

CHAPTER SEVEN

Identity, Beliefs, Emotion, and Negotiation Success

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Identity, beliefs, and emotion can all be unpopular topics. Backlashes against “identity” politics fill both the popular and academic press. It is easy to think of identity as just another roadblock to negotiation. Economists might think of it, as they largely do of emotion, as just another “barrier” to rational settlement. So, too, psychologists often treat beliefs as problems. Popular psychologies, such as neurolinguistic programming, speak often of limiting beliefs,¹ and social psychologists regularly inventory our many mistaken psychological biases.² Apart from any more particular criticisms, identity, beliefs, and emotion face skepticism for seeming too soft, either because the concepts themselves are soft or the insights are not particularly useful.

This chapter instead shows that particular identities, beliefs, and emotions affect negotiation in complicated ways, which may be understood through both qualitative and quantitative methods. Some versions of identity, beliefs, and emotion may indeed be dysfunctional and disruptive, but useful versions also exist. The contrast is often between fixed versions of each and flexible versions of each. Our fixed identity—I must do this because this is who I am—can look a lot like just another example of positional bargaining. Indeed, some identities may harden into particularly rigid positions when people equate identity with

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moral commands. In times of conflict, with ourselves or with others, many people have come to ask, “What would Jesus do?” (or “What would Buddha do?”).³ This may provide a refreshing counterweight to the sometimes amoral practices of negotiation, and it may at other times exaggerate conflict: “I must do this because this is who I am; if I act differently, I am not merely losing a negotiation, I am betraying myself.” And when the identity is linked to a group, then one is betraying one’s family, one’s nation, one’s religion, and so on.

One may view emotions as fixed: a person is not being difficult, he or she is a difficult person; not sad but depressed; not annoyed but a rageaholic. So, too, beliefs may become a part of one’s identity: Are you prochoice or are you prolife? rather than What restrictions do you think make sense on reproduction?

A competing notion views identity, emotions, and beliefs not as fixed but rather as a set of forces, sometimes competing and sometimes complementary. According to this view, we do not identify solely by religion or by family but by religion, family, friendship, profession, and many other sources. This chapter reveals the dichotomy of those competing notions. At times my voice is the objective researcher, as you may read in your own capacity. I shift language to invite you to experience, too, your role as an individual negotiating, mediating, and otherwise living in this world.

To illustrate, consider two scenes:

Scene One: Carrie Menkel-Meadow, a contributor to this and many volumes on dispute resolution, gets a call from a colleague on her law faculty. The colleague says someone has a problem, and the colleague thinks that Carrie would want to help. “Why me?” Carrie asks. The simple reply: “Well, you are a woman.” Carrie does not like the assumption that she would always want to help any woman, any time, with any grievance. She does not help and does not sound very warm when she tells me about the colleague.

Scene Two: Woody Allen is in bed with a woman. More intimacy seems imminent. Then more people appear—his parents on his side of the bed, her parents on her side of the bed. It is a visual enactment of a common therapeutic insight: when lovers come together, they bring with them all of their family history.⁴ So, too, that may partially explain why legal disputes between couples and families become so explosive. The conflicts are not merely between individual family members but in the inner worlds of family members.

The scenes illustrate several important points about identity and negotiation. First, there are two related but distinct aspects of identity. Identity includes the way others identify us (such as seeing us as a woman or as a woman’s advocate), and identity also includes how we see ourselves, including the competing claims on how we see ourselves. At one level, the Menkel-Meadow story tells us that the way others perceive our identity may matter. The Woody Allen scene tells us that how we perceive ourselves also matters.

Second, the two scenes exemplify the fixed and fluid understandings of identity. The faculty colleague sees a prominent scholar of dispute resolution, legal ethics, and other areas as a woman; the woman sees herself as more complex. So, too, the Woody Allen example offers a *more* complex picture: there are six competing identities (the two lovers and two parents for each). It also offers a richer possibility, too, of transforming and evolving identities. From the mix, a couple may form. (And, to go a step further, from their encounter, a new child might literally be born!)

At a third level, the scenes highlight how pervasively identity may matter. As with emotion, it is easy to see only intense versions—little seems more intense in our Western culture than sex. Carefully crafted studies of negotiation, however, show that those induced to be in a slightly better mood (by such things as exposure to a funny video or a mildly pleasant scent) perform better than other negotiators in otherwise identical situations.⁵

This chapter shows how even mild differences in beliefs, identities, and emotions matter. The most quantitative research deals with emotion, but it is suggestive of how other mild differences may matter as well. It is not merely in the emotionally extreme world of divorce negotiation that emotion matters. Carrie's story shows that identity may affect much of our everyday life. This may be easier for those outsiders in some sense (by race, gender, sexual orientation, and so on) to appreciate than others. (And some of us privileged in much of our daily lives may find ourselves feeling like outsiders when we negotiate with unfamiliar groups, or in unfamiliar places, or both.) When we fit in completely, our own identity may be invisible, much as we think of some food as "ethnic" because it is different from our familiar food, though we can see that even something as "all-American" as roast beef has its own ethnic roots.⁶ In part because different readers themselves experience identity differently, some of the examples that follow may provoke "aha" reactions in some while others may conclude that "identity" is not explaining anything more than individual differences or individual context.

For both emotion and identity, seeing how even mild versions matter is crucial: it is far easier to imagine actually managing mild versions of either than something deeply rooted. As with so many tasks, various outsiders in various times may find shifting how others identify them as relatively hard. A New Yorker in California may ease rapport by dressing differently, but many African Americans believe their skin color marks the way others see them.

Examples may yoke theory to practice for some while others may still dismiss identity as mere politics and rhetoric. The following section of this chapter situates identity, beliefs, and emotion in the worlds of both critical theory and social science. It presents evidence both that identity may matter and that identity may not be fixed. The chapter then examines how identity and beliefs may affect negotiation in more particular ways. It concludes by addressing the

question of how we may better manage the complex relationship between beliefs, emotion, and identity. Those who find little value in reading about problems that remain insoluble might start with the final section, which introduces several techniques for better managing beliefs, emotion, and identity.

MANY FLOURS, MANY BREADS: THE COMPETING SOURCES OF IDENTITY AND BELIEF

Many people see identities as fixed. Both popular and academic negotiation trainings use tests designed to identify individuals with certain negotiation “types.” Sometimes this involves identifying others with a particular set of identities and beliefs. For example, one seminar claimed that people’s body types matched their personalities and negotiation styles. Others promise insight into oneself. Participants answer questions for a few minutes, and the test returns a label of one’s negotiation “personality” as if it were his or her single identity. The widely used Thomas-Kilmann conflict styles inventory is one such test.⁷ Often, these tests box people in. One otherwise great book on negotiation puts it simply, quoting a Danish proverb that you must bake with the flour you have.⁸

This emphasis on fixed identities runs counter to research from several disciplines, including critical theories such as postmodernism and the social sciences of psychology and economics. It is worth exploring these several methods since some may place greater faith in one method than in another. Also, many may find it more persuasive when several methods point in the same direction—what the philosopher Rawls called an “overlapping consensus.”⁹

Adherents of postmodernism might challenge the metaphor of baking a bread with a single “flour.” Many speak of postmodern conditions in which people interact with more cultures and have more opportunities to develop different and diverse ideas.¹⁰ This means people may collaborate, problem solve, and resolve conflict in different ways. People may behave one way when they interact in a small legal community, for example, and may behave in other ways in different conditions. People who are relatively cooperative in one-on-one interactions may find themselves more self-confident and more willing to explore collaborative options—or even competitive strategies—in an online environment.¹¹ So, too, the relative masking of identity by technology may short-circuit the way negotiators might otherwise label each other.

Though postmodern critical theories sound very different, some economic and business perspectives make similar points about the fluidity of identity. Max Bazerman of Harvard Business School, and a contributor to this volume, emphasizes how individuals may sometimes have to negotiate with different versions of themselves at any given point.¹² Others emphasize change over time. Richard

Posner, one of the foremost scholars in the field of law and economics and a prominent federal appeals court judge, emphasizes the problem of future selves: the Richard Posner today may not make the best decisions for the Richard Posner tomorrow because that Richard Posner may have evolved in some way.¹³

Psychological research also complicates the way we identify both ourselves and others. Take competition and cooperation, for example. Where Thomas-Kilmann and other personality tests might divide people into competitors, accommodators, and so on, modern psychology suggests circumstances will bring out different aspects of the same person. One study shows that people given positive feedback on a brief test feel slightly happier and behave more cooperatively than an identical group of people given negative feedback.¹⁴ Indeed, psychologists call the tendency to think others act as they do because of personality—as opposed to different contexts—the *ultimate* attribution error.¹⁵ This insight is not merely Western. Buddhist psychology teaches that there is no fixed personality but rather ever-changing beliefs and feelings sometimes called mind-states.¹⁶

Although psychological research undermines the traditional tendency to identify ourselves with fixed personality types, it also recognizes how very readily we get stuck in the way we view those unlike ourselves in some way. It is relatively easy to see subtleties in ourselves, such as explaining why we may have acted “out of anger” or otherwise not “been ourselves.” When we see negative behavior in others, it’s more likely we will identify that as some pervasive trait. However well-intentioned, simple-minded trainings about “diversity” or “cultural competence” may inadvertently reinforce stereotypes.¹⁷ This can include stereotypes of how “they” “always” negotiate. Psychologists do not treat the tendency to overgeneralize about others as some idiosyncratic fault of any of us. Rather, any given set of “us” tends to see any given set of “them” as having more in common with each other than they actually have. Psychologists call this the “outgroup homogeneity effect.”¹⁸ If we are American, we know there are many Americans and many negotiation styles, from the used car dealer to the obsequious custom tailor, but we may too quickly accept descriptions of “the” Japanese (or Latin, or European, and so on) negotiation style.

As with many general tendencies, of course, some of us may fall into such generalizing patterns more readily, more often, or more deeply. Academic psychologists have developed sophisticated methods to test automatic and unconscious beliefs about others, such as how quickly we associate “white” with “good” and “black” with “bad.”¹⁹

To complicate matters further, psychological research recognizes how the way people identify each other may involve many different combinations. It would be easy for the woman academic whose colleague asks her to help “another woman” to conclude she was seen as “just another woman.” Pioneering research by Rosabeth Kanter on organizations, however, showed that people

may have several distinct categories in which to see different women, albeit all of them disempowering in some way. Women could be seen as nurturing “mothers,” as insensitive “iron maidens,” or as other stereotypes.²⁰ Perhaps the faculty member in the earlier example thought that one woman would nurture another, or that one woman would avenge another. Other psychological research shows that similar distinct stereotypes may apply to older people.²¹ Susan Fiske, a leading scholar on the psychology of discrimination, concludes more generally that characteristics may combine in practically any way to create distinct “subtypes” of different individuals.²²

This psychological fluidity, as we will see in the final section, is not merely a problem. It is sometimes possible to create new ways for people to see themselves and others that promote cooperation, such as emphasizing certain common identities. This positive aspect of fluid identities is also recognized by some who speak of postmodern conditions.

HOW IDENTITY AFFECTS NEGOTIATION

Identity, beliefs, and emotion may affect negotiation in multiple ways. To begin with, there are the simple effects of how others identify us and how we perceive ourselves. In complicated ways, initial senses of identity may interact with emotion. As we see in this section, how we perceive ourselves may often intensify the negative role of identity, along with negative emotions. As the next section suggests, however, awareness of emotion also offers one path to shift from fixed identities to more fluid and functional identities.

Negotiation and How Others Identify Us

Simply put, research confirms what many minorities fear: various “outsiders,” such as women and African Americans, often get worse outcomes in negotiations. At least one careful meta-analysis of many studies involving women and male business students shows that women often get worse outcomes.²³ Do such different outcomes also exist outside simulated negotiation in schools? Ayres found that some outsiders got worse deals from real car dealers as well. He sent out teams of car buyers to test this. They dressed the same; they followed similar bargaining strategies; they answered questions in similar ways. And they got different results. African American men got offers that left four times more profit to dealers than did white men; African American women also did worse. White women did not do worse in a statistically significant sense.²⁴

Looking at the pattern of offers and time spent with customers, Ayres argued that the different offers grew out of different beliefs. Salespeople acted as if they thought African American women simply did not like to bargain. When they negotiated with African American men, however, they spent plenty of time

bargaining—just with much worse offers. It was as if salespeople took some pleasure in putting African American men in their place, according to Ayres.²⁵

How these patterns play out in other negotiations is an important question for future research. In principle, many scholars associated with critical race theory, an important movement in law schools and other disciplines, see discrimination as “societal” and “structural,” so one would expect similar patterns of discrimination across society.²⁶ Ayres’s other economic and empirical work has found different results in at least one area: African American men and women and Hispanic men received better jail bond rates than whites.²⁷ Economic perspectives, such as Ayres’s, suggest that patterns of discrimination may vary according to such circumstances as different degrees of information that outsiders may have, as well as perceptions in different circumstances. Different outcomes in different circumstances also fit the psychological perspective on the way individuals may be seen in many subtypes.²⁸ Seeing women through the mothering subtype perspective may hurt in job negotiations, in which employers may assume women will work less hard or simply accept less pay, but may actually help in other circumstances, such as child custody negotiations.

How Conceptions of Self-Identity May Limit Us

Apart from how others see us, how we see ourselves also affects negotiation. Sometimes we see ourselves as people who must bargain, sometimes we see ourselves as people who cannot bargain—or *ought* not. Recall the controversy over deploying American troops through Turkey to attack Iraq. When reports of a request for compensation arose, some Americans were offended that Turkish leaders would bargain over support. Different perspectives on identity might provide an explanation: some Americans might think it wrong to bargain over what might be seen as a moral issue, at least once some publicity arose. Alternatively, some Turks might have originally thought it necessary to bargain for a concession from the Americans rather than be seen as merely an extension of American will.

This same dynamic is *one* way to understand why individuals, too, may bargain when they do. Bazerman reveals how he and others may sometimes spend time bargaining excessively over an item as if their time had no value.²⁹ This may seem irrational from an economic view. But an identity analysis suggests that an individual might bargain because he or she identifies as a negotiator and, at some level of consciousness, feels bound to negotiate whenever possible. Psychologists might see this as yet another example of the consistency principle—people may feel that they must be consistent with some identity.³⁰

Identity may limit individuals from bargaining in other circumstances as well. Gerald Williams tells the story of an American looking in a shop in Italy.³¹ She liked an item, asked the price, and started to pay. The Italian would have none of it and showed her out. Williams explained this as a product of the shopkeeper’s

personal sense of insult that someone would not pay him the respect of bargaining. Notice as well that identity may have exacerbated the problem: seeing an American treating him in such a way may have exaggerated his fears of personal insult, an insult perceived as not just to himself but to those with whom he identified, be they Italians or shopkeepers or some other identity. Without blaming either the woman or the shopkeeper, we might see that the woman might have wanted to bargain too little and the shopkeeper too much.

Evidence suggests that many may bargain far less than the expected outcomes might justify. The title of one book suggests women often do worse because “women don’t ask.”³² When male graduate students get their first academic job, they ask for more (salary, support, and so on) than women often do.³³ But research suggests that men may also negotiate too little in some circumstances. For example, large numbers of men also pass up parental leave policies that cover fathers, for various possible reasons discussed in the following paragraphs.³⁴ In different contexts, then, different individuals and different groups may find themselves bargaining far more or far less than others might see as appropriate.

We may understand these dynamics in two very different ways. Economists might offer a rational explanation. Women settling for less salary and men turning down the opportunity to care for children may seem irrational if one focuses on the payoff of those individual decisions. Economists, however, might redirect our attention to the way both men and women may try to signal something about themselves. Men and women may turn down leave to “signal” that they are the kind of people who work harder (or, from another perspective, that they will not slack on the “mommy” or “daddy” tracks).³⁵

Feminists and other critical perspectives offer a rather different explanation that may be tied to identity. Men may turn down leave lest they be seen as what one state governor has called “girly-men.” In some sense, then, women’s sense of identity may enable them to take leave—or bargain for additional leave—when men’s might not. As in so many other fields, however, outsiders face “double-binds” that insiders do not.³⁶ Many bosses may simply praise the man who turns down leave as a dedicated professional, but the woman who does the same may look like a “bad mother.” And if someone cannot be a good mother, then she may be seen as cold and unreasonable. Men who bargain over wages may seem “savvy,” but women may seem too pushy or domineering, too consistent with the iron maiden stereotype.

Sometimes the refusal to bargain, and the role of identity, may remain unconscious, and sometimes it may operate quite consciously. After University of Chicago Professor of Law Mary Anne Case read Ayres’s evidence of car-bargaining studies, she did not want to buy a car—even if she might compensate for the bias by adopting different tactics.³⁷ (Ayres quoted one economist as suggesting women might get better deals by using feminine wiles.³⁸) African

American law professor Devon Carbado writes that he could avoid being trailed in record stores (as if he were shoplifting) if he were to hum opera—thereby invoking a status as a “good black.”³⁹ This might seem easy enough, and yet Carbado and others associated with critical race theory rightly note how problematic it may feel to “work identity” in such ways.⁴⁰ So, too, economist Ayres thinks it unfair to ask negotiators of some races or genders to adopt more cumbersome tactics to get better negotiation results. As he puts it, “It may be that black and female testers could also have received the price quoted to white males if they had executed twenty push-ups during the course of bargaining. If so, the fact that the white male testers did not have to execute the push-ups to receive the price would clearly constitute discrimination.”⁴¹

Identity, Beliefs, and the Emotional Escalator

Ultimately, negotiations often play out through a network of interrelated identities, beliefs, and emotions. Your identity may entail certain beliefs (for example, people should not treat me differently because I am a woman/man). These beliefs may even include more elaborate scripts, sets of beliefs about how one should negotiate—such as the Italian shopkeeper’s.⁴² Often beliefs remain unconscious. They may remain what cognitive therapists call automatic thoughts.⁴³ When another negotiator violates your beliefs, you may experience an emotion, such as anger.⁴⁴ (Notice, as you read the shift from “one” to “you,” how your identity now may shift from academic researcher or trainer or negotiation student to the more personal experience of your own negotiations.) If we do not understand the relationship between identity, emotion, and beliefs, we get stuck in fixed senses of ourselves, of others, and of negotiations themselves. If we do understand this relationship, then we have multiple possibilities to improve negotiations.

Sometimes emotions from a negotiation introduce or exaggerate the role of identity. Your anger, and the behavior your anger generates, may bring out certain other emotions and behaviors in others. Peter Kramer, the celebrated author of *Listening to Prozac*, notes how such dynamics might play out in a therapist’s office: a somewhat shy patient sees a doctor; the doctor asks questions; the shy patient demurs; the doctor asks more; the patient may seem more reticent, or may get angry. In turn, the doctor suspects the patient may be paranoid and may treat him or her more aggressively, thereby making the patient still more defensive and guarded.⁴⁵ Negotiations may follow parallel tracks: one woman may think it’s best to offer a single, fair price, but the male seller may think it’s natural for people to follow a more elaborate dance of offers and counteroffers.⁴⁶ The dance becomes a brawl, the man feeling that the woman “doesn’t understand” the “give and take” or may be “stubborn.” The woman may think the man is trying to take advantage of her. Even if identity did not play any role to begin with, the intensity of emotion may lead one party to start seeing a “naive woman” and the other to see another “angry man.”

STRATEGIES FOR MANAGING IDENTITIES, BELIEFS, AND EMOTIONS

This complex network (beliefs, emotions, sensations, and behaviors) offers several possibilities for negotiators to better meet their goals. Just as the problem of identity might be seen from several perspectives (critical theory, psychology, economics) so, too, solutions come from many approaches. These include traditional cognitive strategies as well as less traditional strategies based on emotional awareness and management, including mindfulness and awareness of nonverbal expressions of emotion.

Traditional negotiation theory and training emphasize thinking differently, or what psychologists would call purely *cognitive* strategies. Years of negotiation training rest on ideas that insights will set us free: teach students to be aware of dysfunctional biases such as reactive devaluation,⁴⁷ and students will shed the patterns.⁴⁸ But research suggests mere awareness may not change the behavior.⁴⁹ When negotiation students learn one lesson through a simulation, they often fail to apply the lesson in the next negotiation—unless the instructor makes the analogy quite explicit.⁵⁰

Sometimes individual negotiators may invoke more useful identities to help negotiations. Gilson and Mnookin, for example, suggest that parties might sometimes choose bargaining agents, such as particular lawyers, because they have a reputation for collaborative bargaining.⁵¹ So, too, individual negotiators might invoke a reputation for fairness, or a common membership in some trade, small professional group, or other community. In both ways, individuals may try to invoke one identity rather than other identities that might engender irrational competition or undermine collaborative solutions.

Sometimes cognitive strategies work better with third parties. Much research now makes clear that parties often discount the offers made by other parties. This is the much-studied phenomenon of reactive devaluation.⁵² We can also see this as identity and emotion at work: how seriously can we consider an offer from “them”? If you are like most people, you’ll value the same offer more if instead a “neutral” mediator suggests it. In other contexts, too, third parties such as mediators may help shape identities to achieve different results. Think again of the different outcomes men and women achieve in negotiation. When business school students were merely told that men and women negotiated differently, women did worse in the negotiations.⁵³ However, when students were told that they were all successful and skilled business students, men and women negotiated more equally.⁵⁴

Applying this exact intervention may work with many groups of relatively equal parties but may pose problems in other contexts. For example, does it help

to tell an abused woman she can bargain well, when in fact she might be best advised to opt out of mediation?

In other ways, though, mediators may help mold the identity of parties. Many family mediators put pictures of children in the middle of the table to remind parties that they are not merely feuding ex-lovers with a tangled past but coparents with a common future. Other mediators work through community organizations that stress other identities, such as mediation provided by Orthodox Jewish organizations, Islamic mediation, and, more recently, mediation through gay and lesbian community centers.⁵⁵ Some mainstream mediators stress ideas such as “cultural competence.”⁵⁶ For some, that competence means sensitivity to things such as the way some Asian families may favor male over female children. The danger, of course, is that third parties may emphasize identities that promote one party over another, or one unrepresented person (a daughter) over another (a son). In today’s complex times, when parties may present themselves with many different potential identities—and when mediators may know of many other possibilities (for example, feminist perspectives for women from traditional cultures)—some mediators retreat to a kind of passive neutrality, merely mirroring what the parties say. This so-called neutrality, however, may simply have the effect of preserving older identities, or strengthening the more verbally insistent party.⁵⁷

Instead, active kinds of neutrality may put competing identities on more equal ground.⁵⁸ Mediators may identify several ways similar parties may approach similar problems. This gives parties ideas and different kinds of identities to enable choices.⁵⁹ The Asian mother who wants equal treatment for a daughter need not see herself as a “rebel” or “eccentric” but instead as a “feminist.” She does not stand alone against her community; she stands with a community of women.

EMERGING INTERVENTIONS: EMOTIONAL AWARENESS, MINDFULNESS, AND NONVERBAL COMMUNICATION

Given all the limits to purely cognitive interventions, you might consider other strategies. The more that we see that our identities, beliefs, and emotions are not fixed, the more we will want tools to make us aware of potential shifts. So, too, we will want some tools to try to induce shifts to more enabling identities, beliefs, and emotions.

Emotional Awareness and Simple Emotional Shifts

Consider again the importance of brief emotions. We already saw that very small effects, such as a pleasant sound, a funny video, or a pleasant scent, shift

our emotions enough to influence the way we negotiate. Other research also shows that brief changes affect how we categorize and blame others. In one recent study, when people were angry, they were more likely to blame those they had been trained to see as different.⁶⁰ This difference could be far milder than the race and gender differences we usually think about. In one recent experiment, for example, participants took a brief test and were told they were either “overestimators” or “underestimators”—not based on the test, as it turns out, but just through random assignment.⁶¹ When some of the participants were induced to be angry, they were more likely to show signs of having unconscious negative stereotypes of the “other” kinds of estimators! Fear of exactly this reaction may partially explain why women and other outsiders may negotiate less: they may fear bargaining will trigger negative emotions in others, and the negative emotion may activate disabling stereotypes.

Given the importance of small emotional shifts, then, the simplest interventions to help with identity and beliefs would be to manage moods in ourselves and others. You might try a simple extension of the basic research: when negotiating or working with others, try to induce a more pleasant environment through sounds, smells, sights, and so on.

Mindfulness

If we could be more aware of the shifting emotions, beliefs, and identities in ourselves and others, such interventions might be more effective. Mindfulness practices may help us notice our own shifts, and may enhance our awareness of nonverbal expression of emotions in ourselves. It may also help us notice emotional shifts in others.

Briefly put, mindfulness involves awareness of moment-by-moment thoughts, physical sensations, emotions, and intentions. That awareness is in a particular way, moment-by-moment, fully accepting and free from judgment.⁶² In some sense, mindfulness is also an end goal, like a healthy heart or an appropriate weight. And like those other physical goals, different people may arrive at mindfulness in different ways, much as some people may diet (in any number of ways), others may exercise (also in any number of ways), and others may combine both. So, too, mindfulness might involve sitting and paying attention to passing thoughts, or walking and noticing physical sensations, or stretching in yoga poses and noticing physical and mental changes.

However developed, mindfulness works to manage identity and emotion in three complementary ways. Partly it is a cognitive tool. Mindfulness of our own thoughts lets us know when we are identifying with one or another of our various identities or ways of viewing the world. For example, someone might be aware of particular thoughts, such as thinking, “What would Donald Trump do?” or “What would Jesus do?” Mindfulness of the body also gives us a way of knowing when we are experiencing certain kinds of physical tension—this

may be a signal in turn that one is experiencing an emotion—possibly from a sense of identity violation or some belief. We may get angry at a car dealership and, as we reflect on the anger, discover an expectation that—despite so much of what we have heard and seen—somehow the negotiation should go faster, smoother.

Second, mindfulness gives us information on the exact kinds of changes in sounds, scents, food, and others that may affect our own mood. This is important information: studies rest on the generalizations that some changes make most people feel better, but not all. Certain sounds and smells that made most people feel a certain way in studies may not induce that effect in all of us. Mindfulness lets us discover our own individual triggers.

Third, mindfulness practices *may* themselves *sometimes* shift moods and identities. One tool for developing mindfulness is to meditate in particular ways, such as concentrating on one object (one's breath or one's footsteps). One expands to accepting awareness of thoughts, sensations, and so on once one has achieved a certain balance. Research shows such simple meditations have profound physical effects: eight weeks of regular meditation tend to shift brain patterns toward the left part of the brain, a region associated with more happiness and positive emotion.⁶³ This shift lingers even when one is not actually meditating. Simply put, if you meditate, you may not even need to think to overcome the identity-belief-emotion network; you may simply feel happier and approach problems more flexibly. There is some evidence that you can get some of these automatic benefits from other kinds of meditation as well.⁶⁴ Others suggest that mindfulness practices themselves tend to dissolve the identification with ourselves as separate and to promote a sense of connection with others. An important caveat: experienced meditation teachers caution that practices unfold in sometimes unpredictable cycles, so one may sometimes sit in meditation to return to the peace of some pleasant sitting only to discover that the current sitting is not as pleasant, or even unpleasant.⁶⁵

Nonverbal Communication of Emotion in Ourselves and Others

Training in nonverbal awareness of emotion offers another alternative. Paul Ekman's pioneering work on nonverbal expression of emotion has shown that several distinct emotions all involve distinct physical sensations and facial expressions. When you feel contempt, for example, you will tend to smile with only one side of your face.⁶⁶ When you are angry, you may feel physical sensations of warmth; your eyelids may draw down, but your eyes will remain open and glare.⁶⁷ For those practicing mindfulness meditation, Ekman's teachings provide tools to recognize emotions more quickly and precisely through physical sensations and, of course, a chance to test for yourself whether his research fits your experience.

Learning to see how the rapidly changing expressions of others reveal emotions can be a powerful tool. Over time, for example, one may learn to recognize the very quick facial changes that mark the very beginnings of emotions such as anger. Ongoing research suggests individual patterns differ in how quickly anger arises, but at least some individuals display anger briefly before it escalates fully.⁶⁸ If you are mediating a dispute and notice some of the telltale signs of anger, this may be a time to take a break, rather than to press on. As an additional cross-cultural benefit, Ekman's research over decades confirms that these same nonverbal markers reveal emotions not just in American or Western cultures but even in cultures as distant (from most readers of this book) as that of Papua New Guinea.⁶⁹

As with mindfulness, there is a caveat: Ekman often cautions that knowing that someone is experiencing an emotion does not tell us why. If someone you see as your opponent shows contempt with a half smile, it could be contempt for your offer or contempt for himself as he realizes how little he has prepared. But such cautions apply to all information: when someone says, "And that's my final offer," we know it very well might not be.

CONCLUSION: IDENTITY, BELIEFS, EMOTION, AND NEGOTIATOR COMPETENCE

Identity is not about political correctness. Identity, beliefs, and emotion work together to shape our thoughts and actions in negotiations—and our lives. Scientific research now confirms this. This remains particularly true for various outsiders who may face disadvantages in negotiation. It is also true in the many ways that even mild shifts in our identities, beliefs, and emotions may affect how we negotiate. This is both a peril and a potential: the identity-belief-emotion trio often readily shifts for ourselves, and (to some degree) for the way others perceive us. With such insight, we may work to avoid restricting identities, emotions, and beliefs and to develop instead enabling ones in ourselves and in others.

Notes

1. See J. O'Connor and J. Seymour, *Introducing NLP: Psychological Skills for Understanding and Influencing People* (London: Thomson, 1990).
2. See, for example, M. H. Bazerman, *Judgment in Managerial Decisionmaking* (New York: John Wiley & Sons, 1994); and R. H. Mnookin, S. R. Peppet, and A. S. Tulumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2000).
3. See, for example, F. A. Metcalfe, *What Would Buddha Do? 101 Answers to Life's Daily Dilemmas* (Berkeley, Calif.: Seashore, 1999); N. Harrison, *365 WWJD: Daily*

- Answers to What Would Jesus Do?* (New York: HarperCollins, 1998); and C. M. Sheldon, G. W. Sheldon, and D. Morris, *In His Steps, What Would Jesus Do?* (New York: Inspirational Press, 1998). See also 1 John 2:6 ("The one who says he resides in God ought himself to walk just as Jesus walked.").
4. See P. D. Kramer, *Should You Leave?* (New York: Scribner, 1997). The scene described is from the movie *Annie Hall*, Woody Allen (director), MGM/UA Studios, 1977.
5. For a review, see C. Freshman, A. Hayes, and G. Feldman, "The Lawyer-Negotiator as Mood Scientist: What We Know and Don't Know About How Mood Relates to Successful Negotiation," *Journal of Dispute Resolution*, 2002, 1, 1-79. For a recent study of how the very mild differences in emotions affect the success of law students, see C. Freshman, A. Hayes, and G. Feldman, "When 'Not Too Bad' May Not Be Good Enough: A Theoretical and Empirical Exploration of Efficient Emotion and Law Student Success at Grades, Negotiation, and Mental Health," unpublished paper, Faculty of Law, University of Miami, 2004. (Available on request from clark_freshman@post.harvard.edu)
6. See K. W. Crenshaw, "Foreword: Toward a Race-Conscious Pedagogy in Legal Education," *National Black Law Journal*, 1989, 11, 1-14; see also M. R. Mahoney, "Whiteness and Remedy: Under-Ruling Civil Rights *Inwalker v. City of Mosquite*," *Cornell Law Review*, 2000, 85(5), 1309-1357.
7. See G. R. Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (New York: Viking, 1999).
8. See Shell, *Bargaining for Advantage*, 1999.
9. See J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).
10. See, for example, J. Simon, "Inevitable Dependencies: A Comment on Martha A. Fineman, The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies," *Columbia Journal of Gender & Law*, 1995, 5, 152-165; and P. M. Rosenau, *Post-Modernism and the Social Sciences: Insights, Inroads, and Intrusions* (Princeton, N.J.: Princeton University Press, 1992). Paraphrasing Pauline Rosenau, Menkel-Meadow points to the distinction "between more sceptical, nihilistic post-moderns who believe that 'truth' is always partial, transitory, and uncertain, and affirmative postmoderns who instead seek to broaden and increase the methods of knowledge acquisition." See C. Menkel-Meadow, "The Trouble with the Adversary System in a Postmodern, Multicultural World," *William and Mary Law Review*, 1996, 38, pp. 15-16.
11. Some psychologists note that online communication "allows its users to inflict pain without being forced to see its effect" and may "incite a deeper level of meanness." See A. Harmon, "Internet Gives Teenage Bullies Weapons to Wound from Afar," *New York Times*, Aug. 26, 2004, p. A 1.
12. M. H. Bazerman, *Judgement in Managerial Decision Making* (5th ed.) (New York: John Wiley & Sons, 2002).
13. See R. A. Posner, "Are We One Self or Multiple Selves?" *Legal Theory*, 1997, 3, 23-27; see also R. A. Posner, *Aging and Old Age* (Chicago: University of Chicago Press, 1995).

14. See J. P. Forgas, "On Feeling Good and Getting Your Way: Mood Effects on Negotiator Cognition and Bargaining Strategies," *Journal of Personality & Social Psychology*, 1998, 74, 565-577.
15. See L. Ross and R. E. Nisbett, *The Person and the Situation: Perspectives of Social Psychology* (Philadelphia: Temple University Press, 1991).
16. For a relatively easy introduction to this idea, see J. Goldstein, *Insight Meditation: The Path of Freedom* (Boston: Shambhala, 1994).
17. For a survey and criticism, see C. Freshman, "Prevention Perspectives on 'Different' Kinds of Discrimination: From Attacking Different 'Isms' to Promoting Acceptance in Critical Race Theory, Law and Economics, and Empirical Research," *Stanford Law Review*, 2003, 55, 2293-2347.
18. See C. Freshman, "Whatever Happened to Anti-Semitism? How Social Science Theories Identify Discrimination and Promote Coalitions Between 'Different' Minorities," *Cornell Law Review*, 2000, 85, 313-442.
19. See, for example, one version of such an implicit association test, Implicit Association Test Corp, Harvard University, 2004 [<https://implicit.harvard.edu/implicit/>]. For general background on such tests, see also A. G. Greenwald, B. A. Nose, and M. R. Banaji, "Understanding and Using the Implicit Association Test: 1. An Improved Scoring Algorithm," *Journal of Personality and Social Psychology*, 2003, 85(2), 197-216. On Ayres's recommendation of using the implicit association test in litigation and elsewhere, see I. Ayres, *Pervasive Prejudice? Unconventional Evidence of Race and Gender Discrimination* (Chicago: University of Chicago Press, 2001).
20. See R. M. Kanter, *Men and Women of the Corporation* (New York: Basic Books, 1977).
21. See A.J.C. Cuddy and S. T. Fiske, "Doddering but Dear: Process, Content, and Function in Stereotyping of Older Persons," in T. D. Nelson (ed.), *Ageism: Stereotyping and Prejudice Against Older Persons* (Cambridge, Mass.: MIT Press, 2002).
22. See S. T. Fiske, "Stereotyping, Prejudice, and Discrimination," in D. T. Gilbert, S. T. Fiske, and G. Lindzey (eds.), *The Handbook of Social Psychology*, Vol. 2 (Boston: McGraw-Hill, 1998).
23. See L. J. Kray, L. Thompson, and A. Galinsky, "Battle of the Sexes: Gender Stereotype Confirmation and Reactance in Negotiations," *Journal of Personality & Social Psychology*, 2001, 80, 942-958.
24. See Ayres, *Pervasive Prejudice?* 2001.
25. See Ayres, *Pervasive Prejudice?* 2001.
26. See F. Valdes, J. M. Culp, and A. P. Harris, "Battles Waged, Won, and Lost: Critical Race Theory at the Turn of the Millennium," in F. Valdes, J. M. Culp, and A. P. Harris (eds.), *Crossroads, Directions, and a New Critical Race Theory* (Philadelphia: Temple University Press, 2002).
27. See Ayres, *Pervasive Prejudice?* 2001.
28. See Fiske, "Stereotyping, Prejudice, Discrimination," 1998.

29. See M. H. Bazerman, *Smart Money Decisions* (New York: John Wiley & Sons, 1999).
30. For a thorough psychological introduction, see R. B. Cialdini, *Influence: How and Why People Agree to Things* (New York: Morrow, 1984); and R. B. Cialdini, *Influence: The Psychology of Persuasion* (New York: Morrow, 1993). For a briefer introduction as applied to negotiators, see Shell, *Bargaining for Advantage*, 1999.
31. See G. R. Williams, "Negotiation as a Healing Process," *Journal of Dispute Resolution*, 1996, 1, 1-66.
32. See L. Babcock and S. Laschever, *Women Don't Ask: Negotiation and the Gender Divide* (Princeton, N.J.: Princeton University Press, 2003).
33. See Babcock and Laschever, *Women Don't Ask*, 2003.
34. See C. Freshman, "Re-visioning the Dependency Crisis and the Negotiator's Dilemma: Reflections on the Sexual Family and the Mother-Child Dyad," *Law and Social Inquiry*, 1997, 22, 97-129.
35. See A. M. Spence, *Market Signaling: Informational Transfer in Hiring and Related Screening Processes* (Cambridge, Mass.: Harvard University Press, 1974).
36. See, for example, M. J. Radin, "The Pragmatist and the Feminist," *Southern California Law Review*, 1990, 63, 1699-1726.
37. See M. A. Case, "Developing a Taste for Not Being Discriminated Against," *Stanford Law Review*, 2003, 55, 2273-2291.
38. See Ayres, *Pervasive Prejudice?* 2001.
39. D. Carbado, "Straight Out of the Closet: Race, Gender, and Sexual Orientation," in Valdes, Culp, and Harris (eds.), *Crossroads, Directions, and a New Critical Race Theory*, 2002.
40. See C. W. Carbado and M. Gulati, "Working Identity," *Cornell Law Review*, 2000, 85, 1259-1308.
41. I. Ayres, "Fair Driving: Gender and Race Discrimination in Retail Car Negotiations," *Harvard Law Review*, 1991, 817, 832n45.
42. I use *scripts* here to refer to any set of expectations, including reasonable and functional expectations. Some psychologists, particularly psychoanalysts, use scripts more narrowly to describe maladaptive expectations based on inappropriate past situations that distort how one sees and behaves in the present. See, for example, P. Ekman, *Emotions Revealed: Recognizing Faces and Feelings to Improve Communication and Emotional Life* (New York: Times Books, 2003), p. 41.
43. See A. T. Beck, *Prisoners of Hate: The Cognitive Basis of Anger, Hostility, and Violence* (New York: HarperCollins, 1999).
44. See R. Kumar, "Affect, Cognition, and Decision Making in Negotiation: A Conceptual Integration," in M. A. Rahim, *Managing Conflict: An Interdisciplinary Approach* (New York: Praeger, 1989); and D. Stone, B. Patton, and S. Heen, *Difficult Conversations: How to Discuss What Matters Most* (New York: Viking, 1999).
45. See Kramer, *Should You Leave?* 1997.

46. See D. M. Kolb and J. Williams, *Everyday Negotiation: Navigating the Hidden Agendas in Bargaining* (San Francisco: Jossey-Bass, 2003).
47. "Reactive devaluation" refers to the way most of us value the identical offer less if made by an "opponent" rather than a neutral, like a mediator.
48. See K. J. Arrow, R. H. Mnookin, L. Ross, A. Tversky, and R. Wilson (eds.), *Barriers to Conflict Resolution* (New York: W. W. Norton, 1995).
49. See J. J. Gillespie, L. Thompson, J. Loewenstein, and D. Gentner, "Lessons from Analogical Reasoning in the Teaching of Negotiation," *Negotiation Journal*, October 1999, 15(4), 363-371.
50. See Gillespie, Thompson, Loewenstein, and Gentner, "Lessons from Analogical Reasoning in the Teaching of Negotiation," 1999.
51. See R. J. Gilson and R. H. Mnookin, "Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation," *Columbia Law Review*, 1994, 94, 509-566.
52. See Arrow, Mnookin, Ross, Tversky, and Wilson (eds.), *Barriers to Conflict Resolution*, 1995. See also R. Korobkin and C. Guthrie, "Heuristics and Biases and the Bargaining Table," *Marquette Law Review*, 2004, 85, 795-808.
53. See Kray, Thompson, and Galinsky, "Battle of the Sexes," 2001.
54. See Kray, Thompson, and Galinsky, "Battle of the Sexes," 2001.
55. See C. Freshman, "Privatizing Same-Sex 'Marriage' Through Alternative Dispute Resolution: Community-Enhancing Versus Community-Enabling Mediation," *U.C.L.A. Law Review*, 1997, 44, pp. 1692-1695.
56. See A. Barsky, D. Este, and D. Collins, "Cultural Competence in Family Mediation," *Mediation Quarterly*, 1996, 13(3), 167-178.
57. For critiques of such neutrality, see Freshman, "Privatizing Same-Sex 'Marriage' Through Alternative Dispute Resolution," 1997. See also J. R. Coben, "Gollum Meet Smeagol: A Schizophrenic Rumination on Mediator Values Beyond Self-Determination and Neutrality," *Cardozo Journal of Conflict Resolution*, 2004, 5(2), 65-85.
58. See Freshman, "Privatizing Same-Sex 'Marriage' Through Alternative Dispute Resolution," 1997.
59. For a more complete discussion, see Freshman, "Privatizing Same-Sex 'Marriage' Through Alternative Dispute Resolution," 1997.
60. See D. DeSteno, N. Dasgupta, M. Y. Bartlett, and A. Cajdric, "Prejudice from Thin Air: The Effect of Emotion on Automatic Intergroup Attitudes," *Psychological Science*, 2004, 15(5), 319-324.
61. See DeSteno, Dasgupta, Bartlett, and Cajdric, "Prejudice from Thin Air," 2004.
62. See J. Kabat-Zinn, "Full Catastrophe Living," in J. Kabat-Zinn, *Wherever You Go, There You Are* (New York: Hyperion, 1994).
63. See Health Emotions Research Institute, University of Wisconsin, October 2004. [<http://www.healthemotions.org/research/index.html>]. See also D. Goleman,

Destructive Emotions: How Can We Overcome Them? A Scientific Dialogue with the Dalai Lama (New York: Bantam Books, 2003).

64. See C. Freshman, A. Hayes, and G. Feldman, "Mindfulness in the Law and ADR: Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support," *Harvard Negotiation Law Review*, 2002, 7, 67–81.
65. See J. Goldstein, *Insight Meditation* (Boston: Shambhala Books, 2003); and Freshman, Hayes, and Feldman, "Mindfulness in the Law and ADR," 2002.
66. See P. Ekman, *Emotions Revealed* (New York: Times Books, 2003).
67. See Ekman, *Emotions Revealed*, 2003.
68. See P. Ekman, "Emotional Profiles," unpublished manuscript on file with the author, 2003.
69. See Ekman, "Emotional Profiles," 2003.