Teaching Negotiation to a Globally Diverse Audience: Ethics, Morality and Cultural Differences

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By

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Issues of ethics, morality and culture can surface quite quickly when teaching in a multicultural environment. Different ethnicities and cultures can have conflicting viewpoints on moral issues concerning questions such as what is right or wrong, true or false, good or bad, and the degree to which one's point of view must conform to those norms.

In some cultures, for example, bargaining is an acceptable, and even expected, behavior.¹ In others cultures, however, bargaining may be

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considered impolite or even rude. Participants’ experience in the Second Generation Global Negotiation Rethinking Negotiation Teaching conference held Istanbul, Turkey clearly confirmed this understanding.

At one point Istanbul program attendees were asked to leave the classroom and travel to the Grand Bazaar and the Spice Market to participate in an “adventure learning exercise. The participants were instructed to engage in a “real life” negotiation with vendors at those markets and to subsequently describe and analyze those experiences for all the participants when everyone returned to the classroom. Some program participants felt very comfortable bargaining with vendors and challenging the prices they were quoted. Others, however, were not comfortable haggling about prices and instead simply accepted the quoted prices as final. Those participants then simply bought the item or left the stand.

Different cultures and different religions, obviously, can produce dramatically different reactions to the same behaviors. The Second Generation Global Negotiation experience in the Grand Bazaar and Spice

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1 See e.g. John L. Graham et al., Explorations of Negotiation Behaviors in Ten Foreign Cultures Using a Model Developed in the United States, 40 MANAGEMENT SCIENCE 72, 86-88 (Jan. 1994), available at http://www.jstor.org/. In one study, for example, researchers found that study participants from Mexico “achieved higher profits . . . when they took a competitive approach (to negotiations).” Id. at 86.

2 Also known as the Rethinking Negotiation Teaching conference, this international conference was sponsored by the Hamline University School of Law Dispute Resolution Institute, JAMS, and ADR Center Italy.
Market illustrates how people differ in their perceptions as to how they can approach vendors effectively and appropriately. These differences are primarily a result of their world views, cultural experiences, and beliefs.

What is considered conventional in one culture may be considered extreme in another. The standards for what is considered moral are not consistent among cultures and, not surprisingly, one will find distinct subcultures within cultures. This is not to say that any one culture has higher moral values than the other, but rather that these different perceptions influence the way people negotiate and the way they interpret the behaviors of others. The following subsection provides an illustration.

**Truth and Lying in Judaism: An Overview**

The main principal in Jewish religion regarding the value of truth refers to the subjective perspective of the "other side," the listener. If words will cause a misunderstanding or mislead another party, then that is forbidden according to both Jewish religious doctrine and traditions. But if the words do not deceive the other party, even if these words are not true, then they are allowed. In fact, the critical issue is the influence, or impact, of the lie rather than the act of lying itself.³

An often quoted rabbinic saying ([Babylonian Talmud] Shabbat 55a) is: “Truth is the seal of the Holy One, blessed be He.” In Rashi’s explanation [Rashi is the foremost medieval commentator on the Old Testament], this saying refers to the Hebrew word for truth, emet, formed from the first letter of the alphabet, alef, the middle letter, mem, and the final letter, tav. God is found wherever there is truth and, accordingly, His absence is felt wherever there is falsehood.

There are three main sources of religious law in Judaism. The Talmud is a written compilation of Jewish oral law that explains and expounds upon the Hebrew Bible. It consists of the Mishna and Gemara. The Mishna, originally an oral tradition, was compiled and edited in

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PhD, and Abraham C. Weisel, JD, identify “four important Talmudic texts that deal with the issue of permissible deceptions.” Id. Upon examination of these texts, Friedman and Weisel postulate that:

(1)There are several circumstances where one is permitted or sometimes required to lie: lying to preserve the cause of peace, not to hurt another person’s feelings, or to provide comfort; lying in a situation where honesty might cause oneself or another person harm; lying for the sake of modesty or in order not to appear arrogant; lying for the sake of decency, i.e. not telling the truth about intimate matters; (and) lying to protect one’s property from scoundrels.

Id.

written form about 1,800 years ago. The Gemara, which consists mainly of commentaries on the Mishna, was completed approximately 1,500 years ago.

Each of these doctrinal sources has a slightly different perspective concerning truth in negotiation, and these perspectives reflect societal changes over time. These rules and their interpretations remain important today in everyday Western life, however. In fact, many of the tenets that

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5 Rabbi Joseph Telushkin, JEWISH LITERACY: THE MOST IMPORTANT THINGS TO KNOW ABOUT THE JEWISH RELIGION, ITS PEOPLE, AND ITS HISTORY, 151 (2d. ed. 2001). The oral tradition, also known as the Oral Law,

(I)Is a legal commentary on the Torah, explaining how its commandments are to be carried out. Common sense suggests that some sort of oral tradition was always needed to accompany the Written Law, because the Torah alone, even with its 613 commandments, is an insufficient guide to Jewish life . . . Indeed, the Sabbath rituals that are most commonly associated with holiness—lighting candles, reciting the Kiddush, and the reading of the weekly Torah portion—are found not in the Torah, but in the Oral Law.

Id. at 148-49. The Oral Law was memorialized in the Mishna after the second-century Bar-Kokhba revolt against the Romans resulted in staggering losses of the Jewish population in general and rabbis in particular. Id. at 146; 151.

6 See e.g. http://www.myjewishlearning.com/texts/Rabbinics/Talmud/Gemara.shtml. The Gemara memorialized discussions among rabbis regarding the meaning and interpretation of both the Mishna and the Torah: “The oral discussions were preserved . . . and later edited together in a manner that places generations of sages in conversation with one another. These teachers were interested in bringing greater harmonization between biblical and rabbinic traditions . . . .” Id. See also http://www.jewishencyclopedia.com/view.jsp?artid=32&letter=T#117.
governed the Bet Din, the Jewish court of law, find parallels in contemporary common law and statutes that govern contracts, contract negotiations and competitive business practices. For example, the Talmud forbids an individual from interfering with an established and finalized agreement formed between two other parties. This is similar to the concept of contractual interference, which is a tort at common law.

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7 See e.g. Cary Silverstein, *Company Doctor: Ancient Teachings Provided Roots for Best Practices*, BizTIMES MILWAUKEE (Oct. 12, 2007), available at http://www.biztimes.com/news/2007/10/12/company-doctor-ancient-teachings-provided-roots-for-best-practices. It is not surprising that many Western values and legal doctrines are informed by Judaic tradition, given the facts that Christianity stemmed from Judaism and that the majority of Westerners are raised according to Judeo-Christian belief systems.

8 Shulchan Aruch, Choshen Mishpat 237. See also Rabbi Yehonoson Dovid Hool, *Interfering with Business Deals in Halacha*, THE MATZAV NETWORK (Dec. 20, 2009) available at http://matzav.com/interfering-with-business-deals-in-halacha (describing the Talmudic prohibition on interference “with the business deals of another person.”). There are several exceptions to this prohibition, however. Id. Rabbi Yehonoson Dovid Hool explains that:

>(The prohibition) applies only if the buyer and seller have reached an agreement about the sale, including the price, and are at the stage of preparing to finalize the actual purchase. *If the parties are merely at the earlier stage of negotiations, others are free to make a competing bid* . . . *(T)he prohibition of interfering with another’s business deal (also) does not apply in the case of an exceptional opportunity . . . because it is unlikely that (a competing bidder) will be able to avail himself of a similar opportunity elsewhere.*

Id. (emphasis added). An exception also exists in the context of the sale of real property: *“The Halachah of Bar Metzra (Shulchan Aruch, Choshen Mishpat 175) grants a next-door neighbor first rights to a property that is put up for sale.”* Id.
In the Jewish religion, however, the first and foremost value is life rather than truth.\(^9\) Therefore, in order to save life, many behaviors are permitted that would not be tolerated under other circumstances: not only may lying and deceiving be allowed, but actual violation of commandments also may be permitted.\(^11\) But even though negotiations can have very high stakes and, in fact, sometimes can determine life or death, most do not involve such monumental issues. Accordingly, the Talmud

\(^9\) See generally Restatement (Second) of Torts §§ 766 – 766C (2010). The Restatement addresses several forms of contractual interference, including: intentional interference with performance of a contract by a third person; intentional interference with another’s performance of his own contract; intentional interference with a prospective contractual relationship; and negligent interference with a contract or prospective contractual relationship. \textit{Id.}

Each of the intentional torts requires a showing that the interfering conduct was improper. \textit{Id.} The primary factor considered in determining whether conduct is improper is the nature of the actor’s conduct. Restatement (Second) of Torts § 767 (2010). Misrepresentations, fraudulent statements, economic threats, and violations of local business ethics and customs all are considered examples of conduct that are improper for the purposes of proving tort liability. \textit{Id.}

\(^10\) See \textit{e.g.} Telushkin, \textit{supra} note 4 at 543-615 (discussing basic tenets of Jewish ethics). This focus on the sanctity of life is explained by the fact that, because the Torah “believes that each human being is created in God’s image, (it) regards every person as possessing infinite, and individual, value.” \textit{Id.} at 555.

\(^11\) See \textit{e.g.} Friedman and Weisel, \textit{supra} note 2; Telushkin, \textit{supra} note 4. In fact, “with three exceptions, all Jewish laws [including the Ten Commandments] are suspended when human life is at stake.” Telushkin, \textit{supra} note 4 at 573. The two commandments for which one must become a martyr are the sixth (murder) and the seventh (adultery); idolatry is the third exception to the suspension of Jewish law. \textit{Id.} at 41; 574-75.
cautions against the use of sharp practices in business transactions, such as lies and deceit, unless life or an exceptional opportunity is at stake.\textsuperscript{12}

An example is the parable describing the negotiations between Ephron and Abraham concerning the Cave of Machpelah. When Abraham’s wife, Sarah, died Abraham needed a place to bury her. He was, in fact, desperate for a burial plot. Ephron, understanding this fact, recognized that he could overcharge Abraham and probably still get his asking price. Because Ephron was interested in posturing before his countryman and looking generous, he offered the land as a gift, but also mentioned it was valued at 400 shekels. In later commentary, the rabbis pointed out that Jeremiah paid 17 shekels for property that was better. This illustrates that Ephron was taking advantage of Abraham’s plight for economic advantage, rather than lying to preserve life.\textsuperscript{13}

On the other hand, however, certain cultures encourage—or at least embrace—business practices that Westerners might view as

\textsuperscript{12} See Hool, supra note 6 and accompanying text. Friedman and Weisel further explain that,

\begin{quote}
The Talmud has special rules about geneivat da’at (literally, theft of one’s mind, thoughts, wisdom, or knowledge), i.e. fooling someone and thereby causing him or her to have a mistaken assumption, belief, and/or impression. The sages believed that there are seven types of thieves and, of these, the most egregious is the one who "steals the minds" of people . . . .
\end{quote}

Friedman and Weisel, supra note 2 (emphasis added).

\textsuperscript{13} See supra, note 6.
questionable or improper. In South Korea, for example, the concept of *chonji* reflects that culture’s emphasis on “reciprocation as the foundation to interpersonal relationships.”\(^{14}\) Thus, a parent might offer a gift to a teacher who has treated her child with greater leniency than required in order to establish rapport with the teacher.\(^{15}\)

In contrast, this focus on reciprocal roles between parties results in behavior that may be viewed as dishonorable or even illegal in other cultures. Many corporations in the United States, for example, have adopted policies that prohibit the giving and receiving of gifts between company employees and clients or between company employees and vendors.\(^{16}\) Furthermore, the United States Congress enacted the Foreign Corrupt Practices Act (“FCPA”) more than thirty years ago to prevent American companies from engaging in bribery of foreign officials when conducting international business.\(^{17}\)


\(^{15}\) Id. at 235. Other examples of *chonji* include a borrower offering a gift to a banker who has offered him a favorable interest rate and a citizen offering a gift to a government employee who expedites his administrative request. Id.

\(^{16}\) Id. at 234 (noting the American business trend of prohibiting gifts to avoid the appearance of impropriety). This trend also has extended to the public sector, with the adoption of analogous statutes addressing gifts to elected officials from lobbyists. See e.g., Minn. Stat. 10A.071 (2010).

Lying in Commercial Trade and Business

Among the many rules regarding dishonesty in commercial transactions, the following can be quoted as illustrations. The Mishnah (Bava Batra 5:10) rules: “A shopkeeper must wipe his measures twice a week, his weights once a week, and his scales after every weighing.” On the verse, “Ye shall do no unrighteousness in judgment, in meter-yard, in weight, or in measure” (Leviticus 19:35), the Talmud comments: “In meter-yard’ refers to the measurements of the land, that he may not measure for one in summer [when the measuring line is contracted through the heat] and for another in winter; “in weight,” he may not keep his weights in salt [to make them heavier]; “in measure,” he may not make the liquid produce a foam.”

Deceiving others is strictly forbidden: “The Holy One, blessed be He, hates a person which says one thing with his mouth and another in his heart” ([Babylonian Talmud] Pesahim 113b). Defrauding by the seller overcharging or the buyer underpaying is condemned, and the Mishnah (Bava Metzia 4:10) states: “As there is wrongdoing in buying and selling, there is wrongdoing with words. A man must not ask: ‘How much is this thing?’ if he has no intention of buying it.”

Suggestions for Instructors

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Instructors leading a class, and in particular an international class, may not be fully aware of the nature of their students’ deeply held values nor the strength with which those values are held. In this situation, the content of their teachings and the exercises they direct their students to perform may not resonate with those students. The message from the instructors may contradict the basic tenets of one’s religion or value system, such as those described in the preceding sections. At best, the instructor will fail to engage the students. At worst, the instructors not only may alienate students, they also may make the students quite upset.

Although this is true for programs designed solely for domestic audiences, it is particularly important in programs designed for global audiences. Indeed, we must attempt to understand the diverse value systems and the importance of those systems among members of such a global audience. This may be easier said than done and we should not underestimate the time and energy this will require. Unless we make this commitment a priority, however, we risk failing to engage our audiences effectively.

Beyond the ethical dilemmas often raised by certain negotiation methods, there are other cultural concerns.¹⁹ For example, some

¹⁹ See e.g. Michelle LeBaron, Cross-Cultural Communication, UNIVERSITY OF COLORADO BEYOND INTRACTABILITY PROJECT (Jul. 1993), available at http://www.beyondintractability.org/essay/cross-cultural_communication/. One anecdote elaborates,
negotiation courses emphasize the importance of examining body language and other “tells” that allow one party to decipher non-verbal cues that may reveal the truth behind the explicit message communicated by the opposing party.\textsuperscript{20} To the extent that these non-verbal cues are specific to the dominant culture in the class, students who are members of foreign and/or non-dominant domestic cultures who are not accustomed to “reading” or employing such cues may be placed at a significant disadvantage relative to their peers.

Eye contact, for example, is considered of paramount importance in Western culture.\textsuperscript{21} When a person’s eyes are averted from the other party or parties with whom he or she is dealing, conventional (Western) wisdom tells us that the person at worst is lying and at best is

\begin{itemize}
\item A German executive working in the United States became so upset with visitors to his office moving the guest chair to suit themselves that he had it bolted to the floor. Contrast this with U.S. and Canadian mediators and conflict-resolution trainers, whose first step in preparing for a meeting is not infrequently a complete rearrangement of the furniture.
\end{itemize}

\textit{Id.}


\textsuperscript{21} See e.g. James P.T. Fatt, \textit{It’s Not What You Say, It’s How You Say It: Nonverbal Communication}, \textit{COMMUNICATION WORLD} (Jun. 1999), available at \url{http://findarticles.com/p/articles/mi_m4422/is_6_16//ai_55580031/} (discussing the importance of nonverbal communication in general and eye contact in particular in the context of Western business and social cultures).
uncomfortable. Furthermore, we may associate his or her failure to maintain or make frequent eye contact as an indication of incompetence or uncertainty about a particular topic of discussion. Yet in other cultures, maintaining constant or significant eye contact with another party may be interpreted as inappropriate and perhaps even offensive. In several Asian cultures, for example, making direct eye contact with an authority figure or a non-intimate acquaintance is considered disrespectful. Obviously, an exercise that focuses on cues of this nature may be not only be

22 See e.g. Adam Blatner, M.D., About Nonverbal Communications: General Considerations, Jun. 29, 2000, available at http://www.blatner.com/adam/level2/nverb1.htm (discussing the significance and meaning of various forms of nonverbal cues in social interactions). For example, one physician explains that, “Modern American business culture values a fair degree of eye contact in interpersonal relations, and looking away is sensed as an avoidance or even deviousness.” Id. See also Fatt, supra note 11 (explaining that, “(s)tudies on eye contact and its effect on communication and credibility find that maintaining gaze while communicating is beneficial to credibility, and, conversely, averting eye contact is detrimental to credibility.”). Studies also have indicated that “(o)ther strange eye behaviours such as shifting eyes, looking down at notes for extended periods, and blinking excessively, have been shown to lower credibility.” Id.

23 See Fatt, supra note 11 (remarking that, “(w)hen volunteers (in an eye contact study) were asked to rate competence of communicators with low eye contact and with high eye contact, the competence ratings were significantly higher for the subjects who exhibited high eye contact with the audience.”).


25 Id.
unfathomable, but seemingly irrelevant, to persons who do not interact in environments where these cues are commonplace.

**Conclusion**

There is a danger that when we teach globally diverse audiences our familiar, reliable exercises and assignments may not resonate with our audience. But therein lies the opportunity. The program in Istanbul helped us appreciate the importance of learning as much as we can about our students’ cultures and values. It also revealed the fact that we may have to be much more literal and explicit about why we are asking students to engage in specific activities. For example, an exercise focusing on verbal cues initially may be unfamiliar, and perhaps even incomprehensible, to certain students. Assignments that require students to venture out of the classroom may appear pointless, and even uncomfortable, if students simply behave the way that they always have behaved.

But if we take the time to explain that in light of our increasingly borderless economies we all can benefit by identifying and understanding the ethics, morals, and cultural practices that are widely accepted in a particular community, those insights cannot help but make us more effective negotiators. And the instructional program will be especially enriched and engaging if we integrate exercises or examples illustrating
the ethics, morals, and cultural practices represented by a minority of
students enrolled in the class or program.