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# Novel Negotiation

Rebecca Hollander-Blumoff\*

## I. INTRODUCTION

Over the past half-century, the study of negotiation has blossomed into a robust discipline – negotiation and conflict resolution are recognized fields, with dedicated courses of study, experts, and institutional capital. The field has been inherently interdisciplinary from the outset, combining elements from fields including, but not limited to, economics, political science, law, psychology, anthropology, and sociology.<sup>1</sup> At the University of Missouri Law School’s Tower of Babel symposium in the fall of 2016, the program focused on whether it is possible or even desirable to unify a discipline that is ineluctably diverse. Furthermore, if unification is a desired goal, how might we go about such a synthesis when those in the field, writ large, all speak different languages, draw from different disciplines, use different terminology, and conceptualize conflict and conflict behavior in different ways? Can we find significant common ground? Is there any possibility for a theory, or for an approach, that unites and streamlines?

Some disciplines engaged in the study of negotiation share fairly clear common ground – political science and history, for example, or economics and psychology. But other fields may seem less central to the typical multidisciplinary negotiation inquiry. In the “Tower of Babel” metaphor, how many languages should we include, or, in other words, how far afield from “core” negotiation disciplines should we go? How far can we expand our tent to include disciplines that are not *obviously* related to negotiation?<sup>2</sup> In recent years, I have been privileged to be included in a recurring panel at the Alternative Dispute Resolution Section of the American Bar Association called “What I’m Reading.”<sup>3</sup> This panel challenges its participants to discuss a book (or a movie, or a poem) that has been provocative for the panelists in how they think about the discipline of ADR, in a way that has affected or influenced their thinking and teaching. The book need not be obviously related to or about, per se, alternative dispute resolution. This panel has become a focal point for some of my most interesting thoughts regarding negotiation theory and practice in the last several years, and has influenced both my teaching and my writing.

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\* Professor of Law, Washington University Law School. Many thanks to Susan Appleton, Matt Bodie, and Deborah Dinner for comments and suggestions, to John Lande and participants at the Tower of Babel conference at the University of Missouri Law School for terrific insights and discussion, and to Jennifer Reynolds for serving as the catalyst for this project.

1. KENNETH ARROW & ROBERT MNOOKIN, BARRIERS TO CONFLICT RESOLUTION 24 (1996) (noting the “inherently interdisciplinary nature of the field”).

2. The idea that negotiation can draw from a very wide disciplinary net is not new. “Our understanding of conflict resolution would surely be enriched by careful exploration of barriers [to conflict resolution] from the perspectives of other social sciences, including anthropology, sociology, and political science. History, literature, philosophy, theology, and other humanities similarly offer potentially useful contributions.” *Id.*

3. This panel is the brainchild of the estimable Jennifer Reynolds of the University of Oregon Law School.

But is looking at literature in the context of negotiation simply too far outside the negotiation homestead? In a discipline that is characterized by a focus on creative problem-solving and thinking “outside the box,” is looking at insights gleaned from literature simply a bridge too far?<sup>4</sup> When I posed this question at our symposium, I was surprised to be greeted by some resistance. One participant, for example, asked skeptically how we could possibly teach people how to negotiate – what to *do* in a negotiation – based on what worked in a fictional novel. Yet others were creative in their proposals for how our field might use literature. One idea, in keeping with a classic perspective on law and literature, was that the study of literature helps to understand the principles of narrative. What are the elements that make a story “work,” and how might we best put the pieces together in a compelling framework in order to be more persuasive in a negotiation setting?<sup>5</sup> Another possibility was raised, based on recent research about how reading novels can increase empathy,<sup>6</sup> that literature could be deployed instrumentally, to help negotiators develop their empathy skills.<sup>7</sup>

In this Article, I argue for still a different use of literature. In the same way that the negotiation scholar, student, and practitioner use case studies, simulations, and experiences to help further our negotiation skills, the negotiator can use insights gleaned from literature. Literature, when it is successful, crystallizes some piece of the human experience in a way with which we all can engage. We may engage differently (and that difference in and of itself can yield useful insights), and the literature may produce some shared insight (or one that is not shared, but that is helpful in fostering dialogue). This is different than a mere anecdote or observation. A successful work of literature touches people and captures their imagination – and we can learn from immersing ourselves in that experience. Novels also may provide a more accessible and less threatening opportunity for students to critique negotiation situations because it provides an emotional distance that they may not feel in discussing their own negotiation experiences.<sup>8</sup>

In the following three parts, I address three different novels – works of fiction – and highlight the way in which they helped me to see better some fundamental aspects of negotiation with which I had long been familiar. While the situations or discussions in these novels did often dovetail with academic literature on aspects

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4. Law and literature as a discipline has been present in legal academia since at least the 1970s, when Robert Boyd White’s *THE LEGAL IMAGINATION* provided a beginning foray into the explicit interplay between legal texts, literature, and literary criticism. ROBERT BOYD WHITE, *THE LEGAL IMAGINATION* (1973).

5. This angle draws on the “narrative jurisprudence” strand of law and literature. See Julie Stone Peters, *Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion*, 120 *PMLA* 442, 447 (2005).

6. See David Comer Kidd & Emanuele Castano, *Reading Literary Fiction Improves Theory of Mind*, 342 *SCI.* 377 (2013).

7. One traditional way to consider the intersection between law and literature is to consider legal texts from a literary perspective. Because negotiation as a process takes place largely outside of the context of written legal decisions or opinions, this “angle” does not bear much fruit in the conflict resolution domain.

8. See Susan Frelich Appleton & Susan Ekberg Stiritz, *Going Wild: Law and Literature and Sex*, 69 *STUD. L. POL. & SOC’Y* 11, 17 (2016) (discussing how the authors have found that “[s]tudying sex through literature makes the most awkward able to be spoken, exposes the most personal as socially constructed and public, and summons voices from different times and places so that students may reflect on their own sex stories within wider contexts.”).

relevant to the negotiation process, they brought the issues to light in new and distinct ways that provided nuance and amplification to the insight in the academic literature. In the first section, I discuss a novel that takes as its explicit subject the idea of negotiation, but in the subsequent two sections, I consider the plot and structure of two novels for much broader insights that have provoked my thoughts on negotiation in a more creative way.

## II. OBJECTIVE CRITERIA AND *THE GOLDFINCH*

Anyone who teaches negotiation knows that the idea of objective criteria, discussed at length in Roger Fisher and William Ury's seminal book *Getting to Yes*,<sup>9</sup> is tremendously helpful. But in addition, using objective criteria poses some significant dangers. One danger, of course, is that the parties will simply disagree about what constitutes "objective" criteria. Spending a lot of time and energy wrangling over what the appropriate and legitimate benchmark to use in a negotiation can be just as time-consuming as arguing over the ultimate outcome. Typically, however, arguments over the appropriate benchmark may feel more satisfying and meaningful to parties than arguing about numbers within a vacuum.

Perhaps more interestingly, the question of objective criteria is sometimes undermined by the idea that nothing is really objective in a particular context. So, for example, in a situation where there is asymmetric information, an idiosyncratic buyer or seller can do quite well when his or her reservation price is unusually above or below market price. In such a case of an idiosyncratic buyer or seller, market price, which is often understood as one type of objective criteria, can be quite misleading for one side of the negotiating duo.

In Donna Tartt's novel *The Goldfinch*, the main character, Theo Decker, loses his mother to a terrorist attack at a young age.<sup>10</sup> After a series of trials and tribulations, Theo goes to live with an older man who runs an antique store.<sup>11</sup> As one of his hobbies, the man repairs old, extremely damaged remnants of furniture in styles that look like real, and very valuable, antiques.<sup>12</sup> Theo begins to sell these cobbled-together antiques as authentic, expensive items, without the knowledge or permission of their creator.<sup>13</sup> In addition, Theo eventually takes over the running of the shop and manages the inventory pricing and the customer interactions.<sup>14</sup> As he does so, he ruminates on the nature of value and the market in a way that seasoned negotiation teachers will find quite familiar.

As Theo explains, what he believes to be "the truest thing at the heart of the business, the secret no one told you, the thing you had to learn for yourself: viz, that . . . there was really no such thing as a "correct" price. Objective value – list value – was meaningless. . . . [I]t didn't matter what the books said, what the experts said . . . . An object – *any* object – was worth whatever you could get somebody to pay for it."<sup>15</sup> In this rumination, Theo lays bare a truth at the heart of the debate over

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9. ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 81-94 (1981).

10. DONNA TARTT, *THE GOLDFINCH* 37 (2013).

11. *Id.* at 379.

12. *Id.* at 452.

13. *Id.* at 453.

14. *Id.* at 455-57.

15. *Id.* at 456-57.

objective criteria: we can only do so much to approach some sort of “real,” “true,” price when navigating negotiation in the marketplace.

Perhaps more importantly, Theo also highlights the role that trust and reputation play in any interaction. The creator of these “beautiful young Frankensteins,”<sup>16</sup> Hobie, has no interest in selling these creations as real. “A more practical or less scrupulous man would have worked this skill to calculated ends and made a fortune with it,” explains our narrator.<sup>17</sup> “But as far as I knew, the thought of selling the changelings for originals or indeed of selling them at all had never crossed Hobie’s mind.”<sup>18</sup> But our young protagonist approaches the creations differently, selling them for astronomical sums to save the store from bankruptcy.<sup>19</sup> With one sale – “sold to an out-of-town client who ought to have known better, but who was blinkered by Hobie and Welty’s unimpeachable reputation as dealers,” Theo had erased the store’s debt entirely.<sup>20</sup> The focus on the ability of a party with a terrific reputation to bamboozle or cheat another party reveals several key truths about reputation in negotiation: first, that reputation matters tremendously, and is a deeply valuable asset, and second, that reputation alone should not be sufficient to induce trust in the other party.<sup>21</sup> The “trust, but verify” negotiation mantra that many of us teach our students is brought to living color in the novel as a cautionary tale, as we glimpse the mental workings of someone who works hard to deliberately cheat those with whom he negotiates by exploiting a sterling reputation.

Yet another insight from Theo’s discussion of his antique sales highlights the selective perception of his buyers, and his ability to exploit that selective perception to his own ends. He explains that he finds it “very easy to fool even relatively experienced buyers if I sold about twenty per cent cheaper than the real thing. People loved to think they were getting a deal. Four times out of five they would look right past what they didn’t want to see.”<sup>22</sup> Psychology research on selective perception provides support for the idea that individuals focus on what is of most interest or concern to them, and often fail to see important information even when it is right in front of them. For example, the famous “invisible gorilla” study has informed or reminded thousands of viewers that when their attention is focused on one thing, they may miss entirely a dramatic action unfolding simultaneously.<sup>23</sup> And other research on what is often called “confirmation bias” makes clear that

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16. TARTT, *supra* note 10, at 452.

17. *Id.* at 453.

18. *Id.*

19. *Id.*

20. *Id.*

21. Reputation is clearly a powerful driver of individual financial decisions: witness the many people that were enthusiastic about investing with renowned financier Bernie Madoff, before he was revealed as a criminal actor. Eric J. Weiner, *Madoff’s Betrayal*, L.A. TIMES (Dec. 20, 2008), <http://www.latimes.com/opinion/la-oe-weiner20-2008dec20-story.html>.

22. TARTT, *supra* note 10, at 453.

23. In the “invisible gorilla” study, participants are asked to watch a video of two groups of people shooting basketballs into a basket. Some of the shooters are wearing white shirts and some are wearing black. The participants are asked to count the number of basketball shots that are made by the individuals wearing the white shirts. In the middle of the video, a person in a gorilla suit walks through the frame, waves to the camera, and walks off the set. A majority of individuals who watch the video and participate in the counting exercise fail to see the gorilla. The original research focused on visual perception, but the research has since been used more broadly to discuss perceptions generally. See Daniel J. Simons & Christopher F. Chabris, *Gorillas in Our Midst: Sustained Inattention Blindness for Dynamic Events*, 28 PERCEPTION 1059 (1999).

individuals often seek out confirmatory evidence for their prior beliefs, while disregarding disconfirming information.<sup>24</sup>

Finally, Theo's musings on negotiation include an important insight about effective negotiators' ability to truly understand the party with whom they are dealing. Theo explains how one of his special talents is to "size up the customer and figure out the image they wanted to project – not so much the people they were . . . as the people they wanted to be . . . The trick was to address yourself to the projection, the fantasy self."<sup>25</sup> For a negotiation teacher, one of the biggest challenges is to remind your students that their focus on their own side is hobbling: in negotiation, understanding the other party's interests, needs, and outlook, and making the proposed outcome palatable to him or her, is often one major key to negotiation success. *The Goldfinch*'s protagonist, sharing his views on negotiation, provides some fascinating and resonant insights about buyer/seller interactions that echo and amplify more traditional research on negotiation.

### III. AUTONOMY, INTERDEPENDENCE, AND *LIFE AFTER LIFE*

In the deeply creative novel *Life After Life*, Kate Atkinson imagines the life of one woman, Ursula Todd, as lived over and over and over again in different narrative arcs.<sup>26</sup> Born in 1910, Ursula dies very early in the first several versions of her life, either as an infant or a young child, her trajectory over before it has truly begun.<sup>27</sup> In later versions, more complex and richly developed, Ursula lives more fully fleshed out lives that have dramatically different outcomes. In one story, she marries an abusive man and eventually dies at his hands.<sup>28</sup> In another story, she lives in wartime London as an adult, and becomes an everyday hero of the war effort.<sup>29</sup> In yet another version of her life, she appears to kill Adolf Hitler before his rise to power.<sup>30</sup> In each iterative story, Ursula makes at least one decision that changes the course of her previous "life," essentially fixing some mistake that led her down a path that ended in her doom.

The story highlights the classic Lewinian equation of social psychology – that is, that the person plus the environment yields the behavior and the outcome.<sup>31</sup> Ursula is the same person in each story, and yet the influence of the past story exerts a largely unseen and uncertain influence on the "next" version of Ursula's life. In each later version of her life, especially once she is past infancy, her own actions alter the course of each story.

*Life After Life* explores tangentially the nature of these "echoes" of Ursula's past lives and the pull that they exert on her future selves; for example, at one point,

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24. For a general overview of research on confirmation bias, see Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175 (1998).

25. TARTT, *supra* note 10, at 457.

26. KATE ATKINSON, *LIFE AFTER LIFE: A NOVEL* (2013).

27. *Id.* at 8, 28.

28. *Id.* at 240.

29. *Id.* at 429.

30. *Id.* at 4.

31. Edward E. Jones, *Major Developments in Five Decades of Social Psychology*, in 1 THE HANDBOOK OF SOCIAL PSYCHOLOGY 3, 35 (Daniel T. Gilbert et al. eds., 4th ed. 1998) (describing social psychologists Kurt Lewin's "Lewinian equation,"  $B=f(PE)$  – behavior is a function of the person and the environment).

she sees a psychiatrist to discuss her vague sense of these “past lives.”<sup>32</sup> Although the book is quite opaque regarding the degree to which Ursula has knowingly “learned” from her past lives, each successive life improves,<sup>33</sup> suggesting that our past experiences shape our future decisions, even when that effect may be unconscious. In negotiation teaching, a shared classroom norm is often to require our students to reflect on past decisions in order to *explicitly* grow and learn for the next negotiation experience rather than relying on the unconscious learning that may take place.

In my own experience teaching negotiation, individuals often underestimate the influence of their own behavior during a negotiation. They may believe that the other party won’t budge, or that the other party is fixed in his or her thinking, or that the other party “always acts” a particular way, and once a negotiation is over, students often exhibit a fatalism about the way that a negotiation unfolded. “Nothing I would have said could change their minds,” or, “They wouldn’t budge,” or similar statements suggesting 20/20 hindsight are common. The vividly drawn insight from *Life After Life* is that individual actions have significant consequences. Even within the same parameters – Ursula’s birth to the same two parents on the same date – Ursula’s lives vary dramatically based on small and large actions taken by her.

Yet those of us who are teachers of negotiation would be remiss if we suggested that negotiation is fully in control of the negotiator. Negotiation is a dynamic process that involves more than one player; negotiators are interconnected in a web of behavior and circumstances that mean that no one negotiator can be the sole determinant of the process or the outcome. In *Life After Life*, Ursula’s actions *sometimes* change the results, but sometimes they do not.<sup>34</sup> Several vignettes show her acting in a variety of different ways that all, nonetheless, inexorably still lead to her death in the Spanish influenza outbreak of 1918.<sup>35</sup>

One thing that *Life After Life* demonstrates strikingly is the endless sense of possibilities involved in human interaction: reading the novel is an immersion in what is possible, and how many potential realities could have existed. When teaching negotiation, this same sense of the multitude of possibilities sometimes reveals itself when a large group negotiates the same problem: outcomes vary widely, and students can be shocked by how differently another pair of students approached, and resolved, the same underlying conflict. What someone else will do in a negotiation may depend on what you do, and what you do may be contingent on the other party’s behavior; negotiation is truly a dynamic process. *Life after Life* is a rich reminder of the contingent nature of our interdependency and our agency, woven together in a compelling set of stories, each of which is wholly believable.

In a subsequent novel, entitled *A God in Ruins*, Atkinson devotes herself to a more straightforward narrative approach in telling the story of Ursula’s younger brother Teddy, a fighter pilot in World War II.<sup>36</sup> *A God in Ruins* provides a coda to the negotiation lessons learned in *Life After Life*, reminding us that not only are multiple versions of the future possible, but that each story that does unfold looks unique from the perspective of the story’s protagonist. A last-minute twist at the

32. ATKINSON, *supra* note 26, at 496.

33. *Id.* at 525.

34. *Id.* at 98, 106, 113, 123.

35. *Id.* at 98.

36. KATE ATKINSON, *A GOD IN RUINS* (2015).

end of the book – suggesting that this entire, lengthy novel, covering an entire lifetime and eight decades, is only *one* potential path for Teddy<sup>37</sup> – reiterates and underscores the contingent nature of the reality that unfolds. The pair of novels, together, serves as a visceral lesson in perspective-taking, reminding the reader that the landscape of an ever-dynamic, changeable world – but even the “same” world – can appear remarkably different depending on the location from which you view it.

#### IV. THE LIMITS OF EMPATHY AND *ALL THE LIGHT WE CANNOT SEE*

In the self-consciously lyrical<sup>38</sup> novel *All the Light We Cannot See*, by Anthony Doerr, a young blind French girl and a lonely German boy follow a complex and difficult path in the years before and during World War II.<sup>39</sup> Doerr evocatively describes the terrible privations of Werner, who grows up in Weimar Germany as an orphan with a sister whom he loves.<sup>40</sup> He is smart and gifted in the art of radio making,<sup>41</sup> and he is soon recruited to join the military, providing him a path to financial security and personal betterment.<sup>42</sup> In the meantime, Marie-Laure, the blind daughter of a locksmith at a museum, becomes a part of the French Resistance as she grows up.<sup>43</sup> Over the years of the war, she moves from Paris to the remote island village of St. Malo, off the Northwest coast of France,<sup>44</sup> and her father is imprisoned and lost to her.<sup>45</sup>

The story of World War II in the European Theater is intensely told, and vividly personal. The landscape of the war is writ large in geo-political terms, but small in terms of the way that it impacts individuals' lives. The novel appears to specifically aim to cultivate empathy, especially in the way in which it softens and personalizes Werner's experiences; he is swept into a war on the side of the Germans in a way that appears fundamentally to help justify his “choices,” and to explain how few choices he actually had. Rather than painting these two main characters starkly so that “Resistance is good” and “Germans are bad,” Doerr draws a far more nuanced picture that expressly appears to draw a sympathetic, and empathic, picture of his German soldier; Marie-Laure, the young Resistance member, is drawn carefully and sympathetically as well.

And yet, from my perspective, the novel failed more profoundly in stirring empathy than any I have read in recent years, and helped to crystallize for me a fundamental paradox about empathy and its potential role in conflict resolution. What if there are things with which one simply cannot empathize, because of a limit to one's own world view? I speak here, from my perspective, of the role of the Jews in the

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37. *Id.* at 441.

38. As the author explained in an interview, “It’s like I’m saying to the reader, ‘I know this is going to be more lyrical than maybe 70 percent of American readers want to see, but here’s a bunch of white space for you to recover from that lyricism.’” Jill Owens, *Interview with Anthony Doerr, Author of All the Light We Cannot See*, MEDIUM: POWELL’S BOOKS (July 16, 2015), <https://medium.com/@Powells/interview-with-anthony-doerr-author-of-all-the-light-we-cannot-see-3a3a501ccad2#.rrswsn3v9>.

39. ANTHONY DOERR, *ALL THE LIGHT WE CANNOT SEE* (2014).

40. *Id.* at 26.

41. *Id.* at 81.

42. *Id.* at 123.

43. *Id.* at 322.

44. *Id.* at 118.

45. DOERR, *supra* note 39, at 196-97.



novel. For a book that, in an extensive 530 pages, draws an evocative picture of the war on the ground in France and Germany, there were precious few mentions of one critical fact of the era – the mass murder of millions of European Jews.<sup>46</sup> Only a handful of scenes include Jews. In one such vignette, Werner watches as a train passes in the dark.<sup>47</sup> He describes the cars as “flatcars loaded with people. Some stand; more kneel. Each car appears to have a wall of sacks along the front to serve as windbreak.”<sup>48</sup> As the train passes, Werner watches the prisoners on the train, and notes that some of them are sleeping.<sup>49</sup> Eventually, he realizes: “Those are not sacks. That is not sleep. Each car has a wall of corpses stacked in the front.”<sup>50</sup>

In another scene, Werner, who is an unsophisticated small-town boy, goes to Berlin with a friend he meets at military school.<sup>51</sup> On the visit, he shares an elevator with a tiny woman who turns out to be Jewish.<sup>52</sup> Later, he overhears his friend’s mother, his host, speaking to someone else regarding the woman: ““Oh, the Schwartenberger crone will be gone by year’s end, then we’ll have the top floor, *du wirst schon sehen*.”<sup>53</sup> While Werner occasionally, as he does in this moment, experiences “great uneasiness,”<sup>54</sup> the extermination of the Jews by and large plays a small, background part in the novel.

Similarly, in the parts of the novel that focus on Marie-Laure, on the side of the “good” Resistance fighters, almost no attention is given to the plight of the French Jews. Surely there might be some Jewish families that Marie-Laure encounters, or perhaps the Resistance group might discuss or consider the Germans’ actions with respect to the French or European Jewish population, and yet the novel does not include those thoughts or considerations.

Certainly, this may well have been many non-Jewish Europeans’ lived experience during the war. Indeed, on a recent trip that I took to Normandy, a tour guide spoke of the geopolitical machinations in wartime France, Belgium, and Germany with not one word, in a full day tour, about the Jews. As discussed earlier, psychology research suggests that individuals are quite often blind to some information when they are focusing on other aspects of a situation.<sup>55</sup>

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46. I am not alone in noticing this, although many mainstream reviews did not appear to note the issue. See Emily Bazelon et al., *The Audio Book Club Squints at All the Light We Cannot See*, SLATE (June 5, 2015), [http://www.slate.com/articles/arts/books/2015/06/anthony\\_doerr\\_s\\_all\\_the\\_light\\_we\\_cannot\\_see\\_book\\_club\\_and\\_discussion.html](http://www.slate.com/articles/arts/books/2015/06/anthony_doerr_s_all_the_light_we_cannot_see_book_club_and_discussion.html) (one participant notes, “There were basically no Jews in this book,” and another says, “There were all these bigger questions about WWII, about the completely unmentioned Holocaust which essentially is disappeared from this book, and . . . I started trying to decide whether this book was trying to let itself off the hook of not being even counted as Holocaust literature and whether that was not a legitimate move to make.”). But see Janet Maslin, *Light Found in Darkness of Wartime*, N.Y. TIMES (Apr. 29, 2014), <https://www.nytimes.com/2014/04/29/books/all-the-light-we-cannot-see-by-anthony-doerr.html>; Amanda Vaill, “*All the Light We Cannot See*,” *By Anthony Doerr*, WASH. POST (May 5, 2014), [https://www.washingtonpost.com/entertainment/books/all-the-light-we-cannot-see-by-anthony-doerr/2014/05/05/c2deec58-cf14-11e3-a6b1-45c4dfb85a6\\_story.html?utm\\_term=.658a141a8f55](https://www.washingtonpost.com/entertainment/books/all-the-light-we-cannot-see-by-anthony-doerr/2014/05/05/c2deec58-cf14-11e3-a6b1-45c4dfb85a6_story.html?utm_term=.658a141a8f55).

47. DOERR, *supra* note 39, at 318.

48. *Id.*

49. *Id.* at 319.

50. *Id.*

51. *Id.* at 217.

52. *Id.* at 218.

53. DOERR, *supra* note 39, at 222.

54. *Id.*

55. See text accompanying notes 24-25.

Yet my own empathy was not activated by the experiences depicted in the book. The limits of my own capacity for empathy rose up sharply as an impediment to my engagement with the characters, who seemed to me either willfully blind to the horrors around them or else fundamentally deficient in some basic sense. I could not decide if the author was a genius in dramatically demonstrating just how peripheral the experience of the Jews was in the eyes of non-Jewish Europeans during the war, or if the book was complicit in attempting to humanize this viewpoint by, itself, largely excluding the Jewish experience during the war. As noted above, if the former, the book further provided an amazing illustration of the “gorilla” selective perception phenomenon – how one can fail to see something so remarkable unfolding because one’s attention is focused elsewhere.

But in either scenario, the carefully drawn portraits of both Werner and Marie-Laure reached me only intellectually, not emotionally. Although some scholars argue that merely being able to *understand* the other side’s viewpoint and express it back to that party is empathy,<sup>56</sup> others take an approach that requires more emotional connection and appreciation of (even if not agreement with) the other person’s point of view – a true perspective-taking.<sup>57</sup> In this latter definition, mere comprehension of a world view is not equivalent to a fundamental understanding: one can intellectually *grasp* the contours of the perspective, but one can’t fully engage with it or bridge the divide to see the world in the way that the other party sees it. This definition of empathy is fuller and more meaningful than one that simply relies on a portfolio of classic “active listening” behavior.

It is widely accepted in negotiation literature that empathy is important for the successful negotiator. Some negotiation scholars caution against too much empathy, reminding readers that balancing empathy with assertiveness is important.<sup>58</sup> But research shows that some degree of empathy makes for a more successful negotiation outcome.<sup>59</sup> Yet this is a critical nub of negotiation. When we allow ourselves to see the world as others see it, must we be complicit in accepting that viewpoint even when we find it morally repellent, or, less dramatically, simply inaccurate? What are the costs to seeing the world as someone else sees it? Even if it might give us a strategic advantage in a negotiation, or put us in a better position to foster a solution that meets diverse needs, is such an effort to stand in someone else’s shoes desirable when their shoes just seem wrong to us? Are there vantage points from which we simply cannot see?

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56. Daniel K. Grühn et al., *Empathy Across the Adult Lifespan: Longitudinal and Experience-Sampling Findings*, 8 *EMOTION* 753 (2008); see also ROBERT MNOOKIN, *BEYOND WINNING* 46 (2004) (“[W]e define empathy as the process of demonstrating an accurate, nonjudgmental understanding of the other side’s needs, interests, and perspective.”).

57. As another literary work, Leslie Jamison’s memoir, *The Empathy Exams*, explains, “Empathy isn’t just remembering to say that must really be hard – it’s figuring out how to bring difficulty into the light so it can be seen at all. Empathy isn’t just listening, it’s asking the questions whose answers need to be listened to. Empathy requires inquiry as much as imagination. Empathy requires knowing you know nothing.” LESLIE JAMISON, *THE EMPATHY EXAMS* 5 (2014).

58. MNOOKIN, *supra* note 56, at 50.

59. See, e.g., Debra Gilin et al., *When to Use Your Head and When to Use Your Heart: The Differential Value of Perspective-Taking Versus Empathy in Competitive Interactions*, 39 *PERS. SOC. PSYCHOL. BULL.* 3 (2013) (finding that perspective taking and more emotional empathic connection are helpful to success in different types of competitive interactions); Adam D. Galinsky, William W. Maddux, Debra Gilin, & Judith B. White, *Why It Pays to Get Inside the Head of Your Opponent: The Differential Effects of Perspective Taking and Empathy in Negotiations*, 19 *PSYCHOL. SCI.* 378 (2008) (finding that perspective taking, not pure emotional connection, leads to better negotiation results).

This is not a purely academic question. In the post-election landscape of 2016 and 2017, much attention is being paid to the idea that individuals from opposite sides of the political spectrum cannot empathize with one another, and that a failure of empathy was a driving force in the ultimate results of the election. As one author on the political left explained:

Those who rightly view Trump as their enemy must not lose their capacity for empathy. While resisting Trump, it is vital to understand why so many people who will, in all likelihood, suffer from his administration's policies voted for him anyway. Of course, a sizable amount voted for the billionaire because of his bigotry and chauvinism, not in spite of it — and these people don't deserve any kind of sympathy.<sup>60</sup> But a great number of those who voted for Trump did so out of sheer desperation, not because they are white supremacists or fascist sympathizers.<sup>61</sup>

Here, the author interestingly excludes those who are white supremacists or fascist sympathizers from a swath of individuals who “deserve” our understanding. Conflict resolution always involves engagement with someone who sees the world differently than we do. Are there categorical exclusions that we are “entitled” to make about who “deserves” our empathy? If, in fact, empathy — taking the perspective of the other party, and then taking that perspective seriously — is a critical tool for effective negotiation, what can we do when we decide that the other party does not merit empathy? And aren't the situations in which we are likely to be the least empathic exactly the situations where the conflict will reach its highest peak, and where we would want to bring all our tools to bear on the situation?<sup>62</sup>

Psychologist Paul Bloom has recently argued against empathy, touting the value of “rational compassion,” instead.<sup>63</sup> He advocates an effort to understand others with deliberative reason and rationality, through a general lens of goodwill; this is distinct from empathy, which he suggests requires us to “feel” what others feel. Yet this approach focuses largely on the potential excesses of empathy — the limits to how effectively one can use empathy — rather than to the limits of human nature in being able to feel empathy. However, Bloom has noted that even when one cannot feel empathy, there are still reasons to make the effort to understand others.<sup>64</sup> Discussing the idea that some people do not “deserve” empathy because they are sexist or racist, Bloom, says, “So what? You should try to understand

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60. The author appears to conflate sympathy and empathy, although of course the words mean very different things. Sympathy is understood as feeling bad about someone's situation, whereas empathy indicates a degree of understanding and an ability to see the world from the perspective of that person, rather than one's own.

61. Chauncey DeVega, *Yes, Donald Trump's Voters May Be Confused and in Pain — But No, They Don't Deserve Our Empathy*, SALON, Jan. 6, 2017, <http://www.salon.com/2017/01/06/yes-donald-trumps-voters-may-be-confused-and-in-pain-mdash-but-no-they-dont-deserve-our-empathy>. See also Conor Lynch, *Donald Trump Is Undeniably the Enemy — But People Who Voted for Him Might Not Be*, SALON, Jan. 4, 2017, <http://www.salon.com/2017/01/04/donald-trump-is-undeniably-the-enemy-but-people-who-voted-for-him-might-not-be>.

62. How and when to engage with someone morally abhorrent is a related but broader question. For more on this issue, see ROBERT MNOOKIN, *BARGAINING WITH THE DEVIL: WHEN TO NEGOTIATE, WHEN TO FIGHT* (2010).

63. PAUL BLOOM, *AGAINST EMPATHY: THE CASE FOR RATIONAL COMPASSION* (2016).

64. *Id.*

people even if their motives are awful.”<sup>65</sup> In the most heated of conflicts, parties *often* assume that others’ motives are awful. But because the most heated of conflicts often involve moral positions and fundamental commitments, we may find that our attempts to overcome those assumptions, or even simply to understand others’ world view, may come up short. Efforts to encourage empathy in the negotiation of conflicts, in either a full or a narrow sense, must consider the possibility, perhaps even the likelihood, that perspective-taking and trying to see the world from another’s perspective may come up against insurmountable obstacles.

## V. CONCLUSION

My own teaching and scholarship on negotiation have been invigorated by the elements of negotiation theory that I have found in novels. Applying a negotiation lens to literary fiction is a proposition that I think worthwhile. In a field of study that is inherently interdisciplinary, there is no clear metric or rule for how we ought to delineate the limits of the domains that may provide us with useful insights. Literature, with its ability to transport us to different times, places, lives, and stories, can reveal critical and crystallizing truths about human interaction in both conflicts and transactions. Careful and cross-disciplinary analysis of literary works will only serve to amplify our understanding of negotiation behavior in ways that can enrich our writing, our teaching, and our thinking on negotiation.

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65. Kanyakrit Vongkiatkajorn, *A Yale Psychologist Says Clinton Supporters Shouldn't Try to Empathize With Trump Fans*, MOTHER JONES (Jan. 10, 2017), <http://www.motherjones.com/politics/2017/01/paul-28bloom-against-empathy-trump-supporters-inquiring-minds>.