GENDERED DIFFERENCES IN NEGOTIATION: ADVANCING AN UNDERSTANDING OF SOURCES, EFFECTS, AND AWARENESS

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“I would rather trust a woman’s instinct than a man’s reason.”
—Stanley Baldwin, Former British Prime Minister

I. INTRODUCTION

Conversations about gendered differences in negotiation have been around for decades. However, recent research about these gendered differences is expanding our understanding of gender stereotypes and role expectations in negotiation. This article reviews some of this research and discusses how awareness of gendered differences can be advantageous to both male and female negotiators.

One’s self-identity hinges on more than just gender; for example, cultural values, economic class, ethnic origin, geographic location, group affiliations, hobbies, language and dialect, national citizenship, occupation, personal values, race, religion, self-interests, sexual orientation, social status, etc., also play parts in forming one’s self identity. These factors also affect negotiation. This article, however, focuses on gender and its effect on negotiation. This article argues that gendered differences in negotiation are ubiquitous, often largely invisible (especially to men), and not well understood. These gendered differences have roots in our biology and our acculturation. These differences produce implicit bias, gender stereotypes, and role expectations, which create differences in negotiation styles, strategies, and outcomes. This article concludes with tools that male and female negotiators can use to negotiate more effectively.

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II. BIOLOGICAL BACKGROUND

The terms “gender” and “sex” are often used interchangeably in day-to-day discourse; however, “gender” refers to socially constructed roles, traits, and characteristics that are associated with being male or female, whereas “sex” refers to the biological characteristics of being male or female.1 Children acquire gendered behaviors through social interactions that may stem from cultural cues, parental approval or disapproval, and early experiences of what it means to be a man versus a woman. Parents influence a child’s earliest experience of what it means to be male or female through choice of colors, clothes, toys, and expected behaviors.2

Gendered differences in boys and girls also have a biological explanation. For example, female infants are more sensitive to touch, look longer at others’ faces, make more eye contact, and respond more empathetically to others’ distress.3 Male infants, on the other hand, look longer at a suspended mechanical mobile, have a stronger grasp reflex, and greater leg strength.4 Additionally, preferences for gendered toys may be seen as early as ten months, are definitely present by age three, and increase throughout preschool.5 Studies suggest these gendered preferences may be determined biologically and may be influenced prenatally by testosterone.6

In addition to these differences seen in infancy and early childhood, there are differences in the “wiring” and functioning of male

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2 Id. at 60.
3 Id. at 55. It also has been found that the heart rates of female toddlers increase when they are told sad stories. Id. at 97.
4 Id. at 55.
5 Id. at 57. There is research suggesting that “people share greater trust and communicate more effectively with others of their own gender,” and that “people self-segregate into same-gender groups throughout their lives, beginning as young as 33 months. Perhaps, as some have suggested, this phenomenon is due to differences in male and female styles of interacting, which are discernible from early childhood.” Sandra Farber & Monica Rickenberg, Under Confident Women and over Confident Men: Gender and Sense of Competence in a Simulated Negotiation, 11 Yale J.L. & Feminism 271, 301 (1999).
6 Wolpert, supra note 1, at 57–58. As an interesting side note regarding exposure to testosterone, there are minor physical characteristics that show sex differences, for example, the length of the second digit (index finger) compared to the fourth digit (ring finger) on the right hand. In men the second digit tends to be shorter than the fourth, whereas in women the second digit tends to be the same length or longer than the fourth. Lower second-digit to fourth-digit ratios imply higher testosterone exposure in the embryo. Id. at 22–23.
and female brains. It is difficult to tell whether these structural differences stem from biology or from social experiences and differing use of the brain by men and women.\footnote{7} No matter the cause, scans of the brains of men and women show variations in connections in the brain, having to do with visual skills, emotional responses, facial processing, and memory and language abilities.\footnote{8}

A recent study of brain imaging of nearly a thousand male and female adolescents found differences in connections of the brain that may explain behavioral differences.\footnote{9} The study found that male brains had more connections within hemispheres (i.e., more connections between the front and the back of the brain), whereas female brains had more connections between hemispheres (i.e., connections between left and right hemispheres).\footnote{10} This suggests that male brains may be optimized for motor skills, because the front of the brain handles perception and the back handles action. Correspondingly, female brains may be optimized for combining analytical and intuitive thinking, because the left hemisphere is the seat of logical thinking and the right hemisphere is the seat of intuitive thinking.\footnote{11} These structural differences in the brain support previous observations that men on average are better at motor and spatial skills, whereas women on average have better verbal memory and social cognition skills.\footnote{12}

Other research has found women are more facially expressive, better at reading emotional facial expressions, and better at identifying changes in vocal intonation.\footnote{13} Women also use emotional terms to describe themselves more frequently, express more emotions more frequently, and have stronger emotional responses when viewing images of facial expressions.\footnote{14}

\footnote{7} Tanya Lewis, \textit{How Men's Brains Are Wired Differently than Women's}, \textsc{Livescience} (Dec. 2, 2013), http://www.livescience.com/41619-male-female-brains-wired-differently.html. “Learning involves changes in the connections between neurons and two things may happen: new connections may form and the structure of existing junctions may change.” \textsc{Wolpert}, \textit{supra} note 1, at 54.

\footnote{8} \textsc{Wolpert}, \textit{supra} note 1, at 45.

\footnote{9} \textit{See} Lewis, \textit{supra} note 7.

\footnote{10} \textit{Id.} When compared by age group, the most pronounced brain differences were seen among adolescents, suggesting “sexes begin to diverge in the teen years.”

\footnote{11} \textit{Id.} “In addition to this, it has been found that the prefrontal cortex in women is larger which may enable women to search for solutions more effectively.” \textsc{Wolpert}, \textit{supra} note 1, at 94.

\footnote{12} \textit{See} Lewis, \textit{supra} note 7.

\footnote{13} \textsc{Wolpert}, \textit{supra} note 1, at 105.

\footnote{14} \textit{Id.} at 94.
Might these gendered differences be grounded in evolutionary genetics? Lewis Wolpert in his book, *Why Can’t a Man be More Like a Woman?*, writes:

Looking after children and being sensitive to their emotional states and needs could have led to the evolution of empathy, particularly in women; this development would have benefited the children. There is also a view that female behaviour has evolved to help facilitate harmony within the family. Men, meanwhile, needed to carry out tasks which need strength and speed, and the most successful were those who were good hunters and competitive for females. This required aggression, which became genetically determined.15

In summary, various studies and theories suggest there are social, biological, and evolutionary explanations for differences between genders. These differences are seen in early infancy and continue throughout one’s life. Whether biologically determined or socially constructed and reinforced, gendered differences instruct our thoughts and affect our actions. They are responsible for the implicit bias and gendered stereotypes that impact gendered differences in negotiations.

III. **Implicit Gender Bias and Gendered Stereotypes**

Over the past decade, “implicit bias” has emerged as an explanatory force behind gender disparity, supplanting “lifestyle choices” as the dominant explanation.16 This can be seen in a famous study disclosing gendered biases in the sciences. A team put together materials for applicants for a lab manager position. All materials for the applicants were identical except half of the materials had a male applicant’s name and half a female applicant’s name. The materials were sent to 127 faculty members to assess the applicants’ competence, desirability to hire, and recommendations for salary and mentoring. The study found that for each variable, gender made a significant difference. A “male” applicant was viewed as more competent and a better candidate for the job, and was offered a higher salary and more mentoring hours than a “female” applicant. These differing gendered-biased conclusions were

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15 *Id.* at 32.
true for both male and female faculty members assessing the materials.17 Because all materials were the same, the perceived differences in the applicants’ level of competence, desirability to hire, salary, and mentoring offered were solely the result of implicit gender bias.

Implicit bias refers to:

[T]he attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner . . . [and] are activated involuntarily and without an individual’s awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness. Rather, implicit biases are not accessible through introspection.18

Individuals develop implicit biases over a lifetime through direct and indirect messages.19 In the study of gendered biases with the applicants for the lab manager position, the research team concluded that the preferences were based upon “preexisting gender biases reinforced by cultural stereotypes.”20

On a broad scale, gender stereotypes infer that men act assertively, independently, and rationally, whereas women act passively and emotionally, with concern for others.21 In addition, gender stereotypes infer that men have greater mathematical and categorizing skills, whereas women have greater interpersonal and intrapersonal skills.22

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17 See id.
19 See id.
20 See Confronting Implicit Gender Bias in Neuroscience, supra note 16. The impact of this study meant the female applicant was not selected for the position; however, the researchers also hypothesize the findings may predict implications for other parts of one’s career. Specifically, do negative experiences determine a woman’s decision to stay in a field, and when women receive less encouragement from other faculty members, does that undermine their confidence and ambition?
21 Laura J. Kray & Leigh Thompson, Gender Stereotypes and Negotiation Performance: An Examination of Theory and Research, in Research in Organizational Behavior 103–182, 104 (2005).
22 Farber & Rickenberg, supra note 5, at 288.
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Gendered stereotypes affect our expectations about what to expect from self and others and shape our behavior in an ambiguous situation, such as meeting someone for the first time.23

Males are expected to be rational and objective, while females are expected to concentrate more on relationships. Men tend to define themselves by their individual achievements, while women tend to define themselves by their relationships and group endeavors. Male negotiators are expected to be dominant and openly competitive, while females are expected to be passive and submissive.24

These gender-based stereotypes influence the way in which people interact with members of the opposite sex, specifically during negotiations.25 “[R]esearch suggests that negotiators use gender stereotypes not only to judge their counterparts but also to infer what others are likely to expect of them, and that these stereotype-based inferences influence fundamental negotiation behaviors.”26 For example, studies have found that negotiators adjusted their offers based upon whether they were negotiating with a man or woman, and negotiators expected women to take a smaller share of value while negotiating.27

On the other hand, because society stereotypically expects women to have a greater concern for others, studies have shown that women perform better in negotiations in which they advocate for others as opposed to themselves; their results in these negotiations rivaled if not bested that of men.28

These gendered stereotypes do not mean that all women are at one end of a negotiation behavior spectrum and that all men are at the other end. Despite gendered stereotypes, both men and women are capable of using behaviors along the entire negotiation spectrum. Studies have shown that men and women are equally capable of adopting any of the characteristics typically assigned to the other gender. In other words, “[m]en and women both seem to be capable of being aggressive, helpful, and alternately cooperative and competitive. . . and there is little evidence that the nature of

25 Id. at 346.
26 Bowles, supra note 23, at 8.
27 Id. at 6.
28 Id. at 14.
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women and men is so inherently different that we are justified in making stereotypical generalizations.\textsuperscript{29}

Nevertheless, as shown in the study of applicants for the lab manager position, gender stereotypes are real, whether in our conscious awareness or implicitly. These stereotypes affect negotiation attitudes and behavior at the negotiating table and impact the outcomes of negotiations.

IV. IMPRESSION, MOTIVATION, AND REACTANCE

The importance of making a good first impression is a lesson most people learn early in life. The degree to which people are motivated to control how others see them is known as “impression motivation.”\textsuperscript{30} Impression motivation is found in negotiations when negotiators are motivated to make a positive impression, and this also is affected by gender stereotypes.

Negotiators use gender stereotypes to infer the behaviors of their counterpart and also infer how they are likely to be perceived by their counterpart.\textsuperscript{31} When gender stereotypes are implicit in negotiation, negotiators are likely to display gender stereotypical behaviors.\textsuperscript{32} However, when gender stereotypes are explicit in negotiation, or when negotiators feel they are being evaluated by their counterpart, negotiators are more likely to defy gender stereotypical behaviors.\textsuperscript{33}

One study found, when male negotiators were highly motivated to make a positive impression, they yielded more value to their counterparts; however, when female negotiators were highly motivated to make a positive impression, they claimed more value for themselves.\textsuperscript{34} These results are counter to what gender-based stereotypes tell us will happen and, therefore, perhaps being told to make a positive impression in negotiation is akin to being told that our normal gendered behaviors are not sufficiently effective in

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\textsuperscript{29} Craver, supra note 24, at 353.
\textsuperscript{31} Bowles, supra note 23, at 6.
\textsuperscript{32} Id. at 20.
\textsuperscript{33} Id. at 21.
\textsuperscript{34} Curhan & Overbeck, supra note 30, at 189. It appears that women who occupy high-status positions can benefit instrumentally from impression motivation, but may pay relationally, whereas men in the same positions can benefit relationally, but pay instrumentally.
making positive impressions, so that we choose to behave in a contrasting manner.\textsuperscript{35} In other words, negotiators may defy (react against) gender stereotypical expectations when the stereotype is stated explicitly.\textsuperscript{36}

However, studies have shown that acting in defiance of gender stereotypes in negotiation has counterintuitive consequences. Male negotiators, who were more cooperative during negotiations, created a better impression, but ended up with lower payoffs. Female negotiators who were more competitive during negotiations, earned higher payoffs, but created a more negative impression.\textsuperscript{37} Women face this dilemma when negotiating for higher economic gains for themselves, because they defy the gender stereotype that women have a greater concern for others. “Men—and even many women—frequently expect women to behave like ‘ladies.’ Aggressiveness that would be considered vigorous advocacy if employed by men, may be characterized as offensive and inappropriate when used by women.”\textsuperscript{38} Research has shown that women face this dilemma in compensation negotiations; they must weigh the benefit of greater payoffs against the social sanctions they will face when negotiating in defiance of their gender stereotype.\textsuperscript{39}

\textsuperscript{35} Id. at 191.
\textsuperscript{36} Id. at 181. Claude Steele studied the impact of stress on learning and “observed that when a student took a test that measured an ability in which his or her group was stereotypically weak, the student worried about conforming to that stereotype, and this worry in itself could interfere with performance. Steele found that on a difficult math test, men outperformed women, even though students were matched in preparation and ability. However, when subjects were told that men and women performed equally well on the test, the performance differential between equally qualified students disappeared.” Similarly, in a test of verbal ability by white and African American students, when told it was a test of verbal ability, white students outperformed African American students, but that was not the case when verbal ability was not mentioned. Also, stereotype vulnerability was triggered when students were asked to provide background information before the test (i.e., about race). Farber & Rickenberg, supra note 6, at 279–80.

\textsuperscript{37} Bowles, supra note 23, at 13–14.

\textsuperscript{38} Craver, supra note 24, at 336.

V. GENDERED STRENGTHS AND WEAKNESSES

Because of social, biological, or evolutionary differences between men and women, or because of explicit or implicit gender stereotypes, men and women in negotiation will have different relative strengths and limitations. In trying to persuade others, men are more likely to interact with “highly intensive language” and will tend to be effective using this approach, whereas women are more likely to use less intensive language and are often more effective with this approach.40 Conversely, when women use the identical language that men would use to influence others, women often are perceived as being less influential.41

Other gendered differences in negotiations relate to emotions, interpersonal communication skills, and trust. Women have a stronger emotional “resonance” than men and are more commonly cognizant of other’s emotions, whereas men have a more cognitively driven and distant approach to others’ emotions.42 The interpersonal communication skills of women may aid in their ability to understand the interests of their negotiating counterparts, thereby ultimately being more able to create greater value in integrative negotiations.43 A woman’s “relatively persistent trust may also enable her to overlook minor misunderstandings or initial competitive posturing and collaborate with the other party to reach a creative solution, whereas men may lose trust quickly and be less willing to collaborate with a counterpart after a minor [trust] violation.”44 By contrast, men have an advantage in negotiating greater gains in distributive outcomes than women.45 In terms of compensation, women expect to be paid less and accept less pay than men. A study in 1984 asked men and women to do as much work as they thought was fair for a fixed, prepaid amount of money.46 Regard-

40 Craver, supra note 24, at 349–50 (quoting Michael Burgoon et al., Friendly or Unfriendly Persuasion: The Effects of Violations of Expectations by Males and Females, 10 HUM. COMM. RES. 283, 284, 293 (1983)); see also Ayala Malach Pines et al., Gender Differences in Content and Style of Argument Between Couples During Divorce Mediation, 20 CONFLICT RESOL. Q. 23, 36–37 (2002).

41 Craver, supra note 24, at 350.

42 WOLPERT, supra note 1, at 101.

43 Kray & Thompson, supra note 21, at 138.


45 Kray & Thompson, supra note 21, at 142.

46 Id. at 144.
less of whether their performance was in public versus private settings, women worked longer, completed more work, and had higher accuracy rates than did men.47

The psychologist, Carol Gilligan, developed a “Theory of Moral Development” that argues “people operate either from a morality of rights or from a morality of care, or responsibility” and that, although many people may exhibit traits of both moralities, individuals tend to have a stronger stake in one or the other.48 Gilligan notes, although these perspectives were not developed to be gender specific, men tend to exhibit a morality of rights, and women tend to exhibit a morality of care.49 The morality of rights “place[s] the world in relation to self, with one’s own self viewed as foremost and as separate from others. Problem solving in this moral perspective occurs through application of abstract, objective rules.”50 The morality of care “places self in relation to the world, which is viewed as a web of relationships to be preserved. The rights perspective prioritizes rules over relationships, and the care perspective would change the rules in order to preserve relationships.”51 This difference may have a gendered effect on negotiations:

If men place a higher premium on justice-based morality than do women, then it could lead men to prefer to resolve disputes through a discussion of right versus wrong with a clear winner and a loser. In contrast, women’s tendency to view morality through a care-based perspective might promote a desire to focus on higher order priorities (i.e., the preservation of the relationship) and attempts to address both parties’ interests in resolving disputes. As interest-based approaches tend to be more integrative, more satisfying, and less costly than rights-based approaches (Ury, Brett & Goldberg, 1988), women may be more effective at resolving disputes than men.52

On the other hand, while the care-based characteristic stereotypical of women may be advantageous to an integrative strategy in negotiation, it also may prove to be a liability in negotiations that involve competitiveness or a greater concern for self.53 This care-

47 Id.
49 Id. at 775–76.
50 Id. at 775.
51 Id.
52 Kray & Thompson, supra note 21, at 140.
53 Bowles, supra note 23, at 7.
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based morality supposedly used by women generally, also conflicts with the professional values and training of attorneys, which more directly align with the morality of rights.  

These differences also may have an effect on the outcome of negotiations: whereas female negotiators tend to value an “equal” exchange of value, male negotiators tend to desire “equitable” distributions.  

“These different predispositions could cause female bargainers to accept equal results even when they possess greater economic strength than their opponents, while male negotiators strive for equitable exchanges that reflect pertinent power imbalances.” However, with an understanding of these gendered differences, men and women can be proactive in limiting their respective disadvantages, and work on negotiating more effectively.

VI. TOOLS TO NEGOTIATE MORE EFFECTIVELY

Below are eight tools men and women may use to negotiate more effectively, given their gendered differences in negotiation.

A. Understand Your Preferred Negotiation Style and Strategy

Understand your own preferred style and strategy when it comes to negotiation. No particular style or strategy is right or wrong; rather, a negotiator can benefit by using various styles and strategies during a negotiation. Understand your preference first, then practice using other styles and strategies.

54 “As care-oriented people, these women lawyers use relational reasoning, through which they approach problem solving from a contextual, connected perspective.” Klein, supra note 48, at 777. “Women law students often suffer a dramatic loss of their sense of competence. For example, a broad-based study of 29,000 first-year law students indicated that women suffered a lack of confidence about their performance relative to their male colleagues, even though the women’s performance equaled or surpassed that of the men.” Farber & Rickenberg, supra note 5, at 276.

55 Craver, supra note 24, at 350–51.

56 Id.

57 For example, negotiators may employ a competitive or cooperative style, and may utilize any of the four negotiation strategies (performative, transformative, distributive, or integrative) at any time during the negotiation in order to best reach his or her desired outcomes. See generally Holbrook & Cook, infra note 60.
B. Be Self-Aware and Flexible

Self-awareness in negotiation is critical. This enables you to have an intention, choose behavior to implement your intention, monitor your counterpart’s reaction, evaluate whether you are achieving the outcome you intended, and if not, change your negotiation behavior. Studies have shown that female negotiators with higher performance results were primarily found to be the ones who would adjust their style based upon the gender of their negotiating counterpart. Therefore, a negotiator should be aware and flexible based upon the circumstances and the reactions of his or her counterpart.

C. Consider Gendered Expectations

Consider your own expectations and the expectations of your counterpart about gendered stereotypes in negotiation. Do you want to act in conformance to your counterpart’s expectations, or do you want to defy the expectations of your gender stereotype? This choice can have both risks and benefits. Anticipate gender-related responses in negotiation and adjust your style and strategy accordingly.

D. Prepare Using Legitimate Criteria

The Harvard Project on Negotiation has a theory that seven elements are present in all negotiations of differing kinds anywhere in the world: (1) relationship, (2) communication, (3) interests, (4) options, (5) alternatives, (6) legitimacy, and (7) commitment. All of these elements are important in negotiation, but emphasizing the legitimacy element is particularly useful for women. Legitimacy refers to the objective criteria chosen by negotiators to evaluate options, for example, like those of appraisals, fair market values, and industry practices. Using legitimacy allows a female

negotiator to be confidently assertive in advocating a particular outcome, without appearing to be overly aggressive.

E. Include a Relational Aspect

Relationship is one of the seven elements of negotiation identified by the Harvard Negotiation Project. Even in a onetime transaction, negotiators must deal with each other at the negotiation table and, therefore, there is always a relational component in negotiations. Because of their acculturation, it is easier for women to appreciate and use the relational element of negotiations. Male and female negotiators should listen for relational concerns in the underlying interests expressed by their counterparts during negotiations. These relational concerns may be a key component that must be resolved before a party is able to move on in negotiations or in order to reach a full agreement.

F. Preface Gender-Defying Statements or Actions

Framing and making the expectations of gendered stereotypes explicit in negotiation reduce the risks and likely negative effects of defying these expectations. For example, one study found that framing assertive statements with a statement alerting your counterpart to a possible defiance of expectations may reduce negative perceptions.

G. Balance Empathy and Assertiveness

In negotiation, a fundamental challenge for men and women is to strike an effective balance between empathy and assertiveness. Empathy involves effectively understanding your counterpart’s perspective and expressing his viewpoint in a nonjudgmental manner. Empathy should not be confused with sympathy, and understanding a viewpoint need not equate with agreement as to that

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61 Id. at 21.
62 See generally Kray & Thompson, supra note 21.
63 See Grenny & Maxfield, supra note 39. For example, the study noted phrases such as “I’m going to express my opinion very directly; I’ll be as specific as possible” or “I know it’s a risk for a woman to speak this assertively, but I’m going to express my opinion very directly.” Id.
viewpoint. Assertiveness is the ability to express and advocate for your own needs, interests, and perspectives. Assertiveness should not be confused with aggressiveness, and as noted above, the use of legitimacy is an effective way for negotiators to advocate assertively without appearing overly aggressive. A negotiator who can do both will be more effective than a woman who only expresses empathy or a man who only expresses assertiveness.

H. Be Authentic and Confident

The behavior of someone who is not acting authentically will come across as insincere. Find your own strengths as a negotiator and use them confidently to your advantage.

VII. Conclusion

Men and women negotiate differently. Gendered differences in negotiation are largely invisible and not well understood. These gendered differences have roots in our biology and our acculturation. Implicit bias, gender stereotypes, and gender role expectations create differences in negotiation styles, strategies, and outcomes when men and women negotiate. Understanding these gendered differences will enable men and women to have more well-formed intentions and choose more congruent behaviors in negotiation, even those which may defy gender stereotypes, when that creates an advantage or overcomes a disadvantage.