taught to focus on advancing themselves.²⁶ Accordingly, women generally place more emphasis on relationships, while men keep the outcome in sight.²⁷ Research suggests women's conception of interdependence tends to make them more collaborative negotiators.²⁸ Women negotiators are more likely to accept equal splits even when they have stronger negotiating positions.²⁹ Research also suggests that women tend to be more collaborative because they attach greater value to the process of negotiation and

²⁰ Hannah Riley Bowles, Linda Babcock & Lei Lei, *Social Incentives for Gender Differences in the Property to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 84, 85 (2007).

²¹ See *id.* at 85–87; Catherine H. Tinsley, Sandra I. Chedelin, Andrea Kupfer Schneider & Emily T. Amanatullah, *Women at the Bargaining Table: Pitfalls and Prospects*, 25 NEGOT. J. 233, 236–37 (2009); see also Charles B. Craver, *supra* note 18, at 12, 13.

²² Craver, *supra* note 18, at 12, 13.

²³ Alison Crossley, *Clash of Independence and Interdependence Creates Conflict, Fuels Gender Inequality*, STANFORD CLAYMAN INST. FOR GENDER RES. (2014), <https://gender.stanford.edu/news-publications/gender-news/clash-independence-and-interdependence-creates-conflict-fuels-gender>. Johnson, *supra* note 12, at 140.

²⁴ Catherine H. Tinsley et al., *Women at the Bargaining Table: Pitfalls and Prospects* 4 (Marq. U. L. Sch. Legal Stud. Res. Paper Series, Paper No. 09-19, 2009).

²⁵ ANDREA E. ABELE, HOW GENDER INFLUENCES OBJECTIVE CAREER SUCCESS AND SUBJECTIVE CAREER SATISFACTION: THE IMPACT OF SELF-CONCEPT AND OF PARENTHOOD 412 (Ingrid Schoon & Jacquelynne S. Eccles eds., 2014). Johnson, *supra* note 12, at 140.

²⁶ ABELE, *supra* note 25.e

²⁷ Catherine Eckel et al., *Gender and Negotiation in the Small: Are Women (Perceived to Be) More Cooperative than Men?*, 24 NEGOT. J. 429, 441–42 (2008).

²⁸ Mark A. Boyer et al., *Gender and Negotiation: Some Experimental Findings from an International Negotiation Simulation*, 53 INT. STUDIES Q. 23, 29 (2009).

²⁹ Charles B. Craver, *The Impact of Gender on Negotiation Performance*, 13 CARDOZO J. CONFLICT RESOL. 339, 350–51 (2013).

communication.³⁰ Regardless of their precise motivation, women's communal perspective colors their participation in the negotiation process to some degree.

iii. Fairness, Trust and Reciprocity

With regard to fairness and trust, women tend to value both more than men. Eckel et al. suggests that women tend to be sensitive to overall fairness and value equal distributions, even when the cost of doing so increases.³¹ Regarding trust specifically, women are likely to be more trusting than men and unforgiving of violations of trust.³² Research also suggests that women are more likely to engage in behaviors that generate reciprocity.³³ Women tend to engage in reciprocal behavior to reduce social distance and build relationships.³⁴ These preferences can impact women's performance in short-term negotiations such as those concerning starting salaries.³⁵ Women's propensity to trust employer's good faith starting salary offers and their desire to build a reciprocal long-term relationship may result in their accepting a low starting salary figure.³⁶

iv. Gendered Realms

The historical association of the public sphere with masculinity and the private sphere with femininity persists at conscious and subconscious levels.³⁷ Statistically, women tend to perform equally effectively on negotiations concerning traditionally feminine subject matter such as crafts and jewelry.³⁸ But in traditionally male dominated areas, such as cars and racing, gender disparities persisted in outcomes.³⁹ Citing salary negotiations, Johnson suggests that women's conscious or subconscious

³⁰ Boyer et al., *supra* note 28, at 27; *see also* Johnson, *supra* note 12, at 141.

³¹ Eckel et al., *supra* note 27, at 441; *see also* Johnson, *supra* note 12, at 142–43.

³² Craver, *supra* note 29, at 347. LEE E. MILLER & JESSICA MILLER, A WOMAN'S GUIDE TO SUCCESSFUL NEGOTIATING: HOW TO CONVINCE, COLLABORATE & CREATE YOUR WAY TO AGREEMENT 42–45 (2002). JEFFREY Z. RUBIN & BERT R. BROWN, THE SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION 171–173 (1975).

³³ Boyer et al., *supra* note 28, at 29; *see also* Rachel Croson & Nancy Buchan, *Gender and Culture: International Experimental Evidence from Trust Games*, 89 AM. ECON. REV. 386, 389–90 (1999).

³⁴ Croson & Buchan, *supra* note 33, at 387–89.

³⁵ Johnson, *supra* note 12, at 133.

³⁶ *Id.* at 142.

³⁷ Laura J. Kray et al., *Battle of the Sexes: Gender Stereotype Confirmation and Reactance in Negotiations*, 80 J. PERSONALITY & SOC. PSYCHOL. 942, 945 (2001); *Women "Take Care," Men "Take Charge": Stereotyping of US Business Leaders Exposed*, CATALYST (Oct. 19, 2005), <https://www.catalyst.org/research/women-take-care-men-take-charge-stereotyping-of-u-s-business-leaders-exposed/>; *see also* Johnson, *supra* note 13, at 142–44.

³⁸ Julia B. Bear & Linda Babcock, *Negotiation Topic as a Moderator of Gender Differences in Negotiation*, 23 PSYCHOL. SCI. 743, 743–44 (2012).

³⁹ *Id.*

conception of salary negotiations as part of the masculine public domain inhibits their efforts to negotiate better starting salaries for themselves.⁴⁰

v. Self-Fulfilling Prophecies: You Are Who You Think You Are

Women and men's culturally colored perception of their power in a negotiation impacts the negotiated outcome.⁴¹ The power theory suggests that negotiators who think of themselves as more powerful tend to set more ambitious goals and reach better results.⁴² Cultural roles influence the degree to which men and women associate with power.⁴³ Men are expected to exert more power than women.⁴⁴ This impacts negotiations, especially when power differentials and gender stereotypes are activated.⁴⁵

More generally, research suggests that males tend to exhibit greater confidence than females in situations requiring performance.⁴⁶ Men think they can "wing it" even when they are underprepared.⁴⁷ Women on the other hand, feel underprepared even when they are over prepared.⁴⁸ Among other factors, such male confidence may explain why men like negotiating more than women do.⁴⁹ It may also explain why men tend to seek more ambitious outcomes for themselves.⁵⁰ Their socially-conditioned confidence generally makes them more comfortable in situations

⁴⁰ Johnson, *supra* note 12, at 143–44.

⁴¹ Laura J. Kray et al., *Gender Stereotype Activation and Power in Mixed-Gender Negotiations*, IACM 15TH ANN. CONE 4–5 (2002), <http://dx.doi.org/10.2139/ssrn.305011>.

⁴² *Id.* at 3–4.

⁴³ *Id.*

⁴⁴ JOSEPH BERGER ET AL., STATUS CHARACTERISTICS AND SOCIAL INTERACTIONS. (1977). Kay Deaux & Brenda Major, *Putting Gender into Context: An Interactive Model of Gender-Related Behavior*, 94 PSYCHOL. REV. 369 (1987). Laura J. Kray et al, *supra* note 41, at 4.

⁴⁵ Laura J. Kray et al., *supra* note 41, at 16. Carol Watson, *Gender Versus Power as a Predictor of Negotiation Behavior and Outcomes*, 10 NEGOTIATION J. 117, 123–24 (1994). In her review, Carol Watson found that women felt less confident and successful than their male peers even where there were no gender differences in negotiation behavior or outcomes. *Id.*

⁴⁶ Muriel Niederle & Lise Vesterlund, *Gender Differences in Competition*, 24 NEGOT. J. 447, 450–56 (2008); ROGER VOLKEMA, LEVERAGE: HOW TO GET IT AND HOW TO KEEP IT IN ANY NEGOTIATION 154 (2006).

⁴⁷ GAIL EVANS, PLAY LIKE A MAN, WIN LIKE A WOMAN: WHAT MEN KNOW ABOUT SUCCESS THAT WOMEN NEED TO LEARN 84–85, 90–91 (2000); Peggy McIntosh, *Feeling Like a Fraud* 1-2 (Wellesley Ctr. for Women, Working Paper No. 18, 1985), https://www.wcwonline.org/pdf/previews/preview_18sc.pdf.

⁴⁸ EVANS, *supra* note 47.

⁴⁹ Deborah Small, Michele Gelfand, Linda Babcock & Hilary Gettman, *Who Gets to the Bargaining Table? The Influence of Gender and Framing on the Initiation of Negotiation*, 93 J. PERSONALITY & SOC. PSYCHOL. 600, 601 (2007).

⁵⁰ LINDA BABCOCK & SARA LASCHEVER, ASK FOR IT: HOW WOMEN CAN USE THE POWER OF NEGOTIATION TO GET WHAT THEY REALLY WANT 15 (2008).

involving risk.⁵¹ Accordingly, balancing the negotiating playing field involves training negotiators to be aware of gendered confidence dynamics.

vi. Gendered Ethics–Deception and Communication

Carol Gilligan's foundational work describing the way women reason through an ethic of care and connection shapes feminist legal thought and expectations concerning women's participation in negotiations.⁵² Gilligan's feminist theory of morality suggested that women contribute a uniquely female color to legal work and negotiations.⁵³ Other feminist scholars build upon her work to study women's morality and the effects of their participation in negotiations.⁵⁴ Basing her work on Gilligan's ideas, Carrie Menkel Meadow predicts that women's influx in the legal sphere would alter the 'zero-sum' nature of the adversarial system.⁵⁵ Catherine Weiss and Louise Melling recommend introducing law school classes that teach women's ways of reasoning and communicating.⁵⁶ Linda Stamato proposes more research on the proposition that gender, particularly women's participation, can help steer the world away from self-interested conflict towards alternative ways of thinking about "multiple meanings" and relationships.⁵⁷ For her part, Kate McCabe explains that the effort to create more women-friendly spaces and encourage women's participation in negotiation corresponds with the rise of alternate dispute resolution.⁵⁸

But it is worth examining whether women's morality has substantially altered negotiation outcomes. Overall, the general perception is that women are less deceptive and more transparent.⁵⁹ On the one hand, several past studies have found differences in women and men's ethical behavior, with studies of accounting students, health practitioners, and business students reporting women to be less

⁵¹ Robert Roy Britt, *The Undeniable, Unfair Advantages of Overconfidence*, STARTUP (May 31, 2019), <https://medium.com/swlh/the-undeniable-unfair-advantages-of-overconfidence-f501371f0633>.

⁵² CAROL GILLIGAN, IN *A DIFFERENT VOICE: PSYCHOLOGY THEORY AND WOMEN'S DEVELOPMENT* 24–63, 159–60 (1982).

⁵³ See Amy Cohen, *Gender: An (Un)Useful Category of Prescriptive Negotiation Analysis*, 13 TEX. J. WOMEN & L. 169, 170 (2003).

⁵⁴ *Id.* at 170.

⁵⁵ Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 50–58 (1985); see Cohen, *supra* note 53, at 170.

⁵⁶ Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1358 (1988); see Cohen, *supra* note 53, at 170.

⁵⁷ Linda Stamato, *Voice, Place, and Process: Research on Gender, Negotiation, and Conflict Resolution*, 9 MEDIATION Q. 375, 383 (1992); see Cohen, *supra* note 53, at 170–71.

⁵⁸ Kate McCabe, *A Forum for Women's Voices: Mediation Through a Feminist Jurisprudential Lens*, 21 N. ILL. U. L. REV. 459, 460 (2001); Cohen, *supra* note 53, at 170–71.

⁵⁹ Sean Valentine et al., *Gender and Ethics: Ethical Judgments, Ethical Intentions, and Altruism Among Healthcare Professionals*, 24 GENDER MGMT. 112, 114–16 (2009), <https://www.emerald.com/insight/content/doi/10.1108/17542410910938808/full/html>.

tolerant of unethical behavior.⁶⁰ On the other hand, studies also suggest that gender has no impact on ethical behavior.⁶¹

For their study on this issue, Art Hinshaw and Jess K. Alberts surveyed over 700 lawyers and quizzed them on whether they would agree to engage in fraudulent negotiations to settle cases in violation of Rule 4.1 of the Model Rules of Professional Conduct.⁶² They found no significant gender differences.⁶³ Based on their study, three important conclusions emerged: (i) several lawyers indicated their willingness to engage in a fraudulent negotiation scheme in violation of Rule 4.1 if they were “asked to do so by their client,” (ii) several lawyers were confused about the elements of Rule 4.1, and (iii) lawyers believed that violations of Rule 4.1 were widespread.⁶⁴ They found no differences based on gender suggesting that women behave more ethically than men.⁶⁵ In fact, their findings were surprising: while there was no difference between women and men’s willingness to participate in a fraudulent negotiation scheme, there was a difference with regard to a follow up question of a pure omission-based fraudulent negotiation strategy.⁶⁶ Men performed better than women in that regard.⁶⁷ Women were more likely to be a party to omission-based fraud.⁶⁸ Nonetheless, the authors cautioned against making gender-based conclusions about ethical differences between male and female attorneys on this point.⁶⁹ In their study, other factors, such as differences in the ability to decipher circumstantial ambiguity and professional experience were also at play.⁷⁰ Some studies designed to uncover gender differences use different ethical scenarios to compare women and men.⁷¹ In these studies, women outperform men overall, but men perform better in certain scenarios.⁷² It is possible that the Hinshaw and

⁶⁰ Elsie C. Ameen et al., *Gender Differences in Determining the Ethical Sensitivity of Future Accounting Professionals*, 15 J. BUS. ETHICS 591, 596 (1996); Michael Betz et al., *Gender Differences in Proclivity for Unethical Behavior*, 8 J. BUS. ETHICS 321, 324 (1989); Durwood Ruegger & Ernest W. King, *A Study of the Effect of Age and Gender upon Student Business Ethics*, 11 J. BUS. ETHICS 179, 181–82, 184–85 (1992); see also Valentine et al., *supra* note 59, at 114–16.

⁶¹ Donald Robin & Laurie Babin, *Making Sense of the Research on Gender and Ethics in Business: A Critical Analysis and Extension*, 7 J. BUS. ETHICS Q. 61, 71 (1997); Andrew Sikula, Sr. & Adelmiro D. Costa, *Are Women More Ethical than Men?*, 13 J. BUS. ETHICS 859, 869 (1994).

⁶² Hinshaw & Alberts, *supra* note 6, at 147–48.

⁶³ *Id.* at 148.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 148–49.

⁶⁸ *Id.*

⁶⁹ *Id.* at 147.

⁷⁰ *Id.* at 182.

⁷¹ *Id.* at 149; William A. Weeks et al., *The Effects of Gender and Career Stage on Ethical Judgment*, 20 J. BUS. ETHICS 301, 307 (1999).

⁷² Hinshaw & Alberts, *supra* note 6, at 149; Weeks et al., *supra* note 71, at 307.

Alberts's study fell within those scenarios where men outperform women on the ethical front.⁷³

Thus, the emerging picture on women's ethics and their interactions with negotiations is complex and context specific. The research does not suggest that a female lawyer's ethical choice or lack thereof during negotiations is based solely on their gender identity independent of context or other factors.⁷⁴

vii. Cultural Settings and Peacebuilding

Having examined factors affecting American women's negotiation performance, given global interconnectivity and globalization, it is also relevant to examine cross-cultural factors. In their work on gender in cross-cultural negotiation settings, Professors Andrea Kupfer Schneider, Sanda Cheldelin and Deborah Kolb noted that gendered perceptions of likeability and competence in negotiations interact with several multidimensional factors.⁷⁵ Depending on the cultural setting, a woman's religion, family background, relative social power and status become relevant to studying the gender's impact on negotiations.⁷⁶ In some contexts for instance, it is not useful to speak of a woman's Best Alternative to Negotiated Agreement (BATNA).⁷⁷ For example, in Ethiopia, women who reported that they had attained the best scientific jobs available to them said they had nothing left to negotiate.⁷⁸ In post-conflict Liberia and Bosnia, women consider themselves extremely fortunate to have a job at all.⁷⁹ For these women, talking about negotiating salaries or benefits was not a realistic option.⁸⁰

Nonetheless, this does not mean that a woman's role in cross-cultural negotiations is necessarily always circumscribed or unduly fettered. In conflict and post-conflict societies, women's role in peacebuilding negotiations makes peace 35% more likely to last at least fifteen years.⁸¹ In Syria, for instance, women have played a key role in peacebuilding negotiations.⁸² They have negotiated ceasefires, secured

⁷³ Hinshaw & Alberts, *supra* note 6, at 149.

⁷⁴ *See id.*

⁷⁵ Andrea Kupfer Schneider, Sanda Cheldelin & Deborah Kolb, *What Travels: Teaching Gender in Cross Cultural Negotiation Classrooms*, 31 *HAMLIN J. PUB. L. & POL'Y* 531, 545 (2010).

⁷⁶ *Id.* at 532–33.

⁷⁷ *Id.* at 533.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Women's Participation in Peace Processes*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/interactive/interactive/womens-participation-in-peace-processes#Introduction> (last visited May 5, 2020).

⁸² *See Syria Case Study*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/interactive/interactive/womens-participation-in-peace-processes/explore-the-data> (last visited May 5, 2020).

the release of prisoners and documented human rights violations.⁸³ In Afghanistan, women have been critical in brokering local deals.⁸⁴ Females on provincial peace councils have negotiated directly with resistance leaders to support the reintegration of Taliban fighters into local communities, encouraged resistance leaders to participate in peace talks and helped with the release of hostages.⁸⁵ They have also worked in schools and local organizations to counteract extremist narratives.⁸⁶ In Northern Sindh, Pakistan, women play a key role in ending conflict and peacebuilding.⁸⁷ At the end of *quami jhera* or clan conflict, typically those involving competing honor claims, women's peace caravans—*mair minth kafla*—help seal peace negotiations and secure the deal.⁸⁸ In these contexts, women's role in ending wars that men start is critical.

Women's collaborative and relational approach to negotiations makes them particularly useful for peacebuilding negotiations.⁸⁹ Research suggests that their approach takes into account the concerns of diverse interest groups – religious, ethnic, sectarian – and adopts an inclusive, collaborative problem-solving perspective.⁹⁰ Research shows that women's participation in peacebuilding negotiations reduces the chances of future conflict and instability.⁹¹ In UN-led negotiations on Syria, a woman's advisory board was able to successfully work across political divides to build consensus on issues critical to mitigating future conflict.⁹²

In the specific context of peace negotiations, women's participation and ability

⁸³ *Id.*

⁸⁴ *Afghanistan Case Study*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/interactive/interactive/womens-participation-in-peace-processes/explore-the-data> (last visited May 5, 2020).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ NAFISA SHAH, HONOUR AND VIOLENCE: GENDER, POWER AND LAW IN SOUTHERN PAKISTAN (2016). Nafisa Shah, *Honor Violence, Law and Power: A Study of Karo-Kari in Upper Sindh* 154–155 (2010) (PhD dissertation, University of Oxford) (on file with author) (noting “*Mairh* are of several kinds. The most powerful is that centred on women who carry Qurans on their heads and who walk in large numbers, along with little girls, begging forgiveness. This *mairh* is sent to an opponent . . . the sending of women who embody the honour of a family or tribe is to make the other side agree to a settlement . . . *Mairh* continues to play a role in peace-making even after the settlement is announced. Often, when the settlement does not suit one side, that side will sulk, and then a *mairh* by women and girls is used to make them agree to the decisions of the elders.”). See also Morial Shah, *Karo-Kari: Crime and Justice* 28–29 (2014) (unpublished dissertation, University of Cambridge) (on file with author).

⁸⁸ SHAH, *supra* note 87.

⁸⁹ *Women's Participation in Peace Processes*, *supra* note 81 (“Women often take a collaborative approach to peacemaking and organize across cultural and sectarian divides. Research suggests that such an approach—which incorporates the concerns of diverse demographics (e.g., religious, ethnic, and cultural groups) affected by a conflict and with an interest in its resolution—increases the prospects of long-term stability and reduces the likelihood of state failure, conflict onset, and poverty.”).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Syria Case Study*, *supra* note 82.

to deploy collaborative approaches improves prospects for long term stability.⁹³ Here, gender differences do impact negotiation processes and outcomes, with women's participation improving the sustainability and viability of any negotiated peace outcome.⁹⁴

PART II. WOMEN'S SENSE OF SELF: UNDER CONFIDENCE?

Along with general gender stereotypes, it is important to explore at length women's sense of self. In their research on this topic, Professors Farber and Rickenberg note the disconnect between their perception of students' success and students' own perception of their performance.⁹⁵ Their most self-deprecating students predominantly consisted of female law students.⁹⁶ The self-confident group, oblivious sometimes to large errors and shortcomings, mostly consisted of male law students.⁹⁷

Members of both groups risked their long-term professional development.⁹⁸ Some women in the self-deprecating group were convinced of their unchangeable shortcomings and saw little chances of improvement.⁹⁹ Fear of failure could prevent these women from engaging in certain kinds of work and exploring opportunities to grow.¹⁰⁰ The overtly confident group on the other hand, failed to self-reflect on its faults and improve.¹⁰¹ The implications of this research are important for this article's overall goal of studying women's voices in negotiations. To the extent that women find themselves unnecessarily constrained by their overly critical view of themselves, they may limit their ability to engage in hard conversations and achieve optimal gains.

A. *The Exercise*

⁹³ *Women's Participation in Peace Processes: Why it Matters*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/interactive/interactive/womens-participation-in-peace-processes/why-it-matters> (last visited May 2, 2020).

⁹⁴ *Id.*

⁹⁵ Sandra R. Farber & Monica Rickenberg, *Under-Confident Women and Over-Confident Men: Gender and Sense of Competence in a Simulated Negotiation*, 11 *YALE J.L. & FEMINISM* 271, 272 (1999).

⁹⁶ *Id.*

⁹⁷ *Id.* at 272–73.

⁹⁸ *Id.* at 273.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 274.

Professors Farber and Rickenberg hypothesized that women would report a relatively reduced sense of competence as a consequence of their negotiation exercise.¹⁰² Their negotiation problem required working with numbers to estimate the costs of repair, the pool's loss in value, the contractor's loss of revenue, etc.¹⁰³ Since math tends to be strongly associated with masculine subject matter, they expected women to emerging feeling less certain of their competence.¹⁰⁴ The exercise was structured such that students were likely to bluff and withhold information, making it even more strongly associated with stereotypical masculine skills.¹⁰⁵

B. Findings

Women emerged from the exercise feeling less confident about their competence than their male counterparts in some areas.¹⁰⁶ Students were asked to review and rate themselves on eight abilities.¹⁰⁷ Women generally rated themselves lower than men.¹⁰⁸ Men rated themselves higher on stereotypically masculine abilities such as bluffing and working with numbers, while no gender differences emerged in ratings on stereotypically feminine abilities such as listening and building rapport.¹⁰⁹ Nonetheless, gender gaps in students' rating of themselves did not correspond with any differences in their achievements.¹¹⁰ Women and men achieved similar negotiation outcomes.¹¹¹

Their data also indicated that students perceived counterparts of their own gender as fairer and more competent.¹¹² Their findings are consistent with research suggesting that people self-aggregate with members of their own gender from an early age.¹¹³ For negotiation settings, this raises an interesting set of implications. Negotiators dealing with members of the opposite gender must be self-aware of any inherent or automatic mistrust coloring their interactions.

¹⁰² *Id.* at 284.

¹⁰³ *Id.*

¹⁰⁴ *Id.* Larry V. Hedges & Amy Nowell, *Sex Differences In Mental Test Scores Variability and Numbers of High Scoring Individuals*, 269 *SCIENCE* 41, 44 (1995) (quoting evidence suggesting that girls' performance on math tests is severely inhibited by the stereotype that "girls can't do math"). Carol Nagy Jacklin, *Female and Male: Issues of Gender*, 44 *AM. PSYCHOLOGIST* 127, 128 (1989).

¹⁰⁵ See Sandra Bem, *The Measurement of Psychological Androgyny*, 42 *J. CONSULTING & CLINICAL PSYCHOL.* 155, 156 (1974).

¹⁰⁶ Farber & Rickenberg, *supra* note 95, at 283.

¹⁰⁷ *Id.* at 288.

¹⁰⁸ *Id.* at 291.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 292.

¹¹¹ *Id.*

¹¹² *Id.* at 301.

¹¹³ *Id.*

Overall, Farber and Rickenberg's work suggested that although gender was not sufficient for revealing large differences in outcomes and attitudes, it was "implicated in social behavior."¹¹⁴ Without specifically breaking down results and viewing them from a gendered lens, we miss gender's impact on negotiation.¹¹⁵

Their work also suggested that specifically training students to be more aware of gender differences and develop feminine traits of listening and collaborating helps change gendered perceptions of performance.¹¹⁶ The next section examines the role of formal training at greater length.

PART III. IS FORMAL TRAINING THE ANSWER?

With concerns emerging about men and women's different perceived competences on traditionally male and female subject areas, it is worth examining whether formal training can reduce some of those differences. This section examines studies on the differences in male and female competences and the effects of formal training.

In 2009, Professors Russell Korobkin and Joseph Doherty suggested that male law students obtained better bargaining results than their female counterparts.¹¹⁷ First-year law students at UCLA and USC participated in an exercise concerning an employment claim.¹¹⁸ A former employee claimed that he was wrongfully terminated because of age-based discrimination and sued his employer for compensation.¹¹⁹ The students participating in this exercise had no formal negotiation or bargaining training.¹²⁰ The study found that male students set higher targets, did a better job of finding their counterparts' reservation values, and obtained significantly better results than female students.¹²¹ The gender disparity in these outcomes is a worrying sign.

In *Women Don't Ask: Negotiation and the Gender Divide*, Linda Babcock and Sara Laschever presented the stunning results of a study.¹²² Among recent graduates of Carnegie Mellon Business School, fifty-seven percent negotiated their starting salaries, but only seven percent of women did so.¹²³ The emerging difference in

¹¹⁴ *Id.* at 303.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 302.

¹¹⁷ Russell Korobkin & Joseph Doherty, *Who Wins in Settlement Negotiations?*, 11 AM. L. ECON. REV. 162, 184 (2009); see also Craver, *supra* note 18, at 1–2.

¹¹⁸ Craver, *supra* note 18, at 2.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Korobkin & Doherty, *supra* note 117, at 189–92; see also Craver, *supra* note 18, at 2.

¹²² See generally LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* (2003).

¹²³ Craver, *supra* note 18, at 3.

starting salaries between women and their male counterparts was around \$4000.¹²⁴ Professor Babcock repeated the study on students from the Class of 2005.¹²⁵ These students were specifically trained on bargaining skills.¹²⁶ Among those students, sixty-eight percent of females negotiated their starting salaries, and sixty-five percent of males negotiated their starting salaries.¹²⁷ This helped reduced gender-based difference in starting salaries.¹²⁸ Their results suggest that formal training reduces gender-based negotiation differences.¹²⁹

In his study, Professor Craver expected to find similar results.¹³⁰ For his Fall 2015 Legal Negotiation class, Professor Craver began by testing his hypothesis.¹³¹ His students had no previous formal negotiation training.¹³² He gave them a distributive exercise solely concerned with compensation.¹³³ The exercise was about a car accident.¹³⁴ Students had to negotiate over the amount of compensation that the Defendant would supply to the Plaintiff for the Plaintiff's injuries.¹³⁵ The Plaintiff had suffered a broken back and was paralyzed her from waist down.¹³⁶ This cost her around \$250,000 in medical expenses and lost earnings, but she was able to return to her legal work after she recovered.¹³⁷ The Plaintiff's representatives were tasked with obtaining as much compensation as they could obtain.¹³⁸ The Defendant's representatives were told that failure to reach an agreement would be akin to a \$2 million trial judgment against them.¹³⁹

Students paired up with students of the opposite sex for this exercise.¹⁴⁰ On average, men who represented the Plaintiff won \$1,204,166.67 in compensation, while women achieved \$951,818.18.¹⁴¹ With regard to the Defendant, men who represented the Defendant achieved a result of \$969,285.71, while women on average achieved a result of \$1,261,111.11.¹⁴² For men, the average placement score

¹²⁴ *Id.*

¹²⁵ BABCOCK & LASCHEVER, *supra* note 50.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Craver, *supra* note 18, at 3.

¹³¹ *Id.* at 15.

¹³² *Id.* at 2.

¹³³ *Id.* at 15.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

was 13.885; for women, it was 9.550.¹⁴³ On a t-test, a statistically clear gender-based difference emerged at 0.0274 level of significance.¹⁴⁴ Professor Craver's findings were in line with Professors Korobkin and Doherty's study: For single exercises among untrained students, gender played a role in creating different outcomes.¹⁴⁵

Professor Craver explained that in first class exercises, students tend to think that they are representing themselves, not their clients.¹⁴⁶ When women and men negotiate for themselves, men tend to obtain better results than women.¹⁴⁷ Throughout the semester, Professor Craver made his students better understand that they were representing others, not themselves.¹⁴⁸ He suggested that female students negotiating their first salaries should try "out-of-body" strategies and think that they are negotiating for their friends, not themselves.¹⁴⁹

Nonetheless, despite formal training, readings, exercises, and class discussions, Professor Craver again found male-female differences subsequently as well.¹⁵⁰ Men achieved more of the above average bargaining results, while women achieved below average results.¹⁵¹ Through students' feedback, three factors appeared saliently descriptive: First, male students set higher targets and more beneficial terms for themselves.¹⁵² Second, female students suggested that male students deployed "adversarial tactics" against them, or at least what they perceived as adversarial tactics.¹⁵³ Third, females were more concerned about the possibility of non-settlements, so they made bigger concessions than their counterparts when the deadlines were closer.¹⁵⁴

Professor Craver found his conviction that "formal training always eliminates gender-based negotiation differences" undermined.¹⁵⁵ He was particularly surprised to find that gender-based differences were significantly higher on graded exercises than they were on the initial practice exercise.¹⁵⁶ He suggested that males tend to

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 15–16.

¹⁴⁶ *Id.* at 16.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*; Emily T. Amanatullah and Michael W. Morris, *Negotiating Gender Roles: Gender Differences in Assertive Negotiating are Mediated by Women's Fear of Backlash and Attenuated When Negotiation on Behalf of Others*, 98 J. PERSONALITY & SOC. PSYCHOL. 256, 258 (2010); Deborah M. Kolb, *Too Bad for the Woman or Does It Have to Be? Gender and Negotiation Research Over the Past Twenty-Five Years*, 25 NEGOT. J. 515, 521–22 (2009).

¹⁴⁹ Craver, *supra* note 18, at 16.

¹⁵⁰ *Id.* at 17.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 18.

¹⁵⁵ *Id.* at 17.

¹⁵⁶ *Id.*

become more competitive towards their female counterparts, while females do not necessarily become more competitive.¹⁵⁷ He also posited that the job market and general competitiveness of the legal sphere may contribute to this phenomenon.¹⁵⁸ With few legal jobs and high student loans, male law students—who have a tendency to be more competitive than female law students—may be incentivized to capitalize on their competitive streak to achieve better course grades.¹⁵⁹

Overall, Professor Craver noted that formal training should usually diminish gender-based differences and make men's and women's results statistically insignificant.¹⁶⁰ For his class, men were taught to appreciate feminine traits such as maintaining a good relationship, maximizing joint results, and recognizing nonverbal leaks and signals.¹⁶¹ Women were taught to use stereotypically masculine traits including the ability to use manipulative tactics and not fearing non-settlements.¹⁶² They were also taught to bargain for their clients, not themselves. Both genders were taught to be aware of feminine and masculine traits that could undermine their negotiations.¹⁶³ Students of both genders were taught to think in terms of creating win-win outcomes.¹⁶⁴

Despite formal training, gender differences seemed to persist. Professor Carver found that when male class members continue to be overly competitive during the term, and their female classmates do not learn to be more effective at handling competitive behavior, gender-based differences in outcomes persist.¹⁶⁵ In order to avoid these differences, Professor Craver suggests that Legal Negotiation classes should focus on male and female traits to better equip students and reduce gender-based differences.¹⁶⁶

ANALYSIS AND CONCLUSION

The studies examined in the last two sections create a seemingly divergent picture. While Professor Craver finds significant gender-based differences in negotiated outcomes before and after training,¹⁶⁷ Professors Faber and Rickenberg find no gender-based differences in negotiated outcomes.¹⁶⁸ Issues of identity and

¹⁵⁷ *Id.* at 9.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 17–18, 21.

¹⁶⁰ *Id.* at 17.

¹⁶¹ *Id.* at 18.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 19.

¹⁶⁵ *Id.* at 17.

¹⁶⁶ *Id.* at 18–21.

¹⁶⁷ *Id.* at 17–18.

¹⁶⁸ Farber & Rickenberg, *supra* note 95, at 293.

gender norms referenced in the first section explain the context and sociocultural factors underlying our understanding of gender's impact on negotiations.

From Professor Craver's study, it appears that formal training is insufficient for reducing gender differences in negotiation outcomes.¹⁶⁹ Professors Farber and Rickenberg, who found no gender-based differences in negotiation outcomes, find that formal training of the right kind reduces the gap in gendered perceptions of competence.¹⁷⁰ Their results suggested that teaching students more traditionally feminine collaborative traits through the specially designed Workways project could reduce differences in women's and men's perceived sense of competence.¹⁷¹

Professor Farber and Rickenberg's study involved a students' section trained using Workways – a formal training program aimed at reducing alienation felt by certain groups such as women.¹⁷² Their study found that Workways may have started addressing negotiation disparities related to gender-based perceptions of competence.¹⁷³ Women in their Workways section ranked their abilities higher than women in non-Workways section.¹⁷⁴ There was also evidence of some relatively lower self-assessments from men in Workways sections compared with men from non-Workways sections.¹⁷⁵ Their findings suggest that formal training through Workways may have helped students build more 'realistic' self-identities.¹⁷⁶ Nonetheless, students' gendered assessments of their abilities, across Workways and non-Workways groups, did not impact negotiated outcomes.¹⁷⁷

It is important to note that Professor Craver's and Professors Farber and Rickenberg's seemingly divergent findings are based on studies that are different in their aims, scopes and methodologies. Unlike Professor Craver, Professors Farber and Rickenberg mainly focused on the gendered mismatch between perceptions and success.¹⁷⁸ Their research questioned whether (i) women emerged from negotiations feeling less competent than men, (ii) Workways teaching methodologies countered gender-based differences in sense of competence, and (iii) men outperformed women.¹⁷⁹ They hypothesized and found that women emerged from their negotiation exercise feeling less competent than men.¹⁸⁰ Simultaneously, they hypothesized and

¹⁶⁹ Craver, *supra* note 18, at 2–3.

¹⁷⁰ Farber & Rickenberg, *supra* note 95, at 288.

¹⁷¹ *Id.* at 293.

¹⁷² *Id.* at 274, 280.

¹⁷³ *Id.* at 302.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 283–288.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 284, 291.

found that the Workways program narrowed the gender gap in ability ratings.¹⁸¹ On the gender-based performance front, since “there was no structural gender-based power imbalance” in their controlled experiment, they did not expect to find gender-based differences in the negotiated outcomes.¹⁸² Accordingly, no such differences emerged.¹⁸³

Professors Faber and Rickenberg recommended further study on teaching methodologies emphasizing “strategic, narrative, interpersonal and ethical concerns,” in traditional law classrooms.¹⁸⁴ They also emphasized that gender’s effects may sometimes be obscured when “behavior is summed across all categories of social partners.”¹⁸⁵ Other contextual factors, including the gender of students’ negotiation partner and the party represented, impact students’ negotiation experiences and remain important areas of inquiry.¹⁸⁶

Although their work contends that formal training can play a role in reducing gender-based differences in *perception*,¹⁸⁷ it does not specifically and fully counteract Professor Craver’s finding that gender-based differences remained significant even with formal training.¹⁸⁸ Even for women’s perception of self-competence, they suggest that formal training programs such as Workways “may have begun to address gender-based disparities.”¹⁸⁹ For differences in outcome, although Professor Faber and Rickenberg’s study found no differences, we must note that their experiment involved a controlled setting featuring a single negotiation.¹⁹⁰

Professor Craver’s study, by contrast, analyzed students’ results before any formal training as well as results from six negotiation exercises conducted in the second half of the semester, after students received formal training.¹⁹¹ Results for the first exercise and exercises conducted in the second half of the semester showed statistically significant gender-based differences.¹⁹² Professor Craver was surprised with his results since his prior study suggested no statistically significant difference on graded negotiation exercises between male and female students.¹⁹³ Unlike Professors Faber and Rickenberg, Professor Craver did not control for other

¹⁸¹ *Id.* at 289, 294, 302.

¹⁸² *Id.* at 289.

¹⁸³ *Id.* at 292, 302.

¹⁸⁴ *Id.* at 303.

¹⁸⁵ *Id.* (quoting Eleanor Maccoby, *Gender and Relationships: A Developmental Account*, 45 AM. PSYCHOLOGIST 513 (1990)).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 289–291.

¹⁸⁸ Craver, *supra* note 18, at 17.

¹⁸⁹ Farber & Rickenberg, *supra* note 95, at 302.

¹⁹⁰ *Id.*

¹⁹¹ Charles Craver, *supra* note 18, at 2, 8.

¹⁹² *Id.* at 17.

¹⁹³ *Id.*

structural or contextual factors that would have introduced gender-based power imbalances into his framework.¹⁹⁴ It is also unclear whether Professor Craver's formal training was substantially similar to the Workways training program. Professor Craver observed that formal training generally reduces gender based differences, but found that differences may persist despite training when male students continue to be overly competitive and women don't learn to counteract such behavior.¹⁹⁵ The issue of whether formal training necessarily reduces gender-based differences in negotiated outcomes merits greater examination. Further study exploring gender, context and types of formal training is needed.

From Part I, it appears that gender-based negotiation differences are not immutable and some cultural factors or gender-based stereotypes may color women's participation in negotiations.¹⁹⁶ Much of traditional negotiations literature concerns itself with identifying women's weakness at the negotiation table and takes on the project of better equipping women for negotiations.¹⁹⁷ In doing so, it risks essentializing and generalizing gender-based differences.¹⁹⁸ Some scholars critique a "dualist" worldview based on gender¹⁹⁹ or suggest that inquiry into gender differences risks reinforcing gender-based stereotypes.²⁰⁰ Other scholars argue that gender cannot be used for "prescriptive negotiation analysis," explaining that using gender "obscures the complexity of human performance" and prevents "recognitions of structural inequality."²⁰¹

Critiques of using gender as a prism may be countered using psychological literature. Earlier psychological research on gender's role in negotiation viewed gender as a personality trait or personality type.²⁰² Later, Professors Kray and Thompson theorized that stereotypes were responsible for gender effects in

¹⁹⁴ See generally *id.*

¹⁹⁵ *Id.* at 21.

¹⁹⁶ AMARTYA SEN, *supra* note 2. See also Julia Johnson, *supra* note 12, at 139, 144–145, 148–149 (describing cultural norms that can be obstacles to women's negotiation participation and later, explaining strategies women can use to reduce the impact of those obstacles).

¹⁹⁷ Cohen, *supra* note 53, at 169.

¹⁹⁸ Wendy Brown, *Constitutions and "Survivor Stories": In the "Folds of Our Own Discourse" the Pleasures and Freedoms of Silence*, 3 U. CHI. L. SCH. ROUNDTABLE 185 (1996) (contending that "even as feminism aims to affirm diversity among women and women's experiences... (it) tends to reinstate a unified discourse in which the story of greatest suffering becomes the true story of woman"). Naomi R. Cahn, *Theoretics of Practice: The Integration of Progressive Thought and Action: Styles of Lawyering*, 43 HASTINGS L.J. 1039, 1050–54 (1992) (outlining the "problem of essentialism" and the "problem of research" in describing a "female style of lawyering"). Amy Cohen, *supra* note 53, at 171.

¹⁹⁹ Deborah L. Rhode, *The 'No-Problem' Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1786 (1991) (stating "any dualistic world view is likely to be appropriated for nonfeminist objectives").

²⁰⁰ Linda Stamato, *Voice, Place, and Process: Research on Gender, Negotiation, and Conflict Resolution*, 9 MEDIATION Q. 376 (1992).

²⁰¹ Cohen, *supra* note 53, at 173.

²⁰² RUBIN & BROWN, *supra* note 32.

negotiation.²⁰³ Their work, drawing on extensive empirical evidence and psychological theory, argued for a situational approach to gender in negotiation.²⁰⁴ They called for greater investigation into the way gender stereotypes influence negotiation performance.²⁰⁵ They also disfavored approaches viewing gender as a personality trait.²⁰⁶ From their work on the issue, Part I's investigation of the cultural factors and gender stereotypes, and legal negotiation experiments examined in Parts II and III, it appears that gender stereotypes and contextual factors are at play during negotiations.

The emerging picture suggests that a feminine 'ethic' or gender stereotypes may color negotiations in fluid and flexible ways. Negotiators may differentially assume gendered roles or stereotypes.²⁰⁷ Stereotypes about gender and negotiation are fluid and can be manipulated.²⁰⁸ Individuals' multiple, intersecting identity memberships afford different context-specific experiences during negotiations.²⁰⁹ Some women's collaborative approach, relational tendency, morality or aversion to competitive behavior does not necessarily make them less competent negotiators.²¹⁰ By competence, I do not merely refer to competence in negotiation as a lawyering skill.²¹¹ I refer to lawyers' and non-lawyers' competence as experienced, related and measured (i) during negotiation processes and (ii) through negotiation outcomes. Many, if not most, negotiations can be thought of in non-zero sum, value maximizing ways.²¹² Depending on the context, particularly where negotiations do not concern salary or purely distributive matters, relational and collaborative tendencies

²⁰³ Laura J. Kray & Leigh Thompson, *Gender Stereotypes and Negotiation Performance: An Examination of Theory and Research*, 26 RESEARCH ORGANIZATIONAL BEHAV. 103 (2004).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Kay Deaux & Brenda Major, *A Social-Psychological Model of Gender*, in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE 89 (Deborah L. Rhode ed., 1990). Robin Ely & Irene Padavic, *A Feminist Analysis of Organizational Research on Sex Differences*, 32 ACAD. MGMT. REV. 1121-43 (2007). See also Schneider et al., *supra* note 75, at 540.

²⁰⁸ Laura Kray et al., *supra* note 37, at 949 (2001); Laura Kray, Adam Galinsky & Leigh Thompson, *Reversing the Gender Gap in Negotiations: An Exploration of Stereotype Regeneration*, 87 ORG. BEHAV. & HUM. DECISION PROCESSES 386 (2002). Susan W. Coleman & Dorothy E. Weaver, *Women and Negotiation: Tips from the Field*, 18 DISP. RESOL. MAG. 12, 15 (2012).

²⁰⁹ Schneider et al, *supra* note 75, at 540 (2010).

²¹⁰ Laura J. Kray & Jessica A. Kennedy, *Changing the Narrative: Women as Negotiators—and Leaders*, CAL. MGMT. REV. 71 (2017) (observing “while men and women currently exhibit slightly different negotiating styles (with substantial agreement in styles as well), patriarchal assumptions about masculine superiority obscure some of the ways in which stereotypically feminine strengths are essential to effective negotiation. . . .”). See also *Women's Participation in Peace Processes*, *supra* note 81.

²¹¹ Maureen F. Fitzgerald, *Competence Revisited: A Summary of Research on Lawyer Competence*, 13 J. PROF. LEGAL EDUC. 227, 247 (1995) (emphasizing that all research found “practical skills as opposed to the black letter law or substantive law most important to a lawyer's competency. . . .”).

²¹² MNOOKIN ET AL., BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES 42-43 (2004).

stereotypically associated with women may help women negotiators.

Consider political and peacebuilding negotiations examined in Part I. Statistical analysis of women's participation in peace agreement negotiations suggests that women's participation as "negotiators, mediators, witnesses and signatories" has a positive impact.²¹³ Scholars find a robust relationship between women's participation in peace agreements and peace durability.²¹⁴ Specifically, they find that women's participation in "peace negotiations with voice and influence leads to better accord content, higher agreement implementation rates, and longer lasting peace."²¹⁵ According to the Council on Foreign Relations, women's collaborative approach is implicated in their success as peacebuilders.²¹⁶

Other more distributive negotiation contexts may require women to be competitive or better handle competitive behavior.²¹⁷ Women negotiators should seek to have greater awareness of gender stereotypes, build their individual strengths, identify their individual weaknesses, and better understand contextual factors interacting with gender during negotiations.²¹⁸

The research on gender's impact on negotiation does not conclude that women are competent or incompetent negotiators.²¹⁹ It merely suggests that some women may be different negotiators depending on the context.²²⁰ Research suggests that

²¹³ Marie O'Reilly, Andrea Ó Súilleabháin & Thania Paffenholz, *Reimagining Peacemaking: Women's Roles in Peace Processes*, INT'L PEACE INST. 12 (2015), <https://www.ipinst.org/wp-content/uploads/2015/06/IPI-E-pub-Reimagining-Peacemaking.pdf> (last visited May 5, 2020) (quoting the unpublished work of Laurel Stone, research associate for policy studies at University of Notre Dame's Kroc Institute for International Peace Studies, with methodology included in Annex II).

²¹⁴ Jana Krause, Werner Krause & Piia Bränfors, *Women's Participation in Peace Negotiations and the Durability of Peace*, 44 INT'L INTERACTIONS 985, 1005 (2018).

²¹⁵ *Id.*

²¹⁶ *Women's Participation in Peace Processes: Why it Matters*, *supra* note 93.

²¹⁷ Coleman & Weaver, *supra* note 208, at 15 (suggesting that "Women should also become proficient with the complete range of negotiation skills—competitive to collaborative—and apply the right tool for the right situation. . . ."). See also Charles Craver, *supra* note 18, at 21 (referring to the need for women to learn to effectively counter competitive behavior in negotiations).

²¹⁸ Coleman & Weaver, *supra* note 208, at 15–18 (suggesting that women commit to lifelong learning, prepare for distributive or competitive negotiations, build awareness of their "own cultural or gendered lens," and believe they are worthy, letting go of any constraints imposed by "unladylike behavior. . . ."). Julia Johnson, *supra* note 12, at 148–150, 151 (advocating that women use awareness of gender stereotypes and cultural norms to their benefit in salary negotiations).

²¹⁹ Craver, *supra* note 29, at 359 (concluding that his data contradicts the validity of stereotypical beliefs about men being better negotiators). See also Coleman & Weaver, *supra* note 208, at 13 (noting how studies examined whether men or women were better at winning negotiations and those studies remained inconclusive or contradictory).

²²⁰ Charles B. Craver, *supra* note 29, at 359 (acknowledging that "male and female differences may continue to exist," but they do not always influence the results of bargaining interactions). See also Coleman & Weaver, *supra* note 208, at 13 (summing research suggesting that individuals 'construct' their understanding based on the context and individual backgrounds). In this constructivist view, gender is not a fixed notion. *Id.* See also Schneider et al., *supra* note 75 at 540–42, 548 (explaining intersectionality and suggesting that faculty explore a

context is critical for both men and women.²²¹ Context may include factors such as relative power, environment, shared interests, prior relationship between participants and other issues.²²² Relatedly, studies also find that negotiation styles should be suited to contexts. For instance, in salary negotiations, research suggests that women avoid competing or underperform.²²³ Women can bring awareness of that gender stereotype to avoid conforming with it during salary negotiations.²²⁴ With insight about gender stereotypes and contexts, women may be able to learn to use their gender identity to their best advantage at the negotiating table. Further research in this area should continue exploring the role of formal training in helping individual women better navigate gender stereotypes and contexts.

wide variety of issues around gender to provide a “richer context for gender as it plays out in negotiations. . . .”).

²²¹ Coleman & Weaver, *supra* note 208, at 18–19. *See also* Gerard Callagan & David Perri, *Teaching Conflict Management Using a Scenario-Based Approach*, 81 J. ED. BUS. 131 (2006).

²²² Coleman & Weaver, *supra* note 208, at 18–19.

²²³ Julia Johnson, *supra* note 12, 132–133. Coleman & Weaver, *supra* note 208, at 19.

²²⁴ Coleman & Weaver, *supra* note 208, at 19.