INTRODUCTION

A mountain serves as metaphor, which helps convey a little more.

This mountain has levels within\(^1\), and at the top we will begin.

I. POSITIONS

Near the peak’s where we seek our positions,\(^2\) which we find there in any conditions.\(^3\) As for mine, I am quick to proclaim them. And for yours, I will claim to disdain them.\(^4\)

Sometimes, when our outlook’s positional, our counterpart seems oppositional.\(^5\) Discussions, therefore, might get stuck and then, of course, we’re out of luck,

II. NEEDS AND INTERESTS

unless we look beneath positions, there to find our deeper missions.\(^6\) Practicing prospecting underground can yield discoveries quite profound.\(^7\)

As the pathway for getting to yes,\(^8\) Roger Fisher et al. clearly stress attending to interests, more than positions, so to foster ripe conditions

in which you can generate options and evaluate them for adoptions,

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2. A position is what a person says that she wants or deserves. E.g., “I want you to pay me $100,000 for damaging my house.” See ROGER FISHER ET AL., GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 3-4 (2d ed. 1991). Getting to Yes contrasts positions with interests, which are the needs, motives, or goals that the negotiator hopes (consciously or subconsciously) to achieve by asserting a position. See id. at 40-43.

3. During a negotiation, our positions generally are more accessible to our consciousness than our interests or needs. See id.

4. This and the preceding line each refer to a tactic that many commentators believe typifies positional, adversarial negotiation. See, e.g., DONALD G. GIFFORD, LEGAL NEGOTIATION: THEORY AND APPLICATIONS 27-28 (1989) (distinguishing between “competitive,” “cooperative,” and “problem-solving” negotiation strategies). Gifford’s competitive approach corresponds to what I have called “positional” or “adversarial” negotiation. His “problem-solving” strategy roughly corresponds to interest-bases approaches. See LEONARD L. RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS: CASES AND MATERIALS 165 (5th ed. 2014). Theorists have used a variety of categories to delineate approaches to negotiation. See id.

5. See FISHER ET AL., supra note 2, at 6-7.

6. See id. at 14.

7. See id.

8. See id. at 2.
which could lead to agreement success\(^9\) Pareto-ly optimal, which they say is the best.\(^{10}\)

And although “You can’t always get what you want,”\(^{11}\) should wisdom succeed in exceeding greed, perhaps you will want just what you need.

III. THE FIVE CORE CONCERNS

Sources of interests and positions may include our dispositions. When core concerns\(^{12}\) are unfulfilled our spirits get distinctly chilled.\(^{13}\)

You see, we need appreciation, recognition of our station,\(^{14}\) freedom,\(^{15}\) belonging,\(^{16}\) a meaningful role\(^{17}\) these will soothe a tender soul.

And so, each person’s heart does burn to satisfy a core concern.

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9. See id. at 9-14. Getting to Yes recommends four elements of what it calls “principled negotiation”: separating the people and the problem, emphasizing interests over positions, developing options that might help both parties, and using objective criteria. See id. at 15-94. Subsequently, Fisher and Shapiro described “the seven elements of negotiation” that make up the Getting to Yes approach: relationship, communication, interests, options, legitimacy, BATNA (best alternative to a negotiated agreement), and commitments. See ROGER FISHER & DANIEL SHAPIRO, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE 207-08 (2005). Some commentators do not typically distinguish between interests and needs in the negotiation context, intending interests to include needs, wants, and desires. See, e.g., FISHER ET AL., supra note 2, at 48-49; Bruce Patton, Negotiation, in THE HANDBOOK OF DISPUTE RESOLUTION 279-80 (Michael L. Moffit & Robert C. Bordone eds., 2005). Others distinguish between the two. See, e.g., Carrie Menkel-Meadow, Aha! Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?, 6 HARV. NEGOT. L. REV 97, 109 (2001).

10. A “Pareto optimal” outcome is one in which the situation of one negotiation party cannot be improved without damaging the situation of another negotiation party; in other words, “no joint gains are possible.” See HOWARD RAFFA, THE ART AND SCIENCE OF NEGOTIATION 139 (1982).


12. Fisher and Shapiro argue that the best way to deal with emotions in negotiation is to do so indirectly by working with five core concerns that every person cares about deeply: appreciation, affiliation, autonomy, status, and role. FISHER & SHAPIRO, supra note 9, at 15-16.

13. When any of these concerns is not satisfied, negative emotions arise, and these promote narrow, adversarial negotiation perspectives and practices. Id. at 18-21. In contrast, when such concerns are satisfied, positive emotions arise, and these foster more collaborative negotiations. Id.

14. This refers to the core concern for recognition of one’s status. See id. at 95.

15. This refers to the core concern for autonomy. See id. at 72-74.

16. This refers to the core concern for affiliation. See FISHER & SHAPIRO, supra note 9, at 53-54.

17. See id. at 115-17.
Else they may feel emotions negative, and may require a calming sedative.\textsuperscript{18}

So if you’re soaked with negativity—though that’s not your main proclivity—it might come from a core concern, or several, for which you yearn.\textsuperscript{19}

Unmet concerns, if they’re galore, can leave you looking like a boor. You may appear, well, too competitive, using language too loud and too repetitive.\textsuperscript{20}

Besides, your judgment goes kerplunk, so others wonder what you thunk, and you can’t get your interests met. You may not try, but just forget.\textsuperscript{21}

IV. THE THREE CONVERSATIONS

For more insight on tough situations, consider the three conversations.\textsuperscript{22}
Facts\textsuperscript{23} and feelings, you can see. The third one is identity.\textsuperscript{24}

This model’s for helping you learn from those you might otherwise spurn.\textsuperscript{25}

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\textsuperscript{18} See \textit{id.} at 20-21.

\textsuperscript{19} See \textit{id.} at 17-18.

\textsuperscript{20} See \textit{id.}

\textsuperscript{21} Strong negative emotions are one of several potential obstacles to appropriately using the core concerns construct, as well as other models of negotiation. See Leonard L. Riskin, \textit{Further Beyond Reason: Emotions, the Core Concerns, and Mindfulness in Negotiation}, 10 Nev. L.J. 289, 303-08 (2010) [hereinafter Riskin, \textit{Further Beyond Reason}]. Because of such obstacles, you may forget to carry out your plans. See \textit{id.}

\textsuperscript{22} Douglas Stone, Bruce Patton, and Sheila Heen suggest that we try to understand and deal with actual or potential difficult conversations as if they were composed of three conversations: the “What Happened?” conversation, the Feelings conversation, and the Identity conversation. See Douglas Stone \textit{et al.}, \textit{Difficult Conversations: How to Discuss What Matters Most} 7-8 (1999).

\textsuperscript{23} This refers to the “What Happened?” conversation. See \textit{id.} at 9-11.

\textsuperscript{24} See \textit{id.} at 14-15, 101-28.

\textsuperscript{25} The book recommends using a “learning conversation,” the point of which is mutual understanding rather than persuasion. See \textit{id.} at 131-32.
to avoid attributions erroneous, and thus build solutions harmonious.

V. INTERNAL FAMILY SYSTEMS

Considering conflict within, it’s hard to know how to begin. When you’re deciding what to do, Query: Who (or what) is “you”?

To deal with that, I now suggest a model known as IFS. It can highlight your subpersonalities, so the “Self” might undo their dualities.

26. See id. at 46-50.
27. In 2010, Professor Robert Bordone coined the term “The Negotiation Within” as the topic for a live symposium sponsored by the Harvard Negotiation Law Review (for which Bordone was the faculty advisor). For an overview of that symposium, see A. Robert Dawes, Symposium 2010 Recap, HARV. NEGOT. L. REV. (Mar. 6, 2010), http://www.hnlr.org/symposium-central/symposium-2010/. Subsequently, Bordone, along with colleagues Tobias C. Berkman and Sara E. del Nido, clarified and extended the concept, using it to include “all internal conflicts whether addressed or ignored.” Robert C. Bordone et al., The Negotiation Within: The Impact of Internal Conflict Over Identity and Role on Across-The-Table Negotiations, 2014 J. DISP. RESOL. 175, 178 n.14.
28. IFS refers to “internal family systems,” a model of the mind and of psychotherapy that is well suited to understanding and managing “the negotiation within.” See generally RICHARD C. SCHWARTZ, INTERNAL FAMILY SYSTEMS THERAPY (1995) [hereinafter SCHWARTZ, IFST]. Developed by psychologist Richard C. Schwartz, the IFS model is based on the idea that the mind is composed of two types of entities: Parts (or Subpersonalities) and the Self. See id. at 37. See generally RICHARD C. SCHWARTZ, INTRODUCTION TO THE INTERNAL FAMILY SYSTEMS MODEL (2001). The Parts (or Subpersonalities) are “regions of the personality capable of acting as a person . . . .” JOHN ROWAN, DISCOVER YOUR SUBPERSONALITIES: OUR INNER WORLD AND THE PEOPLE IN IT 79 (1993). Each has an age, perspectives, interests, concerns, fears, and responsibilities. See, e.g., id. In contrast, the Self is not a part of the personality, but rather a center of awareness and choice that manifests compassion, clarity, curiosity, and other characteristics of an ideal leader. See SCHWARTZ, IFST, supra note 28, at 37. In Schwartz’s view, the Self ought to lead the Parts, but often one or more of the Parts restricts the Self’s influence and takes over the person’s consciousness. See generally id. When that happens, the person’s perspectives become those of the dominant Part or Parts, which is the opposite of “self-leadership,” the IFS goal. See generally id. Two articles that derived from presentations at the Negotiation Within Symposium (discussed above) have argued that the IFS model can help us deal better with internal and external conflicts. See David A. Hoffman, Mediation, Multiple Minds, and Managing the Negotiation Within, 16 HARV. NEGOT. L. REV. 297, 316-19 (2011); Leonard L. Riskin, Managing Inner and Outer Conflict: Selves, Subpersonalities, and Internal Family Systems, 18 HARV. NEGOT. L. REV. 1, 15-16 (2013) [hereinafter Riskin, Managing Inner and Outer Conflict]. A more recent piece by Bordone, Tobias, and del Nido uses concepts of multiple selves and identities in internal negotiation, though it does not include an entity that is similar to the IFS Self. See Bordone et al., supra note 27, at 179-80. Other recent publications that explicitly deal with the connection between inner and outer conflict in the context of dispute resolution include ERICA ARIEL FOX, WINNING FROM WITHIN: A BREAKTHROUGH METHOD FOR LEADING, LIVING, AND LASTING CHANGE (2013); GARY J. FRIEDMAN, INSIDE OUT: HOW CONFLICT PROFESSIONALS CAN USE SELF-REFLECTION TO HELP THEIR CLIENTS (2014).
29. “Self-leadership” can involve processes that resemble counseling, negotiation, mediation, or adjudication. Riskin, Managing Inner and Outer Conflict, supra note 28, at 64-65, 67. A mediation-like
It can help you manage more inside, 
so you’re not controlled by Parts that ply.  
Profoundly perplexed about an offer?  
IFS could be best that I can proffer.

VI. MINDFULNESS

The practice of mindful attention delivers a different dimension.  
For managing conflict, within and without, 
it’s almost essential, there’s nearly no doubt.  
It keeps us calm and helps us think and more, provides a needed link 
for using constructs named above, and doing so with kindly love.

process would be useful in trying to help polarized parts to de-polarize. In understanding and managing our inner conflicts, it can be helpful to consider such processes as if they were, could be, or should be what I call “conscious internal negotiations, mediations, or adjudications.” Id. at 27-28, 64-65 (proffering a model for doing so, called “CINeMA-IFS”).  

30. As I use the term, mindfulness means paying attention, deliberately and without judgment, to our present-moment experiences, such as body sensations, emotions, and thoughts. See Riskin, Further Beyond Reason, supra note 21, at 308-10. People generally cultivate mindfulness in mindfulness meditation and then deploy it in everyday life. See id. at 308-10, 314-15.


32. I have argued that mindfulness can help a person overcome obstacles to skillfully using negotiation models, such as excessive attention to self-centered concerns; automatic, habitual ways of thinking, feeling and behaving; too much or too little sensitivity to emotions; insuffient social skills; and inadequate focus. See Riskin, Further Beyond Reason, supra note 21, at 315-25. I do not consider mindfulness to occupy a “level,” as do the negotiation models mentioned above (See Riskin & Wohl, supra note 31, at 140) and IFS.

33. Mindfulness practice tends, over time, to decrease attention to self-centered concerns and increase attention to, and compassion for, others. See Riskin, Further Beyond Reason, supra note 21, at 315. In addition, certain meditation practices associated with mindfulness meditation directly foster kindness and compassion toward others. See generally SHARON SALZBERG, LOVING-KINDNESS: THE REVOLUTIONARY ART OF HAPPINESS (1995).