

2006

## Building the Emotionally Learned Negotiator

Erin Ryan

---

### Repository Citation

Ryan, Erin, "Building the Emotionally Learned Negotiator" (2006). *Faculty Publications*. 1130.  
<https://scholarship.law.wm.edu/facpubs/1130>

Copyright c 2006 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.  
<https://scholarship.law.wm.edu/facpubs>

---

# *Review Essays*

## Building the Emotionally Learned Negotiator

*Erin Ryan*

**Fisher, Roger and Daniel Shapiro.** *Beyond Reason: Using Emotions as You Negotiate.* New York: Viking, 2005. 246 pages. \$25.95 (hardcover), ISBN: 0670034509.

**Ladd, Peter D.** *Mediation, Conciliation and Emotion: A Practitioner's Guide for Understanding Emotions in Dispute Resolution.* Lanham, MD: University Press of America, 2005. 276 pages. \$35.00 (paperback), ISBN: 076183284X.

**Smith, Lacey T.** *Get it! Street-smart Negotiation at Work: How Emotions Get You What You Want.* Mountain View, CA: Davies-Black Publishing, 2005. 173 pages. \$18.95 (paperback), ISBN: 0891062076.

### **Swimming in the Sea of Emotion**

Emotion is the ether of human experience. We can scarcely contemplate a mathematical equation without reacting in some emotional way (e.g., *excited* that we might be able to solve it; *frustrated* that we might not; *embarrassed* that we can't even understand it; *hopeful* that someday we will), let alone such potentially traumatic events as the negotiation of child custody or the sale of a family business.

As emotion is the ether of human experience, so emotionality becomes the breathable air of human interaction, the swimmable water in which all forms of negotiation are wholly immersed. You are *hopeful* about a positive resolution, but *fearful* that you may be taken advantage of. They are *confident* in their bargaining leverage, and *sensitive* about rank. Perhaps you are all *uncomfortable* with the very negotiating enterprise, brewing a systemic *anxiety* that pervades the negotiation.

---

**Erin Ryan** teaches negotiation at the Marshall-Wythe School of Law, College of William and Mary, where she is an assistant professor of law. Her e-mail address is [erian@wm.edu](mailto:erian@wm.edu).

---

Indeed, the greatest psychological hurdle faced by many would-be negotiators is the sheer anxiety about how to successfully navigate the emotional obstacle course they anticipate in negotiating:

- “Will he be angry? Dealing with angry people makes me nervous.”
- “Will my eagerness give me away? I have a terrible poker face!”
- “What if I give in too quickly, if only to relieve that awful feeling of pressure?”
- “Will she make me feel small, *again*? How can I stand up for myself without derailing the deal?”
- “I’m worried I may lose my temper, especially if they push that button. . . .”

And once the negotiation gets underway, new emotions are aroused with each exchange:

- “Now they’re asking for *how much*?”
- “She seems to understand my concerns; I feel like I can trust her.”
- “Just who does he think he is, to take that tone with me?”
- “Uh-oh — I never considered *that* possibility . . .”
- “I hate this job.”

And if that is not enough to swamp the emotionally averse, the negotiation might also be permeated with a variety of feelings completely unrelated to the substantive issues at hand (“He kind of reminds me of my late father-in-law . . .”; “I’m hungry/tired/worried about my kids . . .”; “Will my girlfriend forgive me?”). How can anyone keep a substantive negotiation on track in the midst of all this swirling, reactive, and interactive emotionality?

## **The Missing Vocabulary of Emotion**

If the would-be negotiator feels bewildered, she has good reason. Most of us have not been given explicit training about how to manage ourselves in the face of emotional stress, let alone how to manage a professional interaction that depends on the emotional experiences of others. Indeed, we live in a culture only just now recovering from a prolonged societal disengagement from the ways that emotionality enables us to understand and navigate the human landscape. This societal disengagement was entrenched over the centuries by a philosophical legacy that marginalizes emotional concerns as antithetical to the most morally virtuous form of human endeavor, rational inquiry.

Humanity’s greatest thinkers have struggled to understand the role of emotions in our lives for more than three thousand years, and most taught

---

us to be wary. Plato and Aristotle famously sparred over the true relationship between emotional experience and reasoning. Plato argued that reason and emotion are diametrically oppositional aspects of human mental activity, while Aristotle suggested that emotions embody a form of reasoning within them. Western thought mostly sided with Plato, treating emotion as the bastard-stepchild of human experience: distastefully unpredictable, morally inferior to analytic reasoning, threatening to the very social order. Seminal philosophers from Descartes to Kant carried forward the dualistic opposition between reason, the exalted form of human cognition, and emotion, the baser, animalistic, feminine, more mystical, and less dependable aspect of our mental lives. Even the Buddha taught that emotional attachments drive human behavior into an endless cycle of suffering, and Freud taught that emotion (via the id) drives human behavior toward animal instinct.

We can thank the age of Cartesian rationalism for magnificent advances in science and technology, but it has been less conducive to our development of skills to cope with the emotional ether of human interaction. Adhering to the principles of dualistic opposition, scholars and leaders sought to cleanse emotion from the learned realms, to elevate the higher forms of human achievement from contamination by the lower forms of human inclination (Del Collins 2005). Display or acknowledgment of emotion became unseemly, and the appearance of emotional sterility became synonymous with “professionalism.”

Can any sphere of human endeavor truly be so cleansed of emotion? Not likely. But collective denial has proved a powerful enough detergent to purge the professional sphere of the vocabulary of emotions. Even now, attention to emotional skills is conspicuously absent from most professional training, and, as a result, from the skill-sets of many professionals (as anyone who has ever left a professional encounter feeling belittled, misunderstood, disrespected, or otherwise emotionally wounded can attest).

We might expect those who study negotiation to know better. Ours is among the professional disciplines most attuned to the complicated, interactive emotional dynamics that arise during dispute resolution, deal making, and problem solving. While the followers of Plato and Aristotle continue to spar over the philosophical nature of the emotions, negotiation theorists must seek out more functional ways of understanding emotion.

## **The Four Elements**

A functional theory of emotion in negotiation might be characterized as having four elements: emotion as (1) ether, (2) obstacle, (3) episteme, and (4) instrument. The first, which we have already visited, is the poetic notion of emotion as the “swimmable water” in which human interaction unfolds, or

---

1. *the “ether” of human experience.*

To cast emotion *as ether* is to understand the inevitability of emotional impacts on negotiated exchange, and to acknowledge the naturalness of this state of affairs. This is an important lesson, and a good point from which to start our analysis — but the definition it yields is vague. How can a negotiator understand emotion in even more functional terms?

In moments of frustration, the trained negotiator might argue that emotion is better understood according to the second element, as an obstacle, or perhaps:

2. *that which obstructs the mechanical application of established negotiating techniques.*

Such frustration is understandable; unanticipated emotional responses can certainly derail the work of an otherwise precise formula, and it is for this reason that emotion *as obstacle* may prove the most popular conception of emotion in negotiation. But negotiators must not dismiss the importance of emotionality in a negotiation by characterizing it as a mere system error. If emotionality is the “swimmable water” of human interaction, knowing how to pedal one’s arms on dry land is less helpful once immersed in the fluid dynamics of the negotiation. An approach to negotiation that fails to take purposeful account of the roiling tides of emotionality is of inherently limited value.

The more sophisticated negotiator recognizes emotionality not only as ether, not only as obstacle, but also as a means for better understanding herself, the people she deals with, and a good deal else about the world. This negotiator understands emotion in the third element’s terms as:

3. *the medium of insight by which we consult our own interests and to hypothesize about the interests and actions of others*

— that is to say, she understands emotion *as episteme*, a vehicle of knowing, a device of epistemology. In forming the beliefs that underlie choices made during a negotiation, parties regularly rely on insights and intuition informed by a steady stream of emotional data. In an article for the *Harvard Negotiation Law Review* entitled “The Discourse Beneath: Emotional Epistemology in Legal Deliberation and Negotiation” (Ryan 2005), I argue that emotional input fuels a quasi-inductive reasoning process that enables us to draw on stored information about emotional phenomena to effectively hypothesize about motives, behavior, and the potential consequences of available choices. Negotiators draw on this epistemological emotionality in private deliberation and also in the shared,

---

iterative process of evaluating and adjusting for the impacts of each round of exchange on each participant, in order to maintain an effective negotiating environment.

Indeed, the emotionally learned negotiator uses emotion in at least two distinct ways. She uses emotionality epistemologically — continually referring to emotional insight to interpret the fluid dynamics in which the substantive negotiation is suspended, processing unspoken information about all parties' underlying interests and the likely repercussions of a given course of action. But she also uses emotion instrumentally — taking affirmative steps to help manage the emotional experiences of all participants, including herself, her colleagues, and her counterparts. She uses her emotional skills to mitigate undesired emotions and engender preferred emotions: to soothe, bolster, win respect, build trust, encourage creativity. And so, to complete our functional theory of emotion in negotiation, we must also understand emotion as:

4. *a tool for achieving desired ends, a fulcrum by which to motivate someone to a desired direction.*

In this respect, a negotiator appeals to emotionality to foment desired action. She may try to generate emotions “from scratch,” or nurture them to fruition. The emotionally learned negotiator thus uses emotions not only as tools of knowing, but as instruments of persuasion. This is the fourth element, emotion *as instrument*.

Nevertheless, a negotiator's ability to use emotions epistemologically and instrumentally hinges on his capacity to successfully process internal insight, interpret emotional cues in others, and pitch his own actions responsively. In “The Discourse Beneath” I argue that legal education should do more to inculcate a fuller model of legal thinking that can both account for and foster the development of learned emotionality (Ryan 2005). A more purposeful synthesis of emotional and analytic data in deliberation and negotiation would help legal negotiators and decision makers deliver the quality of dispute resolution and problem solving that we should rightly expect from experts. At the very least, they should be fluent in the four functional elements of emotion in negotiation. Better still, they should be able to draw on such theory in practice.

This is all well and good, but how do we get there from here? Some negotiators are gifted with acute emotional intelligence, but others need guidance beyond a theoretical model of what to strive for. Interest in emotion theory has been growing in the academic and professional spheres of late, spurred on by the post-modernist penchant for cultural self-reflection. Philosophers, neuroscientists, business professionals, and even legal academics have become increasingly interested in examining the role of emotional inputs to decision making and social organization, but we are

---

only just beginning to bridge the gap between emotion theory and practice. To move beyond our rhetorical accomplishments toward actual, substantive progress, what we now need most is meaningful guidance on *how* to actually improve emotional comprehension in the moment, *how* to navigate within emotionally charged interactions, and *how* to use emotions instrumentally to create conducive problem-solving environments.

And so it is at this point that we gratefully turn to a series of new books by those who have set to work developing tools with which negotiators can learn to better integrate emotional skills into our most emotionally charged of professional spheres. This next wave of negotiation literature, spearheaded by Roger Fisher and Daniel Shapiro (*Beyond Reason: Using Emotions as You Negotiate*) and flanked by Peter Ladd (*Mediation, Conciliation, and Emotion: A Practitioner's Guide to Understanding Emotions in Dispute Resolution*), and Lacey Smith (*Get It! Street Smart Negotiation at Work: How Emotions Get You What You Want*) moves beyond the battle for the philosophical high ground and directly to the critical discourse of “*how-to*.”

While the three books share the central premise that emotionality plays a critical role in the unfolding dynamics of all negotiations, each offers its own primary lesson. Lacey Smith’s business-oriented *Get It!* examines how the emotions of hope and fear can be both tools and obstacles to the interest-based bargaining method we first learned in Roger Fisher’s classic *Getting to YES*. Fisher and Shapiro’s *Beyond Reason* takes the *Getting to YES* method to the next level of sophistication, providing a taxonomy of core emotional concerns that underlie individual negotiators’ behavior, and with it a “Seven-Elements”-like structure from which to prepare, advance, and overcome emotional obstacles in each negotiating context. Peter Ladd’s *Mediation, Conciliation and Emotions* expands the analysis of emotional content in a negotiation from the individual to the shared experience, exploring the establishment of “emotional climates” that arise between individuals and offering empirically based counsel for mediators and conciliators about how to help remedy undesirable emotional climates and create emotional climates more conducive to problem solving. No book has all the answers we need, but each makes a valuable contribution to the field.

## Hope and Fear

Lacey Smith clearly understands emotionality as both ether and episteme, but *Get It!* speaks most directly to emotion as obstacle, or that which obstructs the mechanical application of well-established negotiating techniques. Why did the negotiation break down when there was so wide a zone of possible agreement? Why did we reach a suboptimal agreement when there was much value to be created? Why did I not get what I wanted when I did everything “by the book”? Speaking directly to the emotional

---

experiences that stymie even the best-trained negotiators on occasion, Smith connects most of the mystery of the negotiating process to the visceral hopes and fears of participants, and offers lessons for transforming hope and fear from negotiating obstacles into negotiating opportunities.

*Get It!* is directed to the business audience, and Smith anticipates the challenge of exorcizing the ghost of Cartesian rationalism that continues to shape business negotiators' expectations. He correctly situates the negotiator's dilemma in light of the philosophic legacy of dualistic opposition between reason and emotion:

Most of the time your emotions — your hopes and fears — not your reason, determine what you say, what you do, and what you get from all your interactions from other people . . . It may not be easy to accept this view. Most of us believe that emotion and reason are at war within ourselves, and smart money bets on reason. It's got a better reputation, is associated with the mind, and is more elegant, less messy — especially in matters of business and commerce — than feelings, which have traditionally been associated with the body and are sometimes out of control. But . . . as we shall see, there is no war. The mind and body are not two disconnected compartments for our reason and our feelings. Reason and feelings do not have to diminish each other (p. 3).

Indeed, the sophisticated negotiator uses feelings to *hone* reasoning, especially in evaluating the various interests that motivate her and her counterparts:

Your job, if you are going to get most of what you want most of the time, is to figure out what your real feelings are about what is at stake as well as the real feelings of the people with whom you are dealing. . . . [T]he contours of almost every persuasion is shaped by emotions: hopes and fears. It's not about logic and rationality. Your task is to understand your emotions and those on the other side, because these emotions define our interests as we perceive them (pp. 16, 156).

In the plainest of language, Smith thus hints at the central tenet of emotional epistemology — the importance of emotional insight as an epistemological tool — and thereby suggests among the most insightful (if subtle) lessons in all three of the books here reviewed.

Thereafter, *Get It!* mostly repackages the classic interest-based bargaining method in a parable-based lesson-book emphasizing how negotiations are driven by variations on the emotional themes of hope and fear. The book winds its way through preparatory interest identification, creative options generation, rapport development, cognitive biases, and hardball tactics via sixty-five separate “Lessons from the Street,” or anecdotal parables that illustrate take-home points about the basic method.

---

These lessons mostly serve up basic elements of the interest-based bargaining credo (“Lesson 61: People value things differently. Trade on these differences to make the pie bigger. . . . Lesson 64: Find out what the parties really want. Differences may provide rich opportunities to expand the pie.”), but they also include helpful pointers to encourage more skillful management of the emotional content in a negotiation (“Lesson 1: Hope frees you from fear. . . . Lesson 46: To be empathic, practice. A small insight into the feelings of others can make a big difference.”).

In this respect, the book is only sparingly original; overt discussion of emotionality assists the discussions of interest identification at the beginning and rapport development at the end, but the majority of the book simply reiterates what negotiators have already learned from *Getting to YES*, *Beyond Winning*, *Bargaining for Advantage*, and other pre-existing literature (Fisher, Ury, and Patton 1991; Mnookin, Peppet, and Tulumello 2000; Shell 2000). The parable model, a time-honored method of negotiation pedagogy, is strained almost to the point of overuse, leaving the sophisticated reader craving a more straightforward presentation of argument and idea.

As its title suggests (*Get It! How Emotions Get You What You Want*), the tone of the book is almost crassly self-interested at times, appealing directly to a model of bargaining in which self-interest is the only legitimate consideration. As such, it may be less consonant for negotiators practicing in contexts where the ultimate well-being of the “other side” matters beyond its ultimate reflection in your own share of the pie (e.g., between families, communities, neighbors, workplaces, etc.).

That said, *Get It!* makes a genuine contribution. Although Smith’s hopes-and-fears model of negotiation is simplistic, it rings true in the telling, and it provides a useful framework for introducing a negotiator to “emotion as ether,” or the extent to which the substance of a negotiation is suffused with the emotional experiences of its participants. Smith teaches negotiators to reflect on their own emotional experiences to identify core interests, and he offers pragmatic advice for cultivating inner hope to wrestle down inner fears that might otherwise compromise one’s ability to create and claim value at the table. He encourages negotiators to engage in explicit emotional planning (p. 34), facilitated by Exercise 1, which invites a negotiator to inventory her own emotions about an upcoming negotiation as part of the other preparations that a trained negotiator undertakes:

1. Why am I meeting and talking with these people?
2. What do I hope to accomplish?
3. What does my boss want me to accomplish?
4. What is at stake for me personally?

- 
5. What hopes do I have in connection with any likely outcome?
  6. What fears or concerns do I have in connection with a worst-case outcome? (p. 19).

Ultimately, *Get It!* is *Getting to YES*, anecdotally repackaged for a business audience and with an added emotional edge, showing how sensitivity to hopes and fears can help keep a negotiation on track toward the desired ends. But to truly expand on the teachings of *Getting to YES* in an emotionally sophisticated direction, we turn to none other than one of its original authors, Roger Fisher, joined here by Daniel Shapiro in coauthoring *Beyond Reason: Using Emotions as You Negotiate*.

### **Accentuate the Positive**

*Beyond Reason* truly takes *Getting to YES* to the next level, integrating emotional sophistication into the canonical approach that we learned through the first book's "Seven Elements" (Fisher, Ury, and Patton 1991). As its title suggests, *Beyond Reason* does little to press the discourse of emotionality beyond Cartesian dualism. However, it transforms the emotionality discourse by offering negotiators the missing tools for actualization. Directly invoking the instrumental understanding of emotion, Fisher and Shapiro frame emotion not only as a set of personal experiences but as a set of experiential tools for advancing the substantive goals of a negotiation. While *Getting to YES* introduced methods for minimizing the disruptive impacts of *undesirable* emotions, *Beyond Reason* teaches readers to enhance a negotiation by inculcating *desirable* emotions that facilitate the process of interest-based bargaining.

*Beyond Reason's* central premise is that five "core concerns" motivate individuals' behaviors during a negotiation and that we can improve our negotiation by affirmatively respecting them. In their taxonomy, Fisher and Shapiro identify these as the core human desires for appreciation, affiliation, autonomy, status, and a fulfilling role. Human beings crave *appreciation*, a sense of valued recognition for their contribution. We are sensitive to *affiliation*, the sense of connectedness that we feel or may want to feel with another person or group (which may extend toward the community or constituents we are representing in a negotiation, or our negotiating counterparts, or both). We prize *autonomy*, the freedom to affect or make decisions without imposition by others. We are protective of our sense of *status*, our standing in comparison to the standing of others with regard to any one of countless criteria (ranging from social standing to special expertise in a particular field of knowledge or understanding). Finally, we tend to define ourselves by the *roles* that we play, and it is important that we find some fulfillment in these roles (p. 211). Fisher and Shapiro teach readers to identify how each concern may be implicated and how to proactively manage the core concerns of all present (including oneself) to

---

facilitate the development of a positive negotiating environment and forestall the emotional roadblocks that typically surface in negotiation.

In this way, readers are coached to use the core concerns as both a way of knowing *and* a way of doing. The core concerns, argue Fisher and Shapiro, provide both an epistemological *lens* by which to comprehend and anticipate reactions at the table, and an instrumental *lever* by which to generate emotions likely to facilitate problem solving (e.g., respect, enthusiasm, comfort, relaxation, humor, trust). Indeed, the authors advise that we avoid becoming preoccupied with labeling and diagnosing each emotion that actually surfaces at the table and instead work to simply “overwhelm whatever negative emotions a person might have with positive ones” generated by the care and feeding of that person’s core concerns (p. 143). Proactive “care and feeding” is the mainstay of the book, which teaches its readers how to effectively and sincerely express appreciation, build affiliation, respect autonomy, acknowledge status, and develop fulfilling roles for negotiating participants.

In *Getting to YES*, Fisher humbly conceded that “[t]here is probably nothing in this book which you did not already know at some level of your experience” (p. 147). The same may be true of *Beyond Reason*, which did not teach me much that I did not already know about the qualities of emotion that arise in negotiation. (For example, most readers probably already know that people want to feel appreciated and are touchy about status.) And yet, even as a negotiation instructor and theoretician of emotion in negotiation, I learned a great deal from the book, and most readers will as well. Like *Getting to YES*, *Beyond Reason’s* greatest contribution is less the enumeration of negotiating insights that we may have already intuited, and more the *structured, portable methodology* that it provides for working with these insights in the context of each individual negotiation. Each provides the organizational framework for thinking about the process during preparation and for falling back on when things go awry at the table.

In this respect, *Beyond Reason* powerfully picks up right where *Getting to YES* leaves off. Among the most valuable features of the *Getting to YES* method is the way that it facilitates emotional stability for parties caught up in the roller-coaster dynamics of negotiation, offering a reliable process to which a negotiator can always return to reorient her approach in the face of the very hopes and fears of which Lacey Smith warns. *Getting to YES* gave us tools to avoid the basic pitfalls of inferior negotiation, for example, settling for a suboptimal agreement, bargaining in the absence of persuasive criteria, or failing to reach agreement despite a wide zone of possible agreement. Though the method is hardly emotionally insensitive (its instruction to build rapport to develop a productive negotiation relationship [p. 37] sounds a lot like *Beyond Reason’s* instruction to tend to the core concern of affiliation), it is not directed at emotional experience

---

*per se*. Instead, *Getting to YES* teaches its reader to establish a level of communication that can uncover underlying interests, yield creative options, and build momentum toward a wise agreement that satisfies all parties' interests to the maximum extent possible.

By contrast, *Beyond Reason* addresses the emotional component of negotiation directly (and in richer detail than the binary hopes-and-fears model of *Get It!*), offering higher-order tools to keep a negotiation on track amidst destabilizing emotions and new tools to establish an emotional environment conducive to a wise agreement. Where the first book taught us to create value in the face of the emotional roller coaster that is any negotiation, the new book teaches us how to *change* the roller-coaster ride — if not into a Sunday drive, then at least into a more predictable commute. Although we may already recognize many of the book's insights (at least in our best moments), Fisher and Shapiro offer a methodology for applying these insights even in our *worst* moments, when we are most likely to be flustered amidst the swirling torrent of hopes and fears. Like *Getting to YES*, *Beyond Reason* provides method and structure to apply where they are most needed. We should study the *Beyond Reason* method for the same reasons we should practice fire drills or CPR — to develop skills and practices that we can fall back on in the heat of the moment.

Fisher and Shapiro invoke a similar metaphor in explaining the importance of the preparation of a negative emotion “emergency plan” for dealing with eruptions of strong negative emotions at the table:

The worst time to craft a strategy to deal with strong negative emotions is while experiencing them. Imagine what would happen if hospital staff waited until each new patient arrived in the emergency room before considering from scratch what they should do. There would be chaos. Instead, emergency rooms have developed standard operating procedures followed by everyone from nurses to surgeons and used with every patient who comes through the door. Negotiators need their own standard operating procedure to avoid facing strong negative emotion unprepared (p. 149).

No work on emotion in negotiation would be complete without engaging the problem of strong negative emotions — the greatest fear of most negotiators. To the extent that past works have touched on emotion in negotiation at all, it has been mostly to address the negative emotional roadblocks that can accompany tense negotiations, and most of them stress the importance of keeping one's own emotions under control (lest you become the screaming meanie at the table, or the chump at the other end of a slick manipulation). There is certainly wisdom in the traditional advice, but it is shallow in ignoring the impact that even repressed emotion can have on proceedings, and optimistic in assuming that things ignored will simply go away. Like *Get It!*, *Beyond Reason* provides more meaningful tools

---

that acknowledge the fruitlessness (and even harmfulness) of ignoring emotionality at the table.

In particular, Fisher and Shapiro recommend that a negotiator conduct a subtle and periodic “emotional temperature check” of all present, to recognize and diagnose emotional hurdles as they arise. Moreover, they recommend that a negotiator come to the table with an “emergency plan,” prepared in advance with strategies for soothing herself or others as might become necessary during tense moments. Most importantly, they offer guidance on how negotiators can prevent emotionally charged motivations from derailing their steady pursuit of underlying interests at the table. They teach a negotiator to hold off expressing negative emotions until (and unless) he can formulate the specific purpose he hopes to accomplish by such expression, and he verifies that this purpose remains aligned with his primary goal — the pursuit of his underlying interests.

Fisher and Shapiro’s treatment of strong negative emotions opens the “Additional Advice” section toward the end of the book, and its very location further highlights the new territory *Beyond Reason* stakes out. The treatment of strong negative emotions is doubtlessly important material, but its penultimate positioning shows that it is secondary to the main purpose of the book, which is to teach us how to avoid these situations *in the first place*, by proactively inculcating positive emotions from the very beginning. Most of the time, the authors tell us, it is better to simply ignore the localized expression of a particular emotion and tend proactively to the core concerns. Just as *Getting to YES* taught us to “look for interests, not positions,” so *Beyond Reason* teaches us to “address the [underlying core] concern, not the emotion” (p. 203).

This outstanding book is not without weakness. The discussion of the final core concern, “the desire for a fulfilling role,” seems forced; although it rings true as a human concern, it seems only tangentially connected to negotiation and more appropriately addressed to a generalized discussion about relationship building. The authors advocate a basic “gut-feeling check” before committing to an agreement (p. 70), but the book could stand more discussion of the epistemological use of emotion to parse interests in service of this goal. In addition, the authors themselves identify limitations in the method for dealing with deep value conflicts (characterized by the strong emotions that arise from religiously and culturally motivated differences), and where negotiators’ abilities to collaborate are hindered by their needs to “perform” for their constituents or communities of interest (p. 33). Because these are often the most emotionally charged and difficult of negotiations, we can hope that the authors will be able to provide further counsel on handling such matters in the second edition.

## **Eliminate the Negative**

*Beyond Reason* focuses on how to use emotion to enhance problem solving, with some attention to the classic problem of how to recover from

---

emotions that disrupt problem-solving efforts. Similarly, *Get It!* warns of the potentially destabilizing impacts that variations of fear pose for negotiation. Still, neither provides specific direction on dealing with the full array of negative emotions that can disrupt dispute resolution. Enter Peter Ladd's contribution: *Mediation, Conciliation and Emotion: The Practitioner's Guide to Understanding Emotion in Dispute Resolution*, which is directed to mediators and conciliators in particular but provides valuable guidance to negotiating professionals in general.

*Mediation, Conciliation and Emotion* broadens the discussion of emotion in negotiation settings from the individual to the collective level, redirecting our attention from the emotional experience of any one particular individual toward the "emotional climate" that unfolds between two or more individuals (who may, in fact, be experiencing very different internal emotions). Ladd offers specific guidance for mediators and conciliators in diagnosing and treating a dysfunctional emotional climate that is disrupting the progress of the negotiation. Reminiscent of the instrumental message in *Beyond Reason*, this book suggests as a primary means of treatment that the facilitator strive to inculcate reciprocal emotions more conducive to problem solving or relationship repair. In this respect, Ladd draws on all four elements of the negotiator's functional theory of emotion: emotion as ether, as obstacle, as episteme and as instrument.

Among negotiation professionals, mediators and conciliators may already be the most skilled at recognizing the central role of participants' emotional experiences in dispute resolution. However, little specific guidance exists for practitioners on how to deal with the particular challenges that arise regarding different emotions that might dominate a dispute. To remedy this deficit, Ladd surveyed mediators and conciliators about which emotions deserve attention and which methods are most successful in mediating or conciliating in the presence of these emotions. The result is this informative review of mediating and conciliating in the presence of anger, resentment, revenge, apathy, guilt, egotism, greed, jealousy, anxiety, and hatred.

Although it is secondary to the focus of the book, among Ladd's most interesting contributions is the way he highlights the *institutional* problem of emotion in dispute resolution, or the various ways that different institutions of dispute resolution do or do not attend to the emotional dimension of disputes. Traditional dispute resolution bifurcates the resolution of the "substantive issues" (the substantive dispute) from the resolution of the emotional sequelae that accompany the substantive dispute. Substantive issues are then resolved by expert fact finders and decision makers (judges, lawyers, arbitrators, bosses, school principals) in rule-based "issue-oriented dispute resolution," while the emotional needs of disputants are set aside for resolution with psychologists, pastors, and other personal counselors outside the formal realm of dispute resolution. In the traditional form of issue-oriented dispute resolution,

---

[e]motions enter into the dispute resolution but are not a priority; issues are connected to rules, not personal beliefs or peoples' feelings. [The adjudicators] are our parents, our teachers, and local town officials who guard the social fabric of our communities and mend it when violated. People in these positions have feelings like the rest of us, but put them aside, while upholding the laws or rules connected to their positions of responsibility (pp. 2-3).

Ladd argues that there is often no good reason for treating the substantive and emotional aspects of disputes separately, and often many bad reasons for doing so. For example, severing the treatment of substantive and emotional issues is contraindicated when (1) the resolution of the substantive dispute is really about the emotional experiences of the parties (e.g., in divorce or custody cases, or even tort or contract disputes that have devolved into emotionally based conflicts or vendettas), (2) the resolution may bear heavily on their future emotional experiences (e.g., many family law matters), or (3) when society has a moral obligation to consider the emotional experience of the disputants as a normative matter (e.g., in cases of abuse, rape, slander, or intentional infliction of emotional distress).

For these reasons, the modern approach to dispute resolution seeks to unify the historically severed parts of issue-oriented and emotion-oriented dispute resolution into a more coherent whole, offering an array of processes that afford varying balances of attention to issues and emotions. By contrast to the rule enforcers of traditional dispute resolution,

[m]ediators, facilitators, negotiators and other similar professionals are society's neutral third parties who bring people together to resolve opposing points of view. These are the referees, in the dispute resolution world, and, as referees, they do not pass judgment on issues nor do they have the task of upholding previously established rules. Their task is in bringing opposing parties to talk to each other. This is accomplished by allowing issues and emotions to flow freely, while someone facilitates a fair and balanced discussion. At times, issues may be the center of the discussion . . . [o]ther times, emotions may dominate the discussion . . . [a]nd, sometimes dispute resolution focuses on both . . . (p. 3, citations omitted).

Litigation and arbitration remain the primary venues of issue-oriented dispute resolution, while mediation seeks to balance attention to issues and emotions. At the far end of the spectrum falls emotion-oriented dispute resolution, or conciliation, which deals only indirectly with the substantive issues and focuses on the repair of broken relationships. Certainly, there will be times where issue-oriented dispute resolution is the most appropriate choice (when a law is broken), and others where emotion-oriented dispute resolution may prove the best choice (when a marriage

---

is at stake). Given the variety of human conflict, it makes sense that a variety of dispute-resolution alternatives be made available.

In fact, the vast majority of *Mediation, Conciliation and Emotion* (80 percent by volume) addresses conciliation. Ladd defines conciliation as an “in-progress” professional field: “[a]t the present time, the general consensus is that conciliators are those practitioners responsible for rebuilding relationships between people who are in dispute” (p. 7), as opposed to counseling, which seeks to assist “people who have some form of ongoing emotional dysfunction in their lives,” (p. 7), and mediation, which addresses a particular dispute. He explains conciliation as an emotion-oriented process that seeks to rebuild damaged relationships by focusing on the emotional climate between participants, with reference to the issues only as necessary to address emotional concerns. Conciliation is often the necessary precursor to more issue-oriented or balanced dispute resolution — such as mediation, which may not even be possible when relationships are completely fractured (e.g., between spouses, or law enforcement professionals and community members who perceive them as discriminating racially). Conciliation may also become necessary *after* mediation, to rebuild relationships as needed to accomplish on the specific terms of the mediated agreement.

Although only 20 percent of the book addresses mediation directly, mediators (and negotiators generally) can learn from the exhaustive empirical review of treating specific emotions in the context of relationships. The organizing principle of “emotional climate” evokes the kind of cooperative emotional environment that *Beyond Reason* teaches its readers to strive for and the kind of fear-compromised dynamic that *Get It!* coaches its readers to move beyond. Although the meaning of “emotional climate” is made vivid by example, Ladd defines it rather weakly as:

the experience surrounding people setting the tone for: what they believe, how they feel, and how they behave toward each other. For example, a climate of resentment may set the tone for how frustrated employees interact in a workplace environment, or a climate of compassion may have an opposite outcome by contributing to an attitude of acceptance among the same employees (Appendix 1, 245).

It is hard to know what that really means, but the term seems to reflect a more nuanced expression of the “emotion as ether” definition — one that explicitly accounts for the dynamically composite and interactive nature of emotional experience in human interaction, where the whole is always different than the mere sum of the parts.

In any event, Ladd teaches that when approaching a dispute, it may be as important to isolate the emotional quality of interaction between two people as it is to find out how each is feeling about the issue at hand. After providing the readers with tools to identify the emotional climates that

---

form between disputants, Ladd offers detailed, empirically based advice for treating the various kinds of dysfunction that can arise in those climates. For example, to overcome a climate of apathy, a mediator should work to affirm interests, engender hope, and ensure that agreements include specific terms rather than vague promises, which are unlikely to motivate compliance by apathetic participants (pp. 45–46). Similarly, a conciliator should strive to help participants feel more empowered to overcome a climate of resentment (pp. 92–95).

In addition to “emotional climate,” the book suffers from other unsatisfying definitions (for example, what exactly does it mean to “reconcile emotions” during dispute resolution [p. 46]?), and the book appears to apply its own rules of punctuation, making it occasionally difficult for the uninitiated reader to follow. Nevertheless, the rich content — direct, hands-on advice for mediators and conciliators building skills on how to manage the flow, expression, and resolution of strong emotions in dispute resolution — makes the effort worthwhile.

## **Navigating the Sea of Emotion**

Negotiators have a lot to think about. They also have a lot to feel. And now more than ever, they have a lot of thinking about feeling to do (as well as some feeling about thinking!). As we move into a new era of emotional understanding in the negotiation and mediation fields, negotiators have new opportunities to become better at what they do by better understanding what they already do on the emotional plane of negotiation, and, at times, by building a better plane. Negotiators should understand the functional roles of emotion — as the ether in which all negotiation takes place, as a potential obstacle to the orderly application of rules, as a source of knowledge and understanding, and as an instrumental tool for enhancing the likelihood of a wise agreement.

The new wave of emotion-in-negotiation literature provides valuable tools for translating theory into practice, and we should accept them with gratitude. *Get It!* introduces the concept of emotion as the real medium of exchange in negotiation. *Beyond Reason* provides an important method for using emotionality instrumentally to yield superior negotiating results. *Meditation, Conciliation and Emotion* offers detailed empirical guidance on dealing with negative emotional climates that can disrupt dispute resolution.

Still, there is work yet to be done; methods are still needed to perfect the emotionally learned negotiating tool kit. We require more resources for teaching the basics of empathy, deciphering emotional messages, and other forms of basic emotional literacy. And perhaps the final frontier of practical guidance (perhaps still under-charted because it is, indeed, so difficult) is more specific guidance on coping with one’s own strong negative emotional reactions. Stone, Patton, and Heen’s (2000) *Difficult Conversations: How to Discuss What Matters Most* is by far the most helpful resource in

---

this regard, but we could use a resource that applies similar methods in less personal, more mundane contexts.

In the meantime, negotiators will still have lots to think about, and plenty to feel. At a minimum, they should feel thankful for the current wave of literature, which can help them do both.

#### REFERENCES

- Del Collins, M. 2005. Transcending dualistic thinking in conflict resolution. *Negotiation Journal* 21(2): 263-280.
- Fisher, R., W. Ury, and B. Patton. 1991. *Getting to YES: Negotiating agreement without giving in*. New York: Penguin Books.
- Mnookin, R. H., S. R. Peppet, and A. S. Tulumello. 2000. *Beyond winning: Negotiating to create value in deals and disputes*. Cambridge, MA: Belknap Press.
- Ryan, E. 2005. The discourse beneath: Emotional epistemology in legal deliberation and negotiation. *Harvard Negotiation Law Review* 10: 231-285.
- Shell, R. G. 2000. *Bargaining for advantage: Negotiation strategies for reasonable people*. New York: Penguin Books.
- Stone, D., B. Patton, and S. Heen. 2000. *Difficult conversations: How to discuss what matters most*. New York: Penguin Books.