Negotiation is Changing

Noam Ebner
Negotiation is Changing

Noam Ebner*

I. INTRODUCTION

In October 2016, the Nobel Prize Committee announced its decision to award Bob Dylan the Nobel Prize in literature. This choice elated some, and sparked ire in others, but one emotion shared by all – perhaps most of all, by the winner himself – was surprise. Whatever one’s opinion on the decision, it demonstrates how change happens – categories blur, merge, and re-divide along new delineations, and shift occurs in what “counts” in, and to, society.

This example of change in our times is particularly noteworthy, for three reasons. First, as Dylan’s commentary on change, and his call for it, were significant components of the body of work that the award was granted for; particularly, this self-fulfilling prophecy:

   Come writers and critics
   Who prophesize with your pen
   And keep your eyes wide
   The chance won’t come again
   And don’t speak too soon
   For the wheel’s still in spin
   And there’s no tellin’ who
   That it’s namin’
   For the loser now
   Will be later to win
   For the times they are a-changin’.

While Dylan foresaw the fading of the order in his work, I think it would be safe to say he never anticipated the wheel naming him as a Nobel laureate.

A second reason this example stands out, is that it offers an example of change that appears unrelated to what has been generally considered the most powerful driver of change – particularly when considering the course and events of the past century – technological development. Of course, one might suggest that shifts in the sands with regards to what is considered literature, poetry or song are, themselves, wholly or partially related to technology-driven changes. Dylan himself is credited with – or blamed for, depending on one’s perspective – bringing folk music into the electronic age by bucking tradition and appearing with an electric guitar and an amplified band at the Newport Folk Festival in 1965, only one year after recording The Times They Are a-Changin’. See Elijah Wald, The

---

* Professor of Negotiation and Dispute Resolution, Creighton University School of Law. When you pose four people four different questions about a paper, and all four give you the same advice, you know they have done you and your readers a great favor. My thanks to guides Alon Burstein, David Matz, Bernie Mayer and John Lande for their comments and insights on the manuscript.


2. At least, not in literature. In fact, my own mental image, upon hearing the news of the award, was of a livid Dylan, furious at the committee for awarding him the prize for the wrong category. Dylan himself described his surprise at receiving the prize in the speech he wrote, read at the award ceremony banquet: “If someone had ever told me that I had the slightest chance of winning the Nobel Prize, I would have to think that I’d have about the same odds as standing on the moon.” Bob Dylan, Nobel Prize Banquet Speech (Dec. 10, 2016), https://www.nobelprize.org/nobel_prizes/literature/laureates/2016/dylan-speech.html.

3. Of course, one might suggest that shifts in the sands with regards to what is considered literature, poetry or song are, themselves, wholly or partially related to technology-driven changes. Dylan himself is credited with – or blamed for, depending on one’s perspective – bringing folk music into the electronic age by bucking tradition and appearing with an electric guitar and an amplified band at the Newport Folk Festival in 1965, only one year after recording The Times They Are a-Changin’. See Elijah Wald, The
it is easy to identify technology as a major driver of change and to focus on it—as I will in this Article—there are other change-forces out there, all of which are interdependent.

A third reason this example is spotlighted is that it presents a vivid, easily recognizable, moment of change. For every such moment, hundreds of other incidents of change fly beneath the radar of the media and elude our mental mattering-maps; we do not notice these occurrences individually and in the moment, but rather belatedly and in the aggregate.

This is particularly true regarding changes driven by developments in technology. These come in so many forms, and at so many levels, affecting so many areas of our lives, that we would be hard-pressed to recognize each little shift as it occurs. We often miss the actual turning points, the moment at which we branch off down a new behavioral or interactional path, altering the way we do things, or shifting how we spend our time.

As I will discuss in this Article, such changes—those we notice, and those that escape our attention until we are quite a ways down a new path—are only the tip of the iceberg of the change that individuals and society are experiencing as a result of the technological developments of the past couple of decades. Introducing technology into every area of our lives, every aspect of our work, and every pocket of our clothes has far-reaching effects, which researchers are only just now uncovering. To list just several change-categories, with corresponding examples, out of a much longer list of categories and examples described in this paper:

We are not only changing our behaviors; we are being changed by our new behaviors: We now conduct our banking and shopping online; at the same time, we have changed in the degree of trust we have in technologically-mediated handling of our financial resources.

We are not only interacting in new ways; we have created new communicative paths for supporting such interaction: While this may have been dismissed in the past as informal forms of slang used by younger people, many of us are, by now, familiar with a substantial dictionary of internet-age abbreviations; similarly, emoticons have emerged from a smiley and a frowning face into a highly nuanced set of emoji mini-images, capable of supporting entire messages, full conversations, and even literature.4

We are not only putting our bodies and our brains to work in new ways; our bodies, and especially our brains, are physiologically changing to adapt to these uses: Our brains are mapping out new neurological networks, developing some areas of the brain at the expense of others.

I will discuss many of these changes, along with research exploring their implications and consideration of the very nature of change itself, in the first half of night Bob Dylan went electric, TIME (July 24, 2015), http://time.com/3968092/bob-dylan-electric-newport/.

4. As an example, I’ll note another significant incident of change-through-award: The emoji 😂 conveying a very particular form of enjoyment, was named Word of the Year 2015 by the Oxford English Dictionary. Katy Steinmetz, Oxford’s 2015 Word of the Year is This Emoji, TIME (Nov. 16, 2015 2:08 PM ET), http://time.com/4114886/oxford-word-of-the-year-2015-emoji/.

this Article. My purpose is to harness the cumulative effect of these changes, for stimulating recognition of the comprehensive nature of the change we are undergoing owing to our immersion in technology. Change is not only a matter of convenience, efficiency and cost. In fact, it is not all necessarily for the better; there are, as we shall see, implications of a dark side to the effects of technology. Value judgements aside, though, the effects of change run deep. As we change the way we do things, our own core nature – comprised of how we feel, think, and act – is in flux. Coming full circle, having changed ourselves, we now do things differently than we used to, including even activities that are not directly related to technology. Within the realm of such changes, I suggest, are changes in who we are as negotiators, and how we act as we negotiate.

It is one thing to marvel at the changes technology has driven in society, or to be amused by the way minute tasks in our life used to be performed – and quite another, to reflect deeply and candidly on whether the sand has fundamentally shifted under our feet. My aim, in this Article, is to prompt the latter form of thinking, as it applies to all those engaged with the negotiation field: in research, theory development, practice, and teaching. The Article raises a question that some will find challenging, others exciting, and still others disturbing (others may see it as moot or flawed): If people have changed, and their conduct has changed, in such a sweeping manner - does it not follow that people-as-negotiators, and therefore negotiation itself, have also undergone significant change? And, if so – what are we doing about that, as theorists, researchers, practitioners, and educators?

The answer I provide to these questions in the second half of this article is, in a nutshell, that change is affecting negotiation, but, at present, we are not doing much at all about it - and we must reconsider this. In light of research from a wide variety of fields outside of negotiation showing changes in negotiation-related behavioral, psychological, and emotional elements – changes in human attention, changes in communicative capacity, changes in capacity for empathy, and changes in the very nature of trust, to name only a few – a time for self-reflection is at hand. The negotiation field must explore whether its most foundational skills, and the principles it has accepted near-axiomatically for the past fifty years, can remain unaltered, given negotiator change and negotiation change.

Such a challenge to the field should not be posed lightly. Accordingly, in this Article, I will first lay significant groundwork regarding the nature of change in the technological era, and explore its sweeping effects on humans, human behavior and human interactions. Next, I will examine the literature connecting negotiation and technology, and explain why – its practical value for negotiators notwithstanding, it does not deal with change in its deeper sense. Only then, will I invite the field to consider an overall self-reflection and a new research agenda. This agenda is drawn with a broad brush, since I anticipate that responses to the suggestions made in this article will refine its nature, methodology, and focus.

II. CHANGE

A. Responses to Change

It is fascinating, that change might be one of the few constants in human history – and yet, when it happens, we are surprised. We are surprised, that is, if we notice
When we do notice it, our responses to it are not uniform, yet some reactions can be categorized. Focusing on technological change, these patterns are often easily discernible.

Douglas Adams, another deep thinker of the 20th century who foresaw many of the technological developments we have witnessed and benefitted from over the past couple of decades, commented on human tendencies in response to technological change:

I’ve come up with a set of rules that describe our reactions to technologies:

1. Anything that is in the world when you’re born is normal and ordinary and is just a natural part of the way the world works.
2. Anything that’s invented between when you’re fifteen and thirty-five is new and exciting and revolutionary and you can probably get a career in it.
3. Anything invented after you’re thirty-five is against the natural order of things.6

Whether we ignore it as part of our environment, embrace it enthusiastically as our springboard to success or reject it grumpily as newfangled nonsense, technology permeates our life, and technological change recurrently leads to human change – change in our behavior, interactions and lifestyles. To put it differently, it is not only the world around us that has changed; even the aggregation of all the discrete shifts in how we now conduct activities, such as banking or shopping (or, for that matter, researching, writing and reading academic articles) only reflects the tip of an iceberg of much deeper change. We ourselves – in our private actions and societal interactions - have changed. Some of us have recognized this change ourselves, noting our own flow from one set of behaviors and patterns to another across the past X years. Others have characterized ourselves, or have been characterized by others, as belonging to one generation or another, each with its own set of personality traits and thinking patterns. Finding it challenging or uncomfortable to recognize change in ourselves, we might look at our children and recognize that they live in a world that is very different from the one we ourselves grew up in, that they are reacting to it and experiencing it in a formative way, and that the differences are fundamental rather than incidental.

B. Back to Babel: The Growing Waters of Change

Only one week before the Nobel Prize Committee announcement, the Moving Negotiation Theory from the Tower of Babel Toward a World of Mutual Understanding symposium that engendered this special Journal edition was held at the University of Missouri School of Law, organized by the Center for the Study of Dispute Resolution.

The symposium’s reference to the Tower of Babel, as a literary allusion or as a metaphor, intended to evoke the sense of a goal of reaching shared understanding after setting out from a starting point of confusing messages. The symposium aimed to explore possibilities for bringing a wide variety of different ideas, spoken in many languages, as it were, into a more comprehensive, and more comprehensively

6. DOUGLAS ADAMS, THE SALMON OF DOUBT 95 (Ballantine Books, 2002). Adams, sadly, was not awarded the Nobel Prize for literature.
understandable, theoretical set. This was expressed in the symposium’s advance material:

The reason for this symposium is that modern negotiation theory is so overwhelming that it is hard for people to use it effectively. There is a wide range of concepts, issues, perspectives, and applications from different disciplines with little consensus in the field. The goal is to help clarify negotiation theory and thus make it more useful for scholars, faculty, students, and practitioners as well as people in their everyday negotiations.7

Other papers in this special edition focus on this aspect of the biblical story, and on this potential evolution of the negotiation field; I share their hope that negotiation theory can advance from comprising a cacophony of disparate - sometimes conflicting - messages, to offering a more unified voice and utilizing a more unified language to discuss a common set of concepts.8

At its core, though, the biblical story of the Tower of Babel, is not really a story about language, or its comprehension, at all. It is a story about a much more fundamental aspect of the human condition of which language and understanding are merely symptomatic: change. Examining this story closely might be instructive to our own current-day efforts to cope with change.

As the curtain rises upon this scene in the book of Genesis, we encounter those who were considered, only a single chapter ago, to be the most fortunate ones of all: the survivors of the great deluge. This small band of people – as far as they knew, and so far as the biblical description goes, the last vestiges of human existence on the planet – did not linger long, in their egress from the hilltop-docked ark, to gaze at rainbows and appreciate divine promises of “Never again!” Rather, confronted with the post-apocalyptic, flood-ravaged landscape, they realized that they would not survive another rising of the waters. Pulling themselves together after their upheaval, they embarked on the project of building a city and a tower – the tower as a symbol of their unity, and the city as affirmation and implementation of their decision to all stay put in one place. More practically, the tower was built to provide them with protection against the recurrence of the catastrophe that had changed their world forever; it would keep them alive, should another onslaught of rising waves occur.

Humanity had learned that technological advancement would allow it to survive: Noah’s advancements in boatbuilding had kept the survivors on top of the previous set of waves, and their own timely invention of masonry and brickwork would do the same – only this time, without displacing them from their point of origin. However, even as these survivors labored to avoid a repeat performance of the previous wave of change, an unexpected, and different, wave of change swept

over them. Construed literally, the biblical text relates that, suddenly, their previously co-construed language lost all its shared meaning. To suggest a somewhat less literal construction of the text, perhaps their unified ideology was challenged by a plurality of ideas. Divisive diversity, and conflict itself, regained salience, trumping unity and group preservation. The city-and-tower project was abandoned, and humanity fragmented from one co-located group with a shared identity to geographically dispersed pockets of people not adhered to one another.⁹

If there is any one lesson of the Tower, it is not, therefore, that we need a really good dictionary. It is, rather, this: change happens, and then it happens again.

Today, once again, we are in an age of repeated upheavals, albeit of a different nature. Some of these are directly comparable to the tale of the deluge, in the sense that the combination of nature, technology and human behavior result in, or coincide with, new upheavals. Some bear catastrophic potential for deluge-like outcomes (e.g., the splitting of the atom or climate change). Other upheavals, interestingly, offer convergence rather than divergence. Seeing the internet as the most impactful technological development of the age, we can highlight its boon of allowing people to engage and cooperate across geographical distance; its next frontier is bridging language barriers.¹⁰ In that sense, technology might hold the potential to reverse the outcome of the Tower of Babel. However, even such reversal is compatible with the underlying lesson of the Tower, a lesson that is more obvious than ever today - in a continuously ongoing manner - to anybody observing nature, technology and people: change happens, and then it happens again.

When change happens, it poses threat, and it presents opportunities. Recognizing change – admitting its occurrence, and accepting the changed state of affairs - allows for adaptation, key for enabling us to taking advantage of such opportunities, sometimes, with our very survival hanging in the balance. Or, as Dylan himself put it (neatly tying the story of the Prize and the story of the Tower together¹¹):

_Come gather round people wherever you roam_  
And admit that the waters around you have grown  
And accept it that soon you'll be drenched to the bone  
If your time to you is worth saving  
And you'd better start swimming or you'll sink like a stone  
For the times they are a-changing...¹²

---

⁹. _See Genesis 11:1-12._  
¹⁰. There are many examples of such efforts. A relatively early one is the work of an Israeli company called Babylon, which developed a translation toolbar as an add-on to internet browsers, allowing for on-the-spot translation without leaving the screen you were on. A more creeping development has been the growing capacity of internet search engines to provide translation; currently, if you type “Wonderful in Spanish” into your English-language browser, you are likely to be provided with the word “Maravillos” as the first outcome of your search. For larger pieces of text, Google Translate currently offers the capacity to translate text from one language to another, between 50 languages. This software provides less-than-perfect translations, with some languages (or language dyads) doing better than others. However, more often than not, one can get the gist of a text using this tool. Another product / project under development is Skype Translate, currently allowing for real-time translation in videoconferencing between two communicators in seven languages. Such programs, still in their infancy from a developmental standpoint, already grant remarkable capacity for cross-language interaction.  
¹¹. _DYLAN, supra, note 1._ I’ll note that Dylan himself clearly recognized the connection between the biblical story and the theme of change; his choice of lyrics in phrasing “[T]he waters around you have grown” directly alludes to the unique terminology employed at several points in the biblical text to describe the rising waters of the deluge. _Genesis 7:17-20._  
¹². _DYLAN, supra note 1._
It seems almost hackneyed, today, to discuss how technology has changed our lives, and yet, the stage for the ideas in this Article cannot be set without spotlighting the many and iterative changes we have experienced – at scales ranging from the global to the personal. Let us begin with changes in activities other than negotiation, and work our way toward participation in this form of interaction.

We need not cast our own personal net of experiences too far back into the past, in order recognize that many of us, in many significant areas of life, and in many ways, do things differently from how we used to. Each of us, of course, has their own particular maps of saliency and their own chart of personal evolution regarding technology. For example, some people may have shopped through mail-order catalogues long before the advent of the internet; online commerce-at-a-distance involved no great transition for them. On the other hand, these same people may have felt they were taking a great leap when they shifted to online banking. We have not all arrived at the same end-result, engaging in the same pursuits online; however, this is often a matter of circumstances rather than a disillusionment with, or objection to, newly evolved and technologically-driven methods (for example, I myself avoid online dating; however, this is less a rejection of the technologically-mediated interaction, than it is recognition of the fact that my wife might raise an eyebrow at my engaging in this particular pursuit).

In general, I feel comfortable going out on a limb and saying that there is no area of life – the professional, the personal, the interpersonal, the communal and the spiritual - that poses an exception to the general statement that the way we do things has changed. Consider the things you consult your smartphone for now, that you would have asked a friend or colleague about only ten years ago. Consider the types of exertion you no longer do, or the places you no longer visit. You might go to a museum you particularly desire to see, but perhaps you do not go to movie theaters as often as you once did. You never go to video libraries anymore, and when was the last time you stopped off at a newsstand to buy a paper? When was the last time you checked a book out from a library? In fact – knowing this Article is likely to be read by people with huge libraries within a stone’s throw of their office – when was the last time you walked into a library? As we shall see, these changes in our activity – examples of behavioral patterns altered by our interaction with technology – affect us cognitively and psychologically as well. For example, it changes the sources of information we access (e.g., Google instead of the library), and as it does, it changes the types, sources and soundness of information we rely on (e.g., our reliance on anonymous web sources or Wikipedia for non-critical issues). As we shall see, this closes the circle by further reinforcing our new behavioral patterns.

People not only vary in terms of those particular areas of their lives that have been fundamentally altered by technological developments, but also in those areas in which they struggle, often as a point of pride, to reject technology-driven change. However, reading the following list of behaviors, I’d imagine that you’d agree that your behavior today has changed over the past decade or two regarding a good number of them – and that suffices to bring the point home. The way we shop has changed. The way we administrate our finances has changed. The way we manage our day-to-day schedule or to-do list has changed. The way we plan our travel has changed. The way we read books has changed. The way we curate our memories
has changed. The way we intake our news media has changed. The way we com-
municate with our peers, colleagues, subordinates and managers has changed. The
way we file reports, or compile others’ reports, has changed. Likely, you
have nodded at many, if not most of these.

Zooming in closer, to our professional activities around the topic of negotia-
tion – stopping shy, at this point, of considering the actual conduct of negotiation itself
– a similar list could be compiled: The way we teach our classes has changed. The
way we interact with our students has changed. The way we conduct our research
has changed. The way we collaborate on writing projects with colleagues has
changed. The way we attend, or present at, conferences has changed.

If technology-related change has so deeply affected so many practices in our
professional and personal lives, it would stand to reason that it applies, in some way,
to negotiation as well. That negotiation is a human constant, a fundamental frame
of human interaction, might be true - but only in the most general sense. “People
have always negotiated, and probably will always negotiate, with each other in their
personal and professional lives” is probably a valid statement, at least to the extent
that we can recreate human interactions in the past and forecast their interactions in
the future. However, this does not equate with saying “people have always negoti-
atged in the same way, in the same contexts, with the same understanding of the
interaction, with the same perception of the other and with the same attitude toward
their own goals.” Acknowledging negotiation as a constant interactional framework
is one thing; assuming that the how, why, where, what and when of negotiation are
all human constants is quite another.

Has negotiation changed, then? It would be premature to respond to this
question quite yet, as we have not fully characterized the change we are currently un-
dergoing. This characterization will help refute the “negotiation as a human con-
stant” assumption by answering the question of “Why is this change different from
all other change?” Following that, we will map out how these uniquely powerful
forces of change are affecting how we act, think, feel and, essentially, are. Only
then, can we relate directly to their impact on negotiation.

D. Future Shock and the Accelerating Pace of Change

Evolution doesn’t happen in a moment, or even in a generation. The literature
we will discuss below suggests that technology-related changes in our behavior are
accompanied by substantial changes to our neurological wiring; other physical
changes may be in the offing. Not that such changes will necessarily rewrite them-
selves in our DNA faster than any other evolutionary change; perhaps we, our chil-
dren, and the next hundred generations will all go through assimilation of technol-
gy as processes of developmental psychology and neurobiology rather than of ge-
netics. Whether individual development or evolution is at play, though, we and
they will all find ourselves with these new brain structures and cognitive habits; or,
practically speaking: whatever the explanation, and like it or not, your child or
grandchild will know how to text before they can write.

I suggest that the technological changes discussed in this article are powerful
enough to affect many things – negotiation amongst them – to extents, and in ways,
that previous social or developmental change has not. This unique power is owed
to four characteristics of modern technology’s sweep over every aspect of our ex-
istence.
It is pervasive: Technology has its presence in every corner of our lives. However, to understand the pervasiveness of the more recent technology, set aside thoughts about electric stoves, refrigeration, air conditioning and microwaves, and focus on technology developed over the past generation or so. Focus, primarily, on those technologies you utilize or access through your smartphone, laptop, and internet connection. In what areas of your life do you not utilize these at all?

It is dependence-building: There is a very effective system of rewards and gratification built into technology. This takes the previous point of pervasiveness one step further, and compounds it. Consider: in what areas of your life are you not dependent on your laptop and/or your smartphone, and the technology you access through them, to some extent? What is the longest you can picture yourself leaving these devices at home, and going out unwired? What is the longest unplugged vacation you can imagine yourself taking? Note your emotional response to these questions, in addition to any practical considerations that surface.

It is intentionally overwhelming: Just as television studios did everything they could to retain our attention decades ago, so, too, do players in the technology field. There are many more of them, and their efforts are far less visible, but they are no less effective for this, and we can discuss their aggregated (and, largely, uncoordinated) efforts without descending into conspiracy theories. The currency of Silicon Valley is attention. This attention is measured either by the time we, as users, spend on a particular technology, or by our engagement with it, as measured through clicks (this depends on the technology and its uses). Every software developer, and the social networks, online vendors, news sites, or video-sharing sites they work for, has one goal in mind: capturing our attention for another second, another click, another share. As individual novices, we stand little chance against the thousands of experts aiming to engage, maintain, hijack, or capture our attention. This uneven battle has been framed well by Tristan Harris, an expert in behavior design who specialized in coaxing users of technology to spend more time on particular sites, or to prefer one technology over another, through designing their features to be psychologically rewarding to users:

While some blame our collective tech addiction on personal failings, like weak willpower, Harris points a finger at the software itself. That itch to glance at our phone is a natural reaction to apps and websites engineered to get us scrolling as frequently as possible. The attention economy, which showers profits on companies that seize our focus, has kicked off what Harris calls a “race to the bottom of the brain stem.” “You could say that it’s my responsibility” to exert self-control when it comes to digital usage, he explains, “but that’s not acknowledging that there’s a thousand people on the other side of the screen whose job is to break down whatever responsibility I can maintain.” In short, we’ve lost control of our relationship with technology because technology has become better at controlling us.13

The pace of change is increasing: One reason this latest spate of change may affect humans – including as negotiators – in a way that no other cycle of change has in the past, owes to the pace at which change happens.

In 1970, Alvin Toffler introduced the notion of Future Shock – a psychological state of individuals, and a sociological state of groups – characterized as “the shattering stress and disorientation that we induce in individuals by subjecting them to too much change in too short a time.”\(^{14}\) He used the term to explain many of the psychological and social problems of his time.

One mechanism Toffler introduced as causing future shock is a term we are only too familiar with today: information overload.\(^ {15}\) The more rapidly change occurs, the more it challenges the psyche, affording one less time to assimilate new data into familiar paradigms. Overstimulation, and the stress associated with making multiple decisions – all routine elements of spending a minute on just about any page on the internet – also feed future shock.

If too much change in too short a period of time was destabilizing in 1970, where do we stand today? Many of us have, likely, experienced an instance of some degree of disorientation or instability (or beyond), at some point over the past few years, owing to technological shifts and resultant changes in human behavior.

Theorists on technology and futurism state that the pace of change is speeding up and will continue to do so; this is likely to increase the effects of future shock, and trigger changes in human behavior and psyche alike.

One such acceleration, relating to the foundational building-blocks of the very superhighway along which change occurs faster and faster, is Moore’s Law. This originated as an observation by Gordon Moore, co-founder of Intel, that the number of transistors on computer processing chips were doubling every two years – and a prediction they would continue to do so. For the past fifty years, this has largely held true. The prediction served as a self-fulfilling prophesy, as the biannual doubling of chip performance capacity became a regular target of the semiconductor industry. This compounding of performance is behind the miniaturization of technology that allows you to take the processing power that would have taken several rooms to store in the 1970s, and slip it into your pocket as you head out the door. Every two-year period in which Moore’s Law holds up, catapults us into a future in which new developments are increasingly possible.

In his essay *The Law of Accelerating Returns*, computer scientist and futurist Ray Kurzweil expands Moore’s Law from applying only to semiconductors to applying to ongoing, evolutionary, developmental processes (including other forms of technological development) in a much wider sense.\(^ {16}\) Per Kurzweil’s Law of Accelerating Returns, such processes develop and grow exponentially.\(^ {17}\) When technological limitations seem likely to bring such development to a halt, he suggests, technological breakthroughs in other areas will occur, allowing circumvention of the barrier, and continued exponential growth (this has actually been borne out, in several instances where Moore’s Law had been thought to have reached its limit).

In his own words:

An analysis of the history of technology shows that technological change is exponential, contrary to the common-sense “intuitive linear” view. So,


\(^{15}\) *Id.* at 350.


\(^{17}\) *Id.*
we won’t experience 100 years of progress in the 21st century — it will be more like 20,000 years of progress (at today’s rate).  

He continues to explain the change in the rate of change:

“Now, back to the future: it’s widely misunderstood. Our forebears expected the future to be pretty much like their present, which had been pretty much like their past. Although exponential trends did exist a thousand years ago, they were at that very early stage where an exponential trend is so flat that it looks like no trend at all. So, their lack of expectations was largely fulfilled. Today, in accordance with the common wisdom, everyone expects continuous technological progress and the social repercussions that follow. But the future will be far more surprising than most observers realize: few have truly internalized the implications of the fact that the rate of change itself is accelerating.”

One way of understanding Kurzweil’s assertions is, to paraphrase Dylan, that it is not only the times that are a changin’ — rather, time itself is a changin’, and constantly speeding up. Indeed, the big game-changer here is not any new technology, it is the acceleration of change itself. As Andrew McAfee of the MIT Initiative on the Digital Economy put it, we have reached the point at which “. . . the rate of change and the acceleration of the rate of change both increase at the same time,” and, as he added, “we haven’t seen anything yet!”

Perhaps the only reason we have not all succumbed to future shock, is that human characteristic that has saved us from all other threats of extinction: adaptability. When we recognize that the waters around us have grown, we learn that we had better start swimming – and do so quickly, before we sink like a stone. One way in which people have adapted to the new normal of change, is by enhancing their capacity to adapt; continuing to enhance adaptability, some suggest, is at once the key to humankind’s development and wellbeing.

While the pace of change might be accelerating, it may not always appear so, whilst looking at any particular technology. Some technologies seem to catch on much slower than expected, and others spread like wildfire. These include technologies particularly pertinent to negotiators – the capacity for videoconferencing has existed since the 1920s, but its use only became widespread toward the end of the

---

18. Id.
19. Id.
20. THOMAS FRIEDMAN, THANK YOU FOR BEING LATE: AN OPTIMIST’S GUIDE TO SURVIVING IN AN AGE OF ACCELERATIONS 26 (2016).
21. Id. at 35.
22. The accelerated pace of change is not without technological or philosophical debate. Some suggest that this is more hype or illusion than reality. See, e.g., David Moschella, The Pace of Technology Change is Not Accelerating, LEADING EDGE FORUM (Sept. 2, 2015), https://leadingedgeforum.com/publication/the-pace-of-technology-change-is-not-accelerating-2502/; The Creed of Speed, THE ECONOMIST (Dec. 5, 2015), http://www.economist.com/news/briefing/21679448-pace-business-really-getting-quicker-creed-speed. It would appear that the answer depends on how you define change and measure its pace. It may be that the perceived acceleration of change can be in itself destabilizing, in a “future shock” sense, whether or not it is real. At the very least, nobody suggests that the speed of change is slowing down. We are all subject to future shock, and perhaps, subjected to multiple triggers of future shock every few days, weeks or months.
Smartphones, on the other hand, are the fastest spreading technology in human history, and have disrupted our communication patterns, our down-time behaviors, and our capacity for cognitive offloading in the blink of an eye. The example of smartphones also offers a timely reminder that change happens, and then it happens again. Only one month before the Nobel announcement with which this Article opened captured the attentions of many millions around the globe, another announcement sent electric ripples through far larger swathes of society: Apple’s release of the iPhone 7. The swell of anticipation and excitement this caused might call to our attention a human hunger for technological development: we may suffer future shock from change, but we yearn for it anyway. This seventh generation of technology, and seventh iteration of its accompanying excitement, span a tiny period of human history; the iPhone is less than a decade old, at the time of writing, as are other models and versions of the modern smartphone, yet, many of us cannot imagine living without one, and scratch our heads in wonderment as we try to recall how we ever got anything done before it. When an eighth generation comes out – probably, shortly after this Article is published, the current pinnacle of handheld technological and communication equipment will lose its luster. If that seems to you to be an effect of marketing rather than of technological advancement, consider that when the ninth generation comes out, a couple of years further down the line, many of the currently new phone’s features will truly be antiquated. Moore’s Law predicts this, and previous iterations bear it out. Change is happening at an unprecedented pace, affecting every area of human activity. Humans experience this on multiple levels, and do their best to adapt to their new environment. Technology’s impact and human adaptation generate a situation in which human change is evident; technology also allows us to measure this change across several dimensions. In the next section, we will explore some of these clearly demonstrated changes.

III. THE SCOPE OF HUMAN CHANGE

The past decade has seen a great deal of writing on technology and its sweeping effects. Some of this literature has painted the altered landscape on which human-kind now operates, and lauded the potential the technological revolution heralds for humans. Other parts of this literature were clearly written with a disapproving grimace or a concerned frown.

2000s. Smartphones, on the other hand, are the fastest spreading technology in human history, and have disrupted our communication patterns, our down-time behaviors, and our capacity for cognitive offloading in the blink of an eye. The example of smartphones also offers a timely reminder that change happens, and then it happens again. Only one month before the Nobel announcement with which this Article opened captured the attentions of many millions around the globe, another announcement sent electric ripples through far larger swathes of society: Apple’s release of the iPhone 7. The swell of anticipation and excitement this caused might call to our attention a human hunger for technological development: we may suffer future shock from change, but we yearn for it anyway. This seventh generation of technology, and seventh iteration of its accompanying excitement, span a tiny period of human history; the iPhone is less than a decade old, at the time of writing, as are other models and versions of the modern smartphone, yet, many of us cannot imagine living without one, and scratch our heads in wonderment as we try to recall how we ever got anything done before it. When an eighth generation comes out – probably, shortly after this Article is published, the current pinnacle of handheld technological and communication equipment will lose its luster. If that seems to you to be an effect of marketing rather than of technological advancement, consider that when the ninth generation comes out, a couple of years further down the line, many of the currently new phone’s features will truly be antiquated. Moore’s Law predicts this, and previous iterations bear it out. Change is happening at an unprecedented pace, affecting every area of human activity. Humans experience this on multiple levels, and do their best to adapt to their new environment. Technology’s impact and human adaptation generate a situation in which human change is evident; technology also allows us to measure this change across several dimensions. In the next section, we will explore some of these clearly demonstrated changes.

III. THE SCOPE OF HUMAN CHANGE

The past decade has seen a great deal of writing on technology and its sweeping effects. Some of this literature has painted the altered landscape on which human-kind now operates, and lauded the potential the technological revolution heralds for humans. Other parts of this literature were clearly written with a disapproving grimace or a concerned frown.

23. Noam Ebner, Negotiation via Video Conferencing, in THE NEGOTIATOR’S DESK REFERENCE, (forthcoming 2017). For a suggestion of a contemporary technology to keep an eye on, with regards to measuring its quick or slow adaptation, I would offer the self-driving car. The technology largely exists at the date of writing, with several companies already at advanced testing phases. Autonomous, software-driven modes of driving already exist in some vehicles currently on the roads. In the US, governmental policy and guidelines for regulation have already been developed. See Federal Automated Vehicles Policy, U.S. DEP’T OF TRANSP., https://www.transportation.gov/AV, (last updated Apr. 21, 2017). Does this mean that your next car, or your next-next car, will do your driving for you? Or, will cars continue to be predominantly controlled by human beings in twenty years?


25. Note how the increase in change converges with traditional capitalistic forces of ever-expanding consumption and planned obsolescence. Not all technological change is equal; capitalism obscures the difference by masking inconsequential differences as significant developments in order to encourage consumption, even as it drives authentically significant change. While beyond the scope of this article, it is interesting to note that capitalism itself may have accelerated.
Each author’s frame or state of mind notwithstanding, there appears to be broad consensus around the degree of change that has occurred, the likelihood this would continue to grow, and the profound impact of this on people and society. Reading through this literature, it is possible to break down some changes we have gone through into three categories:

a) Changes in the way people do things, or *individual behavioral changes*

b) Changes in the very nature of who we are, and how we think and feel or *psychological, cognitive and physical changes*; and

c) Changes in the ways we engage with others, or *interactional changes*.

These changes interact with each other: changes in our psychological makeup affect our interactions with others, and the way we do things change the very pathways of our brains. Therefore, some of the discussion below (which only samples a tiny fraction of the literature, presenting parts that may particularly interest negotiation experts) may seem to blur elements from more than one of these three types, even as it seeks to categorize these dimensions of change to make them more recognizable and accessible.

### A. Individual behavioral changes

In his book *The Shallows*, Nicholas Carr has collected a great deal of research on the effects of technology on the human mind, and its effects on human behavior. His concern was that the way humans used technology was impairing their capacity for focus, learning and deep thinking. The convergence of research led him to the conclusion that while people were adapting to cope with the effects of new technology, they were, indeed, coping in ways that perpetuated such shallowness and distraction, rather than combatting it.

We’ve already noted significant changes in how we conduct our banking, our shopping, and other activities. Some of these might impact (or reflect changes in) our capacity for delaying gratification, to be sure, but do they make us more shallow? Carr’s review focused on much subtler changes in human behavior. One example out of many, which you can try out for yourself, is the altered way we now read text appearing on web pages. Rather than read it linearly as we (used to?) read printed books - from word to word or point to point across a line, then down, and then across once again - we now read in an ‘F’: scanning all the way across the top couple of lines, dropping our view down a few lines and reading the first part of a few more lines (at once), and then dropping our gaze once more a little further down on the left side of the page (when reading in left-to-right languages such as English). In other words – we don’t actually *read* the computer screen, we *scan* for (seemingly) important information.27 Another change pertains to how we search for academic information. Many of us might candidly admit that the bibliography sections of our articles are now much more article-heavy than they were in the past. We read articles, rather than books, as articles are more accessible online than books are. We don’t even need to read the whole article, as we can search its text for elements that interest us. Going even further, research on citation patterns shows

26. Note that the first two dimensions of change correspond, to a large extent, to the behavioral, cognitive, and emotional dimensions of conflict and resolution processes, including negotiation, discussed by Bernie Mayer. See BERNIE MAYER, THE DYNAMICS OF CONFLICT 55-60, 124-37 (2d ed. 2012).

that even with ever-increasing amounts of sources becoming available online, most are ignored, whereas a small fraction of them are increasingly cited. This is not necessarily because they are the most suitable citations for any given piece of work. Rather, it is because the way academic search engines work amplifies the popularity of some works rather than that of others. When a source that a thousand authors have already cited appears top amongst your search results, you are less likely to scroll down and review the article that came up twelfth on your list. Available information continues to expand – yet one result is a counterintuitive, yet measurable, narrowing of science.

Another expert on technology, social media, and its effects on human behavior, Clay Shirky, has stressed two positive changes in human psychology and behavior, resulting from the same overwhelming interaction with technology. He notes that technology has brought about fundamental change in the way people grasp themselves, and as a result – fundamental shift in the way they behave and spend their time. His books make several key points that highlight and explain changing areas of human behavior. For generations, humans have been locked in the role of media consumers. Our capacity to respond to media was limited (consider the small percentage of op-ed letters that get published, out of all those that are written). Our capacity to create media – particularly, appealing media, that others might wish to consume - was virtually non-existent. The internet has fundamentally changed all that. Specifically, this shift came about in the early-to-mid 2000s, as the internet’s primary function as a source of information (still placing people in the consumer role) diminished with the rise of Web 2.0 – technology allowing, and enhancing capacity for, user-generated content. Consumers of news became creators, now able to respond to news articles in talkbacks, compile and share news from preferred sources, or create commentary blogs of their own. Consumers of entertainment media such as TV shows or movies were granted similar capacity to engage about the topics that interested them – and then, with the advent of YouTube –like video-sharing and-streaming sites, gained the capacity to create and air shows of their own. The internet, Shirky suggests, has also disrupted our addiction to television, and the time this liberation has shaken loose and made available for other activity is immense. While we may appear to spend the same amount of time in front of other screens, at least some of it is being used in far more creative ways than the TV viewer’s consumer-mindset ever allowed for. Shirky sees this freed-up time, together with the internet’s capacity for allowing collaboration, as the source of a cognitive surplus that could set humankind on a profoundly new path. The phenomenon of LOL-cats memes – people devoting time and effort to create funny picture/text jokes that will make strangers laugh with absolutely no recognition or benefit given to the creator – is a manifestation of the creator-mindset that, in itself, demonstrates why we need new frameworks to understand contemporary human behavior. Traditional behavioral economics is sorely challenged to explain the generosity involved in activities ranging from LOL-cats to supporting strangers’ Kickstarter or GoFundMe campaigns.

28. Id. at 217.
29. See Clay Shirky, COGNITIVE SURPLUS: CREATIVITY AND GENEROSITY IN A CONNECTED AGE (2010) (describing the causes for the sources of newly liberated time, and discussing the things that people put it to use for).
30. Id.
This shift has significant implications that go far beyond sharing a good joke with the world. When the same amount of time, effort, creativity and generosity required to generate a LOL-cat meme is set on another course, the overall outcome is Wikipedia. Shirky’s writing often focuses on collaboration and on Wikipedia-scale benefits of such collaboration in the internet-age; as such, it should interest those in the conflict and negotiation fields. For the purposes of this Article, we can focus on the fact that humans are engaging in behaviors that are different from their previous conduct, and that these behaviors reflect an empowered sense of voice, an intuitive employment of the multiple channels available to amplify that voice, an outpouring of human creativity, and a surprising (to some) degree of generosity. In changing the things they do, on such a wide scale, people are changing.

B. Psychological, cognitive, and physical changes

During the past decade, there has been an explosion of literature at the nexus of psychology, neuroscience, and internet-related behavior. One growing area of research focuses on neuroplasticity. This term relates to the brain’s ability to evolve-in-motion, by constantly retraining itself to act more efficiently. The brain does not merely function as a warehouse of information with a filing system for storing and accessing data; it is continuously building networks between areas and improving its systems for bringing the most important information to the forefront, faster. The brain’s plasticity is responsible for sensory compensation in cases of disability; if one is deprived of the capacity for sight, the brain puts the grey matter usually dedicated to vision to other uses, enhancing capacity for other senses. The degree of our brain’s plasticity affects our ability to learn new languages.

The notion of the brain’s plasticity teaches us not to relate to the human brain as a shared attribute, common to all people. Take one human brain and subject it, for years, to one set of stimuli, and compare it with a human brain exposed to a different set of stimuli, and you will encounter two very different brains, in the most physical sense of the word – each with different areas developed, and with neural pathways bridging these areas in different ways.

Research on neuroplasticity has helped explain the new generational gap, between an older generation whose brains were largely developed before technological inundation, and a younger one whose brains were engaged with technology from their earliest moments of activity. We tend to acknowledge this generational gap by noting that older folks aren’t crazy about newfangled stuff – but in doing so, we ignore its more profound implications: growing up immersed in the technology that has developed over the past couple of generations fundamentally changes people.

---

32. Shirky, Here Comes Everybody, supra note 31, at 23-4.
33. For an introduction to neuroplasticity, see Stephanie Liou, Neuroplasticity, HOPES (June 26, 2010), https://web.stanford.edu/group/hopes/cgi-bin/hopes_test/neuroplasticity/; Carr, supra note 27, at 21-35; Gary Small & Gigi Vorgan, iBrain: Surviving the Technological Alteration of the Modern Mind 4-8 (2008).
34. Small & Vorgan, supra note 33, at 8.
35. Id.
36. Id. at 40-45.
37. Id. at 8.
The more you have developed in a technology-driven world, the greater the difference is, in terms of your brain’s physical structure, between you and someone who has largely grown up and developed without this technology. This is not merely a generational gap (although it may appear more overtly across generations). It is not even a cultural gap (although, it has many cultural implications). It is a human gap: if the brain itself is an aspect of our humanity, we are now experiencing a new variation; I do not have the same brain as my grandfather did – and my children do not have the same brain as mine.

Two aspects of this change in human brain development are amplified in both popular and industry assumptions: (1) younger people are more tech-savvy than grow-ups, but (2) they don’t know how to interact with others. 38 In their book *iBrain: Surviving the Technological Alteration of the Modern Mind*, Gary Small and Gigi Vorgan described these two aspects of difference:

Young minds tend to be the most exposed, as well as the most sensitive, to the impact of digital technology. Today’s young people in their teens and twenties, who have been dubbed Digital Natives, have never known a world without computers, twenty-four-hour TV news, Internet, and cell phones—with their video, music, cameras, and text messaging. Many of these Natives rarely enter a library, let alone look something up in a traditional encyclopedia; they use Google, Yahoo, and other online search engines. The neural networks in the brains of these Digital Natives differ dramatically from those of Digital Immigrants: people—including all baby boomers—who came to the digital/computer age as adults but whose basic brain wiring was laid down during a time when direct social interaction was the norm. The extent of their early technological communication and entertainment involved the radio, telephone, and TV. As a consequence of this overwhelming and early high-tech stimulation of the Digital Native’s brain, we are witnessing the beginning of a deeply divided brain gap between younger and older minds—in just one generation. What used to be simply a generation gap that separated young people’s values, music, and habits from those of their parents has now become a huge divide resulting in two separate cultures. The brains of the younger generation are digitally hardwired from toddlerhood, often at the expense of neural circuitry that controls one-on-one people skills.39

As we proceed down the path of human development in the age of constant technological immersion, we realize this dichotomy might not be precise. For one reason, many factors affect human development—not only exposure to technology. For another, it is not as if there is any precise line, drawn by divine decree, dividing the older generation from the younger generation. I often feel as if my four children – aged 6-20, at the time of writing - belong to three separate generations; you may know many people who were exposed to current technology at relatively advanced ages – yet comprehensively transformed to being fully “wired” or “connected.” Finally, age or generation is only one factor affecting exposure to technology. The

39. SMALL & VORGAN, supra note 33, at 3.
world over, one can find any degree of exposure to modern technology being the local norm, including zero exposure. The global digital divide is only one aspect of exposure; even in countries with a high degree of digital access, one can find regions, communities, and individuals whose level of access to, or interaction with, technology is less than a general or national level. Clearly, there are many degrees of nativity, and many migrational paths, with diverse outcomes.

Another area of research targets three dimensions of cognitive activity at the heart of our inner workings: focus, distraction, and boredom. Focus has been lauded as a key attribute of successful people, and as a desired psychological state for either productivity or mediation. Incessantly attacked by the wave of stimuli provided by technology, our tendency to focus is diminished; our very capacity for it is, as well. Multitasking seems to be a ubiquitous mode of operation in the modern living room or café; it is lauded as a marketable skill and is the predominant mode of operation in the modern workplace. This, despite the research showing that multi-tasking is, at best, a myth; the human mind cycles between multiple tasks rather than deal with them concurrently - and does so inefficiently. Having gone off-task due to interruptions, people take 23:15 minutes to return to doing the original task effectively. In order to make up for this, workers work harder once they have resumed focus, which comes at the price of increased stress. Furthermore, task interruption, as well as interruption anticipation – another feature of the design of the modern workplace – can reduce brain power by 20%. Literally, distraction can make us temporarily dumber. In the modern world, even when we shut our office door, such distraction can occur at any moment, with the arrival of an email, Facebook message or text. We dedicate about 3 minutes to any given task, before we are interrupted. Interruptions can be externally induced, such as being called into a meeting or receiving an email - but they can also be self-originated, as when we open our inbox or our Facebook page or a news site for no apparent reason in the middle of a task. We set ourselves up for interruption, by setting our devices

40. See, e.g., DANIEL GOLEMAN, FOCUS: THE HIDDEN DRIVER OF EXCELLENCE (2013) (discussing the benefits of focus and the challenges to it in the modern world).


42. See, e.g., Eyal Ofir et al., Cognitive control in media multitaskers, 106 PROC. NAT’L ACAD. SCI. 15583-87 (showing that heavy multitaskers suffer flawed information processing). See also EDWARD HALLOWELL, CRAZY BUSY 18-23 (2007).


44. MARK ET AL., supra note 43 (describing experiments related to the effect of interruptions on task completion -time and on workers’ stress levels).

45. Bob Sullivan et al., Brain, Interrupted, N.Y. TIMES (May 3, 2013), http://www.nytimes.com/2013/05/05/opinion/sunday/a-focus-on-distraction.html; see also Harold Pashler, Attentional Limitations in Doing Two Tasks at the Same Time, CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 1, 44-50 (1992).

46. See supra Section II.D for discussion of how software is designed to trigger these subconscious urges in users. On the patterns, frequency, and negative effects of self-interrupting owing to email-checking, see Gloria Mark et el., Email Duration, Batching and Self-interruption: Patterns of Email Use on Productivity and Stress, in PROCEEDINGS OF THE SIGCHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS 1717-28 (2016). As our capacity for ignoring distractions diminishes, we begin to rely on technology even for the purpose of turning itself off. You can download and set applications such as Switch Off Notifications on your smartphone to clear windows of uninterrupted time, and a
to alert us of various occurrences. There is a complex mechanism of gratification-seeking and reward underlying our self-interrupting habits, and technology gives us so many alternatives to the task we are attempting to perform, right there on the same device, that it is a wonder we ever get anything done at all. Human capacity for paying deep attention seems to be on a downswing, and the price we pay is measured in lost terms of efficiency, productivity and intelligence. On the other hand, we might be more knowledgeable about a host of things ranging from efforts to bring world peace to the number of people who have liked your latest Instagram photo.

With so much stimulation, there is little-to-no space for boredom, or any state of not-attending-to-anything, to occur. We shy away from it, by clicking on our Facebook icon a moment after we shut it down – sometimes, even when we are still on the site itself! By doing so, we are denying the brain the breaks it needs for rest, and for reviewing experiences and information. This detrimentally affects the physical processing and storage of the experiences and information.47

We may already be far enough down the path to connection with technology to justify being called cyborgs: “a person whose body contains mechanical or electrical devices and whose abilities are greater than the abilities of normal humans.”48 At most, we are but one step away - our actual machinery might not yet be implanted in our bodies, but it is never more than arm’s length away – often, less than an inch, as such machinery increasingly includes not only the smartphones in our palms or pockets, but also Bluetooth headsets, smart watches, wearable technology woven into our clothes, and screen/vision interfaces such as Google Glass. At a stage of ubiquitous gadgetry just shy of technology implantation, humans are already robustly bound to technology through threads of dependency. In this process of becoming cyborgs, we are changing physically and psychologically.

One interesting – and delightfully overt - way our minds are signaling us of this change, is the phenomenon of phantom vibrations. Ever feel your phone buzz in your pocket notifying you of an incoming message – only to find, upon checking the screen, that you had not received one? So has everybody else – and often.49 Phantom vibration syndrome is not only commonly experienced; it is real - to our minds and bodies. After discovering no new message – you are likely to be surprised, still believing your phone had vibrated. This phenomenon - a manifestation of our hyper-alertness to external contact and stimuli - is yet another step along the road to becoming cyborgs; your body is calibrating its degree of sensitivity for optimally connecting your neural pathways to your phone.

Another area of neuroscience linking the psychological to the physiological, is memory. Perhaps you have noticed, that you no longer remember people’s phone numbers? The more our mind identifies information as being readily storable by a computer, the less cognitive attention it devotes to it. And, the more it identifies tasks as being easily handled by software, the more it utilizes software. These

____________

47. Kalina Christoff et al., Experience sampling during fMRI reveals default network and executive system contributions to mind wandering, 106 PROC. NAT’L ACAD. SCI., 8719-8724. (2009).
tendencies are part of a phenomenon known as “cognitive offloading.” The first tendency explains why you no longer remember people’s phone numbers the way you used to; the latter explains why, having had one successful experience in finding information via Google, you are more likely to turn to Google the next time you face an information-retrieval task. The essence of memory is changing, along with our filing system and the way we open and access our memories.

Cognitive offloading has many benefits, allowing people to exceed their cognitive limits, remember more, and process more; with these new abilities comes new confidence. It brings us full-circle with the notion of the brain’s plasticity - the brain develops physically, to cope with the tasks we assign it. Change those tasks, by adding to them or by offloading them, and areas of the brain related to those tasks will grow or shrink, respectively. This adds a cause for concern to the notion of cognitive offloading. The growth or shrinking of a brain area affects not only the capacity to conduct that specific particular cognitive task – but, more generally, that area’s capacity to do all of the tasks that area is in charge of. Cognitive offload, therefore, may diminish the brain’s capacity to handle tasks not offloaded. This has been demonstrated by another area of cognitive offloading that is not directly related to negotiation – but may be the epitome of cognitive offloading over the past decade: our sudden, overwhelming, reliance on GPS-utilizing satellite navigation systems for finding our way from Point A to Point B. While these have been a huge boon to many people, scientists are presently researching the effects this cognitive offloading might be having, other than getting us home by the shortest route. Navigating our physical and spatial surroundings develops certain areas of the brain and can even significantly alter their size. Offloading navigational tasks might stunt these areas, raising concerns about a range of effects associated with diminishment of those same areas of the brain – memory loss, depression, dementia, PTSD, schizophrenia and more.

Our evolution into cyborgs (or tech-adopting humans, if the former term strikes you as being far-fetched) has far-reaching implications - some good, some bad, and most still unknown. What is clear, once again, is that we are changing.

51. Benjamin C. Storm et al., Using the Internet to Access Information Inflates Future Use of the Internet to Access Other Information, 25 MEMORY 717-23 (2016).
53. SMALL & VORGAN, supra note 33, at 5-8.
55. As evidenced by a large body of research mapping and tracking brain development of London taxi drivers, required to possess expert navigational knowledge of an extremely complex city, Eleanor McGuire et al., Navigation-related structural change in the hippocampi of taxi drivers, 97 PROC. NAT’L ACAD. SCI. 4398-4403 (2011). See also, Eleanor McGuire et al., Acquiring “the Knowledge” of London’s layout drives structural brain changes, 21 CURRENT BIOLOGY 4, 2109-14 (2011).
C. Interactional changes

It is common to encounter newspaper and popular-science articles lamenting the loss of social interaction amongst younger people, particularly millennials, and the loss of the skills and attributes (such as communication skills, or demonstration of empathy) that develop through these interactions. However, reviewing this literature one gets the sense that it is more opinion-based than scientific. That is not to say they are not grounded in experience and common sense. As one of the many negotiation teachers who share challenges encountered in negotiating with their own children as examples in class, I’ve recently realized that I face a much greater challenge with my six-year-old son than with any of his predecessors - in the sense that I find it hard to get him to keep his gaze away from the screen long enough for even the briefest of negotiations. So, while I recognize there appear to be changes, there is no clearly identified range of effects of the combined impact of the physiological changes discussed above and the changes in the way people now interact. Doubtless, individual effects combine to create broad social impacts, yet what might be the true impact on how people interact with each other? We might do well to keep an eye on those areas in which research is being conducted, which suggest that raised on technology, people tend to have poor interactional skills, social anxiety, low capacity for understanding nonverbal communication, and lower degrees of empathy for others. Such effects, should they be continuously and validly measured, could portend significant negotiator change, as Small and Vogel articulated:

As the brain evolves and shifts its focus toward new technological skills, it drifts away from fundamental social skills, such as reading facial expressions during conversation or grasping the emotional context of a subtle gesture . . .

With the weakening of the brain’s neural circuitry controlling human contact, our social interactions may become awkward, and we tend to misinterpret, and even miss, subtle, nonverbal messages. Imagine how the continued slipping of social skills might affect an international summit meeting ten years from now when a misread facial cue or a misunderstood gesture could make the difference between escalating military conflict or peace.

For the present, to find changes in patterns of interactions, I suggest that rather than focus on millennials or any other group of younger-than-us-s, we might all do well to focus on ourselves. You will likely find that - regardless of your age or your

57. For example, articles on how millennials learn are based on polling teachers; many of the articles on millennials’ interactional patterns and how these will affect their future are based on polling internet experts. For an example of one such poll conducted by the Pew Center that served as the basis for dozens of articles in the general media and popular science press, see Anderson & Rainie, supra note 38. While not without merit, these all tend to compile people from one generation opining on people from the next. Aggregating a judgmental approach, I’d suggest, is only evidence that the judgmental attitude exists; the hypotheses deriving from such polls require further testing.

58. For a demonstration of the nascent state of research into these issues, see Bruce Feiler, Hey, Kids, Look at Me When We’re Talking, N.Y. TIMES (Apr. 15, 2015), http://www.nytimes.com/2015/04/19/fashion/hey-kids-look-at-me-when-were-talking.html.

59. SMALL & VORGAN, supra note 33, at 2.
digital immigration status - over the past decade or so, your ‘network’ has become much different from the one you had in the preceding decade, as have your patterns of interaction with people in your network. We have multiple networks, and we interact with them at different levels of intimacy and frequency. These networks rarely break down into the professional/personal split we may have maintained, perhaps uncompromisingly, two decades ago. Our awareness of other people in our networks and of some of what they are going through is heightened, while in other aspects, our dialog with them may have decreased, flattening out our interaction with them. We ourselves interact with some of these networks in the aggregate, rather than orienting ourselves toward individuals (e.g., by authoring a blog post rather than expressing my opinion to an individual, or updating my Facebook status rather than tell someone how I am feeling); thus, we flatten ourselves as well.

Sherry Turkle, an MIT professor focusing on the impact of internet on society and on people’s relationship with technology, has summed this up: “We are increasingly connected to each other, but oddly more alone: in intimacy, new solitudes.”

In my experience, many people find it challenging to discuss these new forms of networks, intimacy and connection, without grading them against some picture of ‘real’ interaction. They are quick to remind us that Facebook friends aren’t ‘real’ friends, that videoconferencing is great but still isn’t the ‘real’ thing, and that 140 character tweets cannot possibly support meaningful interaction. I suggest that such comparisons usually involve a judgmental slant, combined with a highly idealized set of assumptions about the attributes of the way things were done before technology arrived and changed everything for the worse. Friendships, it seems, were always authentic and intimate, people always had time for one another, and complex thoughts and emotions were always expressed - fully, and at great length.

This idealizing of pre-technology interaction is not only true for whatever degree of intimacy people associate with friendship. Having taught online for nearly fifteen years, I have interacted with hundreds of other educators who insisted on prof-splaining to me the differences between online and real students, online and real teaching, online and real interaction – and how online education could never meet the bar set by real, physical classrooms with regards to all these. At first, as a proponent of online learning, I would respond by explaining that online education could meet all those bars, as demonstrated anecdotally by my own experience, and more scientifically in any number of comparative studies of online and classroom education (these explanations were often waved away, overwhelmed by an anecdote about my interlocutor having looked at a colleague’s online course and finding it lacking in aesthetic appeal or by other, similarly irrefutable, evidence). Later on, less reticent (and, admittedly, less patient) I abandoned this tack by directly challenging my counterpart’s idealized version of their classroom. Challenged on student-teacher interaction, I’d ask them “Tell me again, about how deeply involved you are with all of your students - including the forty percent of them who have never once said a single word in your classroom, over the course of an entire semester.” Challenged on how I could possibly ‘really’ teach negotiation without closely observing my students conducting in-person simulations and delivering close-up, personalized feedback (this last is one of my favorites), I would ask my

60. SHERRY TURKLE, ALONE TOGETHER: WHY WE EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER 19 (2011). This new solitudo is not only sociologically diagnosed. US Surgeon General Vivek Murthy, asked to name the biggest disease in America today, answered “Isolation.” See FRIEDMAN, supra note 20, at 450.
counterparts to calculate how much time they themselves ‘closely observe’ each student in their physical classroom, when they have a class of 30 students conducting a 45-minute negotiation simulation? How much authentically personalized feedback were they able to provide these same 30 students with, in a 45 minute debrief session?61

Perhaps one cultural and psychological difference separating one generation from the next, digital natives from digital immigrants, is that even as they engage in the same behavior, digital immigrants ‘do it online’ whereas digital natives ‘just do it’. Immigrants are aware of the shift, and carry with them the memory of how things were once done (along with the nostalgia and tendency toward expressing judgement that often accompanies this memory). Natives are not aware of the shifts – and, to be honest, are often not as interested in your stories of how things used to be done as you suppose they would be (this last is based on unstructured interviews with my children). Separations between the online and the virtual are not as salient as they used to be, and they are often preserved only by digital immigrants, tradition, and commercial interests.62 What is true for transactions is true for interactions. I cannot clearly distinguish my ‘online’ friends from my ‘face-to-face’ friends, but at least I understand the distinction. Ask your daughter to tell you about her interactions – in terms of intimacy, familiarity, or sense of social presence – with her ‘online friends’ as opposed to her ‘real friends,’ and she will likely give you that look withheld for use with for parents who ask those particular questions that reveal that they have hobnobbed with dinosaurs.

Some of us have put very careful thought into whom we want to interact with, and how. Such people have been very meticulous regarding whom they connect with on LinkedIn, and friend or accept as friends on Facebook. They have read the privacy information provided for any social media platform they partake in, and regularly reread it as it is updated. They may have multiple accounts on a single platform, for different personas and levels of connection (e.g., having a personal and a professional profile on Facebook, managed separately and with different intent). They are quick to correct people who overstep the boundaries that they feel everyone should intuitively understand, attributing to them negative character or intent. Examples of such perceived infractions might include the student who contacts you through Facebook Messenger to appeal the grade you gave them, or asks you for a recommendation letter via a direct message on Twitter or an automated request on LinkedIn.

Many of us, though, have not put such careful thought in, either ahead of time or in an ongoing manner. As we have been exposed to each platform, medium or method of interaction, we have somewhat intuitively and somewhat randomly found

61. There are many ways to conduct simulations, debrief them and give feedback in online courses. As a start, see Noam Ebner et al., Using role-play in online negotiation teaching, VENTURING BEYOND THE CLASSROOM: VOL. 2 IN THE RETHINKING NEGOTIATION TEACHING SERIES, (Chris Honeyman et al. eds., 2010) (offering methods for conducting and debriefing role-plays between students who are not co-located). However, the point here is not the efficacy or performance of online simulation, but rather the idealized notions teachers have about their face-to-face classrooms.

62. For example, in the US and around the world, Black Friday connotes the first day of the post-Thanksgiving, pre-Christmas shopping season, “celebrated” by retailers offering deep discounts and consumers swarming to the shops. Cyber Monday, several days later, opens the same season for online sales. Of course, many consumers shop both on and off-line interchangeably, and retailers offer their merchandise in both modalities. The distinction is preserved by tradition, and by the benefits to retailers of having two shopping celebrations rather than one.
ourselves with some type of network, and subconsciously developed our own norms of interaction and borders. These relate to activity vs passivity (you might spend an hour a day reading your Facebook feed, yet only post once a month), the intimacy of your posts (you might only share interesting articles you have come across, or actually voice your opinion on them; you might share what you had for dinner, or the devastation you feel after a betrayal), and social elements of your post (do you describe your experiences with other friends, or your thoughts about them? Do you tag them, thus ensuring they know of your post and inviting them to respond?) In our online interactions, we also decide about distancing ourselves from people – unsubscribing from their blog, blocking their email or unfriending them on Facebook. Whatever norms, criteria or intuition we apply in all these regards, are likely to differ greatly from the ones we used to apply to our friends and networks only a few years ago.

Finally - keeping the spotlight on ourselves rather than on anyone conveniently younger than us - each of us should be able to identify that there have been changes in our in-person interactional patterns, when we actually venture out from behind our screens.

One shift in these patterns, is that there is now nearly always an online component to our in-person interactions. Most of our meetings are set up via technology, e.g., via an Outlook calendar invitation a week in advance, verification via email a day before the meeting, and a pre-meeting ‘Just parking the car’ or ‘Where r u?’ text two minutes after the meeting was to have started.

Beyond that, the way we spend our time in such in-person encounters, and the patterns of conversation and interaction they involve, may also have changed. 92% of adults in the U.S own cellphones, and 76% rarely, if ever, turn them off. In other words, we ourselves rarely ‘clear space’ for our in-person interactions. As an educator, I have, occasionally, checked my email or Facebook feed during faculty meetings, much as my students do in class. This holds true for one-on-one interactions. Even when we attempt to engage in deep, focused interactions, we are often interrupted. Often, we are to our counterparts as my children are to me, promising me they are listening when their eyes are riveted to the screen; like my children, we really do feel we are listening. We are all doing our best to adjust to the new reality we find ourselves in, and the forces of distraction are, as discussed above, not only pervasive, but expertly designed to penetrate any shields we might try to set up against them.

Overlaying the interactional aspect of our one-on-one engagements, we now encounter interesting new relational aspects where our online and face-to-face encounters overlap: do you speak with your friends about their blog posts, or posts on Facebook, when you meet in-person? Or, does what happen online, stay online? Is the sit-down interaction something that you keep between the two of you, or do you share it with the world by posting a joint selfie (technically, an ‘usie’) on Facebook?

Finally, you, more than anybody else, might notice other differences in your in-person interactions, that are either unique results of your own path through the technological landscape, or are broader trends that have not yet been spotlighted.

Do you notice changes in your own listening? Do you recall the content of conversations as well as you used to? Do you find you interrupt people more often? These are just examples of areas in which you might examine your own behavior.

Reflecting on the personal social and interactional evolution we ourselves have gone through, demonstrates why an “us and them” approach isn’t helpful. The challenge posed by this article cannot be addressed by someone writing How to Negotiate with Millennials for Non-Millennial Dummies. We have all changed, and we all continue to negotiate with people of all ages - who have also all changed.

In the previous sections, we have elaborated on change – change in general, and the current wave of change and its sweeping power. We have noted our own responses to the changed environment in which we live, noting how human behavior, emotions and cognition are all in flux. Against this background, we now ask: If people are changing, how are these changes affecting them as they negotiate? Furthermore, how is negotiation itself changing, as a result of the changes in humans driven by technological development?

IV. BEYOND “MEDIA EFFECTS”: CHANGE IN NEGOTIATORS, CHANGE IN NEGOTIATION

The literature on negotiation provides no answers to the preceding questions. Reviewing this literature, one receives the clear sense that while we are constantly uncovering new information about negotiation, it is only new in the sense that recently mined gold is new; it has always been there, yet we have only just been able to uncover it. We continuously learn new things about its nature, but essentially, negotiation has not changed, nor have negotiators changed. The winds of change blowing across all human activity seem to lose their force at the gates of negotiation; negotiation, itself, is viewed as a constant.

That is not to say, that the negotiation field has not discussed applications of technology to negotiation. Recent years have seen a great deal of writing on this topic. However, as I’ll explain, this activity may actually have contributed to the fact that the field has not considered deeper, essential change.

A. Negotiation and technology: The instrumental smokescreen

If everything has changed, how could negotiation not change? To understand why this change has not been explored, we must pierce a veil of sorts, presented by the existing literature discussing negotiation and technology.

Far from ignoring the topic, the past few years have witnessed a large wave of writing focusing on the nexus of negotiation and technology. This literature has sought to identify key differences arising as negotiation is shifted from the familiar “table” to a technologically-mediated environment, and to help negotiators navigate online negotiation communication successfully. It is augmented by a growing body of literature exploring the field of Online Dispute Resolution which, beyond expanding the conversation on online negotiation, spotlights similar differences arising as processes of mediation or arbitration are shifted to online platforms.

This body of literature is impressive and contributes greatly to contemporary negotiators’ ability to conduct negotiation processes over online communication.

64. See the material referred to infra Section IV.A.
media. However, I suggest that, overall, it has had an unintended and unforeseen obfuscating effect. It has focused the field’s curiosity regarding the effects of technology on very narrow questions: how does negotiation play out over this, that, or the other medium? What are the effects of email communication on negotiation? What might be best practices for text-messaging based negotiation? What elements of nonverbal communication pertain to negotiating via videoconferencing? Should I conduct a particular negotiation, or a particular part of a negotiation, over one medium, or should I prefer another? This has led to discussion of the characteristics of communication media, through individual and comparative lenses, with an eye toward uncovering their “media effects” — the ways in which the media supporting a communicative interaction affects the interaction itself.

In other words, the assumption underlying the negotiation field’s treatment of technology is that negotiation has not fundamentally changed in any way — rather, that technology is instrumental for negotiators, and has side effects (mainly viewed as unfortunate) that negotiators must deal with. The goal is, then, to identify media effects and rein them in as best as possible, so as to conduct close-to-conventional negotiation. Some experiments dived deeper in exploring the relationship between technological platforms and negotiation theory — yet even these maintained the frame of instrumentalism. Such is the case, for example, for research comparing face-to-face to email negotiations in their tendency to produce integrative agreements. The research focused on whether email could deliver the integrative goods; rather than question whether the integrative approach, or the very preference for integrative outcomes, had evolved in its own self, in the technological era. Showing empathy to support the uncovering of interests has been discussed regarding email-based negotiation — but nobody challenged the field to question whether interest-based negotiation continued to be a valid or suitable approach to negotiation. Might there might be something in the technological upheavals that may have fundamentally disrupted its suitability or benefits, in general or in specific contexts?

65. For one such example of an article providing descriptions in a comparative manner, see Jill Purdy et al., The Impact of Communication Media on Negotiation Outcomes, 11 INT’L J. CONFLICT MGMT. 162, 162-87 (2000) (comparing the effects of various electronic media on negotiation).
68. Noam Ebner & Jeff Thompson, @Face Value? Nonverbal communication and trust development in online video-based mediation, 1 INT’L J. ONLINE DISP. RESOL. 103, 103-24 (2014) (discussing elements of nonverbal communication unique to videoconference interactions, and their effects on negotiation).
69. Andrea Kupfer Schneider & S.A. McCarthy, Choosing among modes of communication, in THE NEGOTIATOR’S DESK REFERENCE (forthcoming 2017) (discussing considerations for choosing between different communication media in negotiation, and blending use of multiple methods for different stages or elements of the process).
71. For one framing of a possible shift in this issue, see WILLIAM URY, THE THIRD SIDE: WHY WE FIGHT AND HOW WE CAN STOP 89-90 (1999).
Similarly, the assumption that empathy affects negotiators in the same ways it always has goes unquestioned. The fundamental frameworks of negotiation were never called into question, nor was the notion entertained that negotiators themselves might be evolving.

Another example of how this instrumental perspective on technology has provided an unintended smokescreen, confounding recognition of a deeper shift, can be found in the literature on trust in negotiation. Generally, the literature exploring the effects of technology asks how trust-building is challenged, or whether trust-infractions are more often perceived, while negotiating through different media. It does not, generally, seek to raise and address whether trust carries the same value in negotiation it did a generation ago, or whether the ways negotiators assess trust – communication medium notwithstanding - are different nowadays from what they used to be. This same instrumental approach has carried over into negotiation education, with teachers focusing on media effects rather than on deeper-set changes in negotiation and negotiators.

I note the distracting effects of the focus on instrumentalism somewhat con-trite, given my own contribution to this body of work. I think that none of this work was unnecessary – negotiators increasingly work online, and need to know how to function well in that environment. However, the notion that engaging with these interesting issues had rendered me oblivious to uncovering deeper meaning and shifts is cause for self-reflection. Ruful self-reflection, in fact, given that distraction by instrumentalism is not novel; communications theorist Marshall McLuhan, in his effort to explain just why the media really is the message, had chastised his own generation for just this mindset over fifty years ago: “Our conventional response to all media, namely that it is how they are used that counts, is the numb stance of the technological idiot.” Despite this crystal-clear warning, I fell into the trap offered by the comfortably numb stance.

The research discussed in the previous sections of the Article, exploring the reach, pace and effects of change, requires the negotiation field to go beyond the instrumental focus, and explore the effects of technology in a far more foundational sense. Negotiation theory needs extensive review, focusing on changes in negotiation and negotiators that may have occurred, beneath the field’s radar, over the past generation or two. Before discussing what form that review might take, though, we must consider whether, other than the instrumental smokescreen, there are other causes for the persistence of the unvoiced assumption that negotiators, and negotiation, have not been undergoing change.

73. See id. (describing trust-related challenges facing negotiators using email as a communication channel); Charles Naquin & Gaylen Paulson, Online Bargaining and Interpersonal Trust, 88 J. APP. PSYCHOL. 113, 113-20 (2003) (describing experiments gauging differences in interpersonal trust between parties negotiating online and face-to-face); Charles Naquin et al., The Finer Points of Lying Online: Email Versus Pen and Paper, 95 J. APP. PSYCHOL. 387, 387-94 (2010) (discussing lying as a basic trust-infract, and its manifestations in different form of text-based communication); Noam Ebner, ODR and Interpersonal Trust, in ONLINE DISPUTE RESOLUTION: THEORY & PRACTICE 203-36 (Ethan Katsh et al. eds., 2012) (discussing the importance of trust in negotiation and mediation processes conducted online, and challenges inherent to trust in the online environment).

74. See, e.g., Noam Ebner et al., You’ve got agreement: Negotiating via email, in RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 89-114 (2009) (discussing differences between email-based and face-to-face negotiation, and making suggestions for teaching these as well as practical skills for email negotiation to students in negotiation courses).

B. Negotiation: The Last Human Constant?

Despite changes in human development and behavior, there appears to be an assumption that negotiation, as a human activity, is a constant; beyond the instrumental aspects discussed above, there is little search for any significant impacts that the winds of change may have had, on negotiation or on negotiators. Human and technological change is something of a blind spot for the field. Indeed, why should it not be?

Change – in general, and technological in particular - is hard to foresee, for several reasons. One might be a ripple effect of the status quo bias – a general preference for things remaining the same as they have been. Negotiation is no exception to this.

Beyond that, to be fair and honest with ourselves, teachers, authors, and researchers in negotiation are prone to the status quo bias, given our vested interest in things staying largely the same, allowing us to use largely the same textbooks and teach the same courses. We might easily prefer change to occur at a much slower pace, developing as incremental discoveries (preferably, our own!), through research in the field (ditto), rather than challenging anew the validity of all its already-developed knowledge. This slower pace is compatible with favoring the instrumental exploration of technological effects, and, indeed, in recent years some negotiation textbooks have adopted chapters on online negotiation76 or Online Dispute Resolution77 as incremental nods toward technological influence on our field.

However, I think that for the most part, any omission in exploring more fundamental change is due to a wider, and unintentional, attentional blind spot. The status quo bias is reinforced by a status quo orientation in terms of vision. “It’s hard to make predictions, particularly about the future”78 – and that’s true even when someone is tasked with trying to anticipate the future. Change happens, and predictions about it are generally wrong more often than they are right, and become laughable in years to follow. Closer to home, Colin Rule, an expert on online dispute resolution, has correctly noted that the real challenge inherent in writing about technology is trying not to look silly after two or three years, once the cutting-edge technology you have written about has changed so much that your observations have become quaint and antiquated.79

Changes in technology have swept over fields and industries far more established than negotiation, and have done so much more overtly; still, many people and companies in these fields did not recognize those changes for what they were until they had already taken effect. As entire industries have been disrupted or diminished by new technology – journalism and the print industry might serve as examples of these two degrees of change – the negotiation field’s curiosity regard-

76. E.g., ROY LEWICKI NEGOTIATION: READINGS, EXERCISES & CASES (7th ed. 2014), JAY FOLBERG & DWIGHT GOLANN, LAWYER NEGOTIATION: THEORY, PRACTICE & LAW (3d ed. 2016) (examples of textbooks on negotiation which have included a chapter on negotiation via email or other online media).
77. E.g., JOHN C. KLEEFIELD ET AL., DISPUTE RESOLUTION (4th ed. 2016) (example of a textbook on dispute resolution which has dedicated an entire chapter to the topic of Online Dispute Resolution).
78. Attributing this piece of wisdom to any one person is a challenge; it has been credited to baseball player Yogi Berra and physicist Niels Bohr, amongst others. See The perils of prediction, THE ECONOMIST (July 15, 2007), http://www.economist.com/blogs/theinbox/2007/07/the_perils_of_prediction_june.
79. COLIN RULE, ONLINE DISPUTE RESOLUTION FOR BUSINESS, at vii (2002).
ing technology was certainly piqued, but oriented itself toward instrumental questions rather than fundamental ones. Perhaps this was due to the negotiation field not being, clearly and in its own self, an industry or professional field; it never experienced the bite of disruption nipping at its own heels. And, to the extent that negotiation is associated with the legal profession (particularly in the United States) – the legal profession stands out as one that has not (yet) been fundamentally changed by technology. With no “enemy at the gates,” so to speak, there was no pressing need to reexamine everything we hold true. However, this is the very nature of technological change, particularly in our speeded-up era: it is there, and taking effect, long before you know it and think to consider what its far-reaching implications might be. As media theorist Marshall McLuhan declared over half a century ago, speaking about a different technology/media cataclysm (television media displacing print):

> The electric technology is inside the gates, and we are numb, deaf, blind and mute about its encounter with the Guttenberg technology, on and through which the American way of life was formed. It is, however, no time to suggest strategies when the threat has not even been acknowledged to exist . . .

I don’t intend to posit anything negative, or suggest that any “threat” exists. Rather, just to suggest that dramatic change has occurred, that we have not fully noticed it, and that we might want to look under the hood of negotiation and see whether the fundamental pieces look and act as they did 30-50 years ago, when they were first articulated by the negotiation field.

I recognize, that the suggestion that we are required to take a renewed look at the basics of our field can be challenged, even summarily dismissed, by a simple dismissive counterargument: “we’re not as special as we think.” People have been negotiating for tens of thousands of years. Our field generally assumes that people have been doing it in roughly the same ways over that time, and nothing in our existing knowledge would suggest that negotiation in the Bronze Age was fundamentally any different (in the sense of “fundamentally different” that has been discussed in this Article) from negotiation in the Middle Ages. At least, this seems to hold true, in the sense that ancient or aged depictions of negotiation, such as encountered in the bible, in Shakespearean plays, etc., can be familiarly discussed through the analytic frames developed in the twentieth century. Society has changed and people have changed over time – why this insistence on any current degree of change being overwhelming, when no other previous episode of change has been so?

80. Or, perhaps, has not yet systematically noticed the roots of disruption currently spreading through it, such as the spreading phenomenon of disintermediation permeating all professional fields, in which – mistakenly or not - the internet poses as everyone’s expert, diminishing the degree to which people turn to human experts. For more on the legal industry and its future in light of technological changes, see RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES (2008) [hereinafter THE END OF LAWYERS]; and RICHARD SUSSKIND, TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE (2013) (describing the ways in which technology and other aspects of the information age will change expectations and requirements of clients from their attorneys, and, as a result, will fundamentally alter the roles filled by attorneys, the knowledge they need to have, and the business models they employ) [hereinafter TOMORROW’S LAWYERS].

81. McLuhan, supra note 75, at 11.
Were I the polemic type, I would probably challenge the assumption that negotiation has always been the same. Many texts we might refer to for depictions of negotiation in times past olden days are accepted as literary reflections of their time and the society in which they were written, but do not necessarily provide a body of historic fact upon which an analysis of human negotiation behavior throughout history can rely. The suggestion that we are lacking a solid body of literature depicting actual negotiations (and that negotiation theory would benefit from developing such cases to understand negotiation better) is true in the present; an even greater paucity exists regarding such descriptions from past events, the further back in history you go.

Polemics aside, though, while I recognize the power of the historical argument, I believe its persuasiveness is limited. I don’t think I would be accused of overly advocating here-and-now-ism - being swayed by the uniqueness of the current age just because I happen to be living in it - by suggesting that something out of the ordinary is happening right now in human development. The types and the degree of changes we are experiencing in our era differ from, and surpass, previously experienced wave of change; their effects will, accordingly, extend further - affecting even those areas of human conduct which have continued, largely unaltered, throughout human history. In previous sections, we’ve discussed how change, itself, is changing, and therein lies its power to affect all human constants to an unprecedented degree, at an unprecedented pace. As Dylan put it, it is not just that the order is fading – the order is rapidly fading.

C. Translating human change into negotiator change

If people are changing, then these changes will likely affect them as negotiators. Once again, for clarity’s sake, this argument must be differentiated from the suggestion that people negotiate differently when the negotiation takes place via technological platforms (e.g., videoconferencing or email). That has already been well established by research in the negotiation and conflict field. My suggestion is that - a generation or more into the new technological era - people may have changed as negotiators, even in those (increasingly rare) cases in which technology is not directly involved in the negotiation itself. Reading the negotiation literature, however, leaves one with the impression that people sitting around a table to negotiate today generally act just as they did thirty years ago. If my suggestion that people as negotiators may have changed passes muster, the next suggestion deserves serious consideration: we must re-examine much of what we think we know about negotiation.

This is not a simple proposition to make, let alone to accept. The suggestion that the field must re-examine much, or all, of its existing knowledge might be waved away on the premise of “we’ve already proved that knowledge, and don’t need to re-prove it.” Indeed, the growth of scientific knowledge is largely premised on the axiom that once something has been sufficiently demonstrated, you can continue building upon it without constantly needing to re-prove it. To make the suggestion of re-examination more palatable, faced with this argument, I have done my

best to describe the pervasiveness of change and its effects, in many significant areas of human activity; I suggest this may extend to negotiation.

In this coming sections, I will first describe, as a positive example of re-examination, one area in which human change has been directly applied to human-as-negotiator change: attention. I will then suggest two other areas in which human change is clearly apparent, and which would benefit from exploration of changes in people-as-negotiators: trust and empathy. I will then move on to discuss how any element of negotiation might be subject to change in this new era, and worthy of the renewed attention of the negotiation field.

I. Negotiators are changing: Attention

Laurel Newell has tackled an important area of negotiation: a negotiator’s capacity for attention - their ability to focus on one set of stimuli, to the exclusion of others. Negotiators rely heavily on their capacity for attention, says Newell, as . . . negotiation is a highly complex endeavor. In any given negotiation, a negotiator may need to listen carefully, evaluate offers, propose options, respond to positions, calculate figures, plan strategies, read contracts, write emails, remember agreements, wait for replies, exercise patience, and soothe tempers, among countless other things. Negotiation makes demands upon negotiators’ cognitive abilities, emotional competencies, and impulse control capabilities—all of which rely upon the negotiators’ powers of attention, particularly their executive attention mechanisms. It stands to reason that a negotiator who cannot pay attention effectively is unlikely to be an effective negotiator.83

Focusing on the younger generation of negotiators, as opposed to their older counterparts, Newell explains why these negotiators are prone to, or even wired for, reduced attention. Multitasking is a fact of life for these negotiators,84 and this comes at attentional cost as we’ve noted above. Physiological changes in their brains change their attentional capacity,85 as do their levels of stimulus-driven distractions, cognitive overload, and stress and anxiety.86 Newell explains how these attentional shortcomings might impair negotiators’ performance, and suggests two mechanisms for younger negotiators to improve their performance through improving their attention. She recommends negotiators experiment with taking technology breaks – not through leaving their devices at home, but rather the opposite – intentionally setting aside time devoted to satisfying their need for technological engagement, so the remainder of time can be dedicated to uninterrupted focus on their interpersonal negotiating interaction.87 She also recommends negotiators practice meditation, which has been shown to provide numerous attentional benefits.88

I suggest that Newell’s theory should be expanded to apply to us all, rather than limited to the Digital Generation. This opinion derives from the literature discussed earlier in the Article, in addition to the fact that in some aspects we are all members of the Digital Generation. Your age notwithstanding, you have a smartphone on

84. Id. (draft at 6).
85. Id. (draft at 9).
86. Id.
87. Id. (draft at 15).
88. Id. (draft at 16).
Your table or in your pocket as you read this Article; that same smartphone accom-
panies you to negotiation. The attentional loss caused by only one variable – check-
ing messages received on a smartphone during a face-to-face negotiation conversa-
tion (something any of us is likely to do) – has been shown to result in lower gains
in the message-checker’s negotiation gains. This, even when the messages received
are related to the negotiation (in other words, do not forcibly drag the negotiator’s
mind off-task). Furthermore, checking messages lessens the message-checker’s ne-
gotiation counterpart’s perception of their trustworthiness and professionalism.
One party’s message-checking reduces their counterpart’s satisfaction with their
own outcome, even if this was increased owing to the message-checker’s atten-
tional loss189.

This comment aside, though, Newell’s chapter is an excellent illustration of the
benefits of relating to the effects of technology on negotiation through a perspective
focusing on human change, rather than on technological instrumentalism. Without
relating to human change, the best advice we could give negotiators might be a
somewhat brusque “leave your phone at home or turn it off” – an approach Newell
dismisses as impractical;90 and, I would add, as irrelevant as recommending they
leave their arm at home. Newell’s chapter exemplifies the need to address basic
issues in negotiation anew in the technological age. It serves as a particularly
good example, given its focus on an area that negotiation theory has more or less taken
for granted.

“Don’t it always seem to go, that you don’t know what you’ve got till it’s
gone?” asked Joni Mitchell.91 This has largely been the case, regarding attention.
Newell’s exploration of negotiator’s attention illuminates a topic which had not
even been on the negotiation field’s radar a generation ago. Certainly, as negotia-
tion teachers, we have labored to retain our students’ attention. “Paying attention”
may have been one way we’ve framed elements of the act of active listening. Per-
haps we’ve referred to attention as a more foundational mindset underlying con-
structive communication.92 In a deeper sense, though, the capacity to focus atten-
tion as an attribute of negotiators, or the role played by such focus as an element of
negotiation, was seldom explored in its own self in the literature.93 attention as a
skill or a trait was not seen as a variable before technology threatened to hijack it.
If technology is changing the attributes we once took for granted, how much more
so, for elements that the negotiation field has always considered challenged, or at-
risk? I will now briefly introduce two examples of such areas: empathy and trust.

89. Apama Krishnan et al., The Curse of the Smartphone: Electronic Multitasking in Negotiations, 30 NEGOT. J. 191, 191-208 (2014) (discussing the effects of one commonplace form of distraction on nego-
tiation efficacy).
90. Newell, supra note 83 (draft at 14).
92. Mayer, supra note 26, at 183-191.
2. **Negotiators are changing: Empathy**

Empathy has been discussed as a core attribute of negotiators for the past two decades. 94 Negotiators must learn to balance empathy and assertiveness, 95 utilizing basic elements of empathy is key for uncovering interests 96 and setting a constructive negotiation atmosphere. 97 These notions have quickly been assimilated into classrooms and textbooks. Empathy is a complex element of negotiation, combining an emotional aspect (actually feeling it), a cognitive aspect (understanding the other’s predicament, circumstances or motivations), and a behavioral aspect (displaying or receiving empathy).

In the new technological era, empathy as we know it might be under threat. Part of this is due to attentional deficits: Lost in our screens, we may not see a look of pain on the other’s face. Part of this might be due to new developmental patterns leaving children less likely to recognize elements of nonverbal behavior. 98 Beyond technology’s general effect, specific types of pervasive technological immersion more directly affects empathic capacity. In particular, while this has been debated for years, meta-reviews are leaning toward the conclusion that immersion in violent video games is a causal risk factor for decreased empathy. 99

Rather than treating empathy as being “under threat,” though, we might more correctly view it as being in flux. For example, some research shows that spending large amounts of time online (displacing face-to-face interactions) may not displace capacity for empathy in traditional, face-to-face interactions (as might be intuitively expected), and might actually enhance capacity for empathy in virtual encounters. 100 Violent video games may diminish capacity for empathy – but playing prosocial games can increase this capacity. 101

Clearly, changes in behavior, activities, interaction, attention, and brain development all predict shifts related to empathy in negotiation. Such shifts may assume many forms: empathy may not play the same roles it once did in negotiation. It might be conveyed through channels overlooked two decades ago. Negotiators may have more, or less, need to receive empathy in negotiation, and receiving empathy may have more or less powerful, or simply different, effects on them. Perhaps today’s negotiators must receive exactly the same type and amount of empathy they

98. SMALL & VORZAN, supra note 33, at 2.
100. Sara Prot et al., Video Games: Good, Bad, or Other?, 59 PEDIATRIC CLINICS N. AM. 647, 647-58 (2012) (finding that video-games have powerful effects on their players – some harmful, and some beneficial).
101. Id.; Grettemeyer et al., Playing Prosocial Video Games Increases Empathy and Decreases Schadenfreude, 10 EMOTION 796, 796-802 (2010) (finding that video-games have powerful effects on their players – some harmful, and some beneficial).
always have – but their counterpart negotiators need more, or less, or different, training regarding providing and displaying this empathy. All this, I suggest, is worthy of exploration.

3. **Negotiators are changing: Trust**

Roy Lewicki has framed the value of interparty trust in conflict and negotiation relationships:

The existence of trust between individuals makes conflict resolution easier and more effective. This point is obvious to anybody who has been in a conflict. A party who trusts another is likely to believe the other’s words, assume that the other will act out of good intentions, and probably look for productive ways to resolve a conflict . . . The level of trust or distrust in a relationship therefore definitively shapes emergent conflict dynamics . . .

The degree of trust between parties to negotiation, Lewicki has explained with Jean-François Roberge, determines the nature of their relationship:

Trust has been described as the “glue” that holds relationships together and enables individuals to perform more efficiently and effectively . . . We assume trust between parties has an impact on their relationship, and vice versa . . . As relationship develops, trust changes, and as trust changes, relationship develops.

As I’ve written elsewhere, more than any other element, perhaps, trust has been recognized at providing all the “good stuff” negotiations require to be successful:

Trust has been identified as an element playing a key role in enabling cooperation, problem solving, achieving integrative solutions, and dispute resolution. Negotiators are trained and advised to seek out and create opportunities for trust-building whenever possible, and as early as possible in the course of a negotiation process. Trust is considered a vital precondition for sharing information, arousing generosity and empathy, and reciprocating trust-building moves in a negotiation process. When trust in a negotiation opposite is lacking, negotiators fear that information imparted to the other might be used to one’s own detriment. A trust-filled environment might enable negotiators to contemplate the worst outcome of the process as being a mutually agreed upon “no-deal,” which holds promise of a continuing relationship and possible future interactions, dictating cooperative behavior patterns in the negotiation process. Distrust, on the other hand, causes parties to focus on how their cooperative behavior can be used against them by the other to cause them actual loss. This triggers

defensive behavior – negotiators withhold information, attack the other’s position and statements, threaten him, and lock themselves into positions from which they cannot easily withdraw.\textsuperscript{104}

Might trust form and function differently, in the new technological era? Trust has been generally understood to be predicated on identification, knowledge and deterrence, or similar constructs.\textsuperscript{105} It has been understood to function both as the relational glue discussed above, and as the source of people’s willingness to assume risk and vulnerability.\textsuperscript{106}

Given trust’s all-important role in negotiation, it warrants constant investigation. A generation into the technological era, there are many reasons to believe that trust is in flux. For one, trust itself is literally under attack, in some spheres. Worried that people might trust certain others, their adversaries prefer to undermine people’s trust altogether – in a sense, eroding the very concept of trust. This might be exemplified by the role played by false news reports in the 2016 elections in the United States. With each discovery of any news item being false, I suggest that people may have suffered an increase in distrust of all media reports. Fact checking – itself an activity conducted at internet-scale by websites such as Snopes.com – seemed overwhelmed in that presidential race; trust itself could not be trusted.\textsuperscript{107}

Gallup’s annual survey of the public’s trust in traditional institutions indicated an all-time low in 2015,\textsuperscript{108} which might indicate that institutional trust is simply not suitable for the digital age.\textsuperscript{109} On the other hand, a new kind of trust – that might be called “peer trust”\textsuperscript{110} - is alive and thriving. As Rachel Botsman has described this shift:

Think of the characteristics of “institutional trust” – big, hierarchal, centralized, gated, and standardized. It works if you are Goldman Sachs, AT&T, or Pfizer but it makes no sense if you are network or market-based company like Airbnb, Lyft, or Etsy. The DNA of “peer trust” is built on opposite characteristics – micro, bottom-up, decentralized, flowing and personal. The result of this shift is not only the emergence of disruptive new business models. Convention in how trust is built, lost and repaired – in brands, leaders and entire systems – is being turned upside down.

We are inventing a type of trust that can grease the wheels of business and facilitate person-to-person relationships in the age of distributed networks and collaborative marketplaces. A type of trust that transforms the social glue for ideas whether it be for renting your house to someone you don’t know, making a loan to unknown borrowers on a social lending platform,

\textsuperscript{104} Ebner, supra note 72, at 141-42 (citations omitted).
\textsuperscript{105} Lewicki, supra note 102, at 94.
\textsuperscript{106} Ebner, supra note 72, at 142.
\textsuperscript{107} For more on the phenomenon of widespread disinformation and the resulting emergence of agnotology (a neologism expressing the study of culturally constructed ignorance), see Clive Thompson, \textit{How more info leads to less knowledge}, WIRED (Jan. 1, 2009), https://www.wired.com/2009/01/st-thompson-14/.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
and getting in a car with a stranger from being considered personally risky, to the building blocks of multi-billion dollar businesses.\textsuperscript{111}

Very much in line with the general theme of this paper, Botsman concludes:

Without a doubt this shift in trust will be messy. New complexities will emerge around risk, discrimination, and accountability that will require not just new regulatory and legal frameworks but a different organizational mindset to find a way through. And we’ll have to find a way through because to be human, to have relationships with other people, is to trust. Perhaps the disruption happening now is not about technology; it is how it enables a shift in trust, from institutions to individuals.\textsuperscript{112}

The fact that changes in human tendency to form and place trust are taking place, concurrently, across a broad span of activities – including, for example, dating, taxi service, and holiday accommodations – is both indicative of a large shift, and can precipitate such a large shift. Every successful experience one had in shifting trust away from familiar institutions (such as a Sheraton hotel) to an individual (such as an Airbnb host) might reinforce this new type of trust formation and placement.\textsuperscript{113}

The growth of these new types of trust are related to the ever-developing trust that people place in rating systems or reputation sites. When considering a purchase, a meal, or a trip, we care greatly what a vendor’s rating on Amazon or eBay is, or what feedback travelers have given a restaurant on Yelp or a hotel on TripAdvisor.\textsuperscript{114}

While it may be possible to discuss some aspects of these formations of trust in terms of knowledge-based and deterrence-based trust, it may require a great deal of conceptual stretching to force the trust developed in the “sharing economy” into these terms. It may follow, that the changes in the way people develop trust are so fundamental as to warrant new conceptualizing and terminology.\textsuperscript{115}

Trust is a primary consideration and variable in negotiation. If trust itself is changing, and people are changing regarding the factors that affect their trust and distrust, the negotiation field would do well to examine the effects of this change on people’s trust-related actions and decisions as negotiators.

\begin{footnotesize}
\begin{enumerate}
\item[111.] Id.
\item[112.] Id.
\item[113.] Rachel Botsman, Technology is making it easier to trust strangers, WIRED (Jan. 29, 2016), http://www.wired.co.uk/article/trust-networks.
\item[115.] See Jason Tanz, How AirBNB and Lyft finally got Americans to trust one another, WIRED (Apr. 23, 2014 6:00 PM), https://www.wired.com/2014/04/trust-in-the-share-economy/.
\end{enumerate}
\end{footnotesize}
D. Translating human change and technological change into negotiation change

The case for negotiation itself changing can derive from the previous discussion of negotiator change. If people act differently while negotiating, the process itself is likely to be different. However, the notion of negotiation change can also be illuminated through examining familiar models and frameworks for negotiation. Each model comprises a set of core concepts and elements, which the change-frame can be applied to. Once you look for change, it is everywhere. The question of how much change fundamentally transfigures a familiar concept or generates a completely new spin-off element, depends on the eye of the beholder. However, examining any model of negotiation, you are apt to recognize the extent to which change has permeated all its elements.

To demonstrate such model-wide effects of change, consider the four elements of the model espoused by Fisher, Ury and Patton in Getting to Yes.116

Separate the people from the problem117: Implementing this element taps skills of focus, empathy, interpersonal communication. We have already noted, at length, how all these are in flux.

Focus on interests, not on positions118: This element requires attentional skills, allowing negotiators to maintain a particular focus despite distracting information and stimuli the other presents. It requires excellent communication skills. Sharing information about your interests, and encouraging the other to share such information, requires good trust decisions and skillful trust building. We’ve already discussed the effects of change on each of these areas, above.

Create options for mutual gain119: Our immersion in technology is yielding a great deal of creativity.120 More than ever, societal progress is being driven by this creativity,121 which is increasingly gaining recognition as a life-skill.122 Moreover, the rise of technology has accelerated collaborative creativity – the type required for negotiation processes (as opposed to individuals experiencing alone-in-the-bath-tub Eureka moments). Collaborative creativity drives knowledge-creation between a thousand students in a MOOC,123 or hundreds of thousands of Wikipedia editors, just as it drives the development of Linux.

116. ROGER FISHER, & WILLIAM URY, & BRUCE PATTON, GETTING TO YES (3d ed. 2011).
117. Id. at 19.
118. Id. at 42.
119. Id. at 58.
121. See, e.g., RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS (AND HOW IT’S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE) (2002) (identifying the new “creative class,” calculating it constitutes over 30% of the US workforce, and discussing the broad societal impacts of this group).
122. Mitchel Resnick, Sowing the seeds for a more creative society, 35 LEARNING & LEADING WITH TECH. 18, 18-22 (2008).
123. See Noam Ebner, Negotiation and Conflict Resolution Education in the Age of the MOOC, 32 NEGOT. J. 231, 257 –n.9 (2016).
Insist on using objective criteria. Using objective criteria is reliant on access to information, as well as methods to present it reliably to the other; modern technology has provided both to degrees unimaginable only a generation ago. On a more substantive level, the very nature of “objectivity,” “facts,” and human acceptation of objective facts as persuasive may have changed. One can find support for anything on the internet. Even if one cannot find equal full-fledged support for both sides on any question, the internet is likely to provide a wealth of obfuscation on any issue, capable of diluting the persuasive effects of the most solidly constructed evidence on any one side. Lines between opinion and fact blur on the internet, further undermining the persuasiveness of any source and diminishing capacity for meaningful public debate over the internet and beyond it. This is compounded by the realization that there are those engaged in deliberately creating false facts, as was recently spotlighted in the 2016 elections. Collectively, these changes erode institutional trust, further challenging negotiators in a world in which there were few recognized and authentically objective referees or reference points to begin with.

Other elements-based models of negotiation have put additional core ingredients of negotiation in the spotlight. For a second example of model-wide effects of change, consider a model I have developed with Yael Efron in which relationship, communication, and alternatives are added to the list of key elements of negotiation. All three have been significantly impacted by the forces described in this Article:

Communication: This Article has discussed several aspects of change in face-to-face communication. In addition, consider how rare it has become to conduct a negotiation entirely at the table. Setting aside the specific media effects of email or video-conference on negotiation conducted through those media, as I’ve been careful to do in this Article, I’ll note that the very fact that we communicate via multiple media in a single negotiation has further effects on how we negotiate. We now have a new set of decisions to make, choosing between media for any message or interaction. This has us considering our counterparts, and their reactions, in many new contexts, and having more initial, pre-table, communicative interactions with them than in the past. We might find temporal differences in when we now communicate with our counterparts, and what we say as a result; perhaps we negotiate differently in our pajamas at 2am, from how we do in the office, suited-up, in the morning?

Relationship: The topic of networks and relationships has already been discussed at length in this Article. In a general sense, though, I will suggest that with all relationship patterns in upheaval, assuming negotiation relationship patterns remain the same might be questionable. A quintessential example of such upheaval relates to the most significant relationships people form: dating and marriage. Simply, if associatively, in a world in which online dating flourishes, and 1/3 of

---

127. Schneider et al., supra note 69.
128. The prevalence of online dating in the U.S. has tripled in the period between 2013-2015 amongst 18-24 year olds — and doubled, amongst 50-60-year-olds (demonstrating that this profound shift in relationship initiation patterns cannot be dismissed as a fad of a dismissible younger generation. See Aaron Smith, 15% of American adults have used online dating sites, PEW RES. CTR. (Feb. 11, 2016),
the marriages in the US now originate in online meetings, it may be a good idea to re-examine preconceived notions on what constitutes a “good working relationship.”

Alternatives: In the current era, alternatives flourish. Globalization has created multiple vendors or outlets for transactions of any size, and for merchandise at any scale. Technology has given access and utility to these opportunities – in terms of locating them, assessing the reputation of the counterparts involved, and storing and organizing the information. It has not only changed the ways negotiators form their BATNA – but also how they use their BATNAs. On an instrumental level, this allows parties to literally bring one vendor into another vendor, walking around one shop with another’s website open on their phone, or running a “find cheaper offers” app when encountering an item on a website. It allows the search for alternatives to take place not only as preparation to a negotiation, but also as a part of a negotiation, right there at the table. The ability to display a cheaper offer on a comparable vehicle to a car salesperson changes the nature of the “want me to go somewhere else?” moment; similarly, it has changed the ways in which negotiators can, or cannot, bluff about their BATNA. On a more profound level, it would not be surprising to discover that negotiators, in many face-to-face contexts, have a heightened sense of “there are always other alternatives,” given that they find this to be true of every purchasing decision they make online.

Beyond effects on each one of their components, negotiation models focusing on key elements are likely affected by the interaction of these changed elements with one another. No negotiation element exists in a vacuum; negotiation processes comprise the tension of how all these elements interact with each other, influencing each other over time. This is what makes every negotiation process unique. A change in any one element, therefore, affects other elements and the process as a whole.

In short, the overall effects of change on a model may be greater than the sum of the individual effects of change on each of its component elements.

As opposed to models focusing on specific elements, more general negotiation frameworks, providing continuas of process characteristics and variables, might appear more impervious to change. For example, John Lande’s framework identifying six process variables which can be examined in any negotiation, might remain applicable despite changes to negotiation and negotiators. To mention one variable, perhaps the notion of examining a continuum along negotiations conducted in a hostile tone and negotiations conducted in a friendly tone needs no adjusting. However, this only holds true at a top-level view of the framework and of each of its variables. The moment you dive down into any individual variable, you are likely to find those same significant changes. What constitutes a hostile tone – how

http://www.pewinternet.org/2016/02/11/15-percent-of-american-adults-have-used-online-dating-sites-or-mobile-dating-apps/.

129. And, these marriages have higher satisfaction rates and less likelihood of separation or divorce, John T. Cacioppo et al., Marital satisfaction and break-ups differ across on-line and off-line meeting venues, 110 Proc. Nat’l Acad. Sci. 10135, 10135–40.
132. Id. at 47.
is it measured, and what are its impacts? Do these remain the same as we’ve considered them to be before, or have they changed? What constitutes the range of socially acceptable responses to perceived hostile tone; which of them signifies forbearance, and which of them escalation? All these may have changed.

E. Spotlighting technology-related negotiation and negotiator change: USA, late 2016

Change happens, and then it happens again. This article was written in October, November, and December of 2016 – a season of change in the United States, enveloping a remarkable presidential election and its early aftermath.

The role of technology as a societal force, as communication media, and as a substantive topic was woven into these elections as never before. Social media has had strong impact on previous elections. In these elections, though, technology had other novel manifestations and impacts, which are increasingly spotlighted in post-election analysis. Online activity created echo chambers, later blamed for polarized perceptions and a lack of appreciation for the other.133 Online fact-checking attempted, yet was often unable, to counteract the effects of candidate-generated falsehoods, let alone those of sophisticatedly-created fake online news. Foreign hacking of email may have affected the election’s outcome, and creative online methods for voter suppression were employed.134 Technology was not only a vehicle or an amplifier of issues; it was woven, to an unprecedented extent, into the recurring substantive themes of the campaigns. Two major issues in this election were technology-related: the trustworthiness of a candidate who had utilized a private server for her email communication, and the character of a candidate who could not refrain from mid-night Twitter rants.

In the aftermath of Hillary Clinton’s loss, a “secret” Facebook group emerged, morphing from a group of people supporting her candidacy into a regrouping area or rallying spot for her disappointed supporters. Within weeks, the group had swelled to four million members.135 The group was intended as a storytelling community, aiming to harness the power of collective storytelling to effect change.136 And indeed, hundreds of stories are told, every day, by members of the group. These stories often relate interactions in the somewhat altered U.S. society this election season has engendered. In early November, many stories discussed interactions around the elections; in later November, many focused on anticipating and describing split-vote-family interactions during the upcoming Thanksgiving holiday.

While a full exploration of this group’s activity might interest those studying conflict organizing at some later point, there is one theme that immediately stands

134. For example, a Twitter campaign mounted by supporters of one party to convince supporters of the other party that they can vote from home via text messaging. See Taylor Link, You can’t vote from home, SALON (Nov. 7, 2016 4:37 PM), http://www.salon.com/2016/11/07/you-cant-vote-from-home-donald-trump-trolls-take-to-twitter-to-suppress-voter-turnout/.
out to anyone with a background in conflict or negotiation reading the stories. Many stories describe behavior along the negotiation and conflict continuum. People describe how they found themselves in situations in which they felt offended, attacked, demeaned, belittled, or negated, or observed others in these situations. They admitted, openly, how these behaviors would have left them speechless, submissive, accommodating, or avoiding in the past. However, as they repeatedly shared, something had changed, owing to their experiences inside the Facebook group – reading others’ posts, admiring their actions, and marveling at their fortitude and bravery. When faced with these situations in their own face-to-face interactions, they now spoke up, stood their ground and engaged. Some described how they pushed back and met force with counterforce; others shared how they met aggression with compassion, empathy and cooperation.

The notion of conflict and negotiation orientations is well accepted in negotiation studies and is an element of any negotiation course. People have natural inclinations of how to act in conflict and negotiation interactions, inclinations that run much deeper in our wiring than any intentional choice amongst strategies. Also widely accepted, is the notion of strategic choice – negotiators’ capacity to choose amongst a variety of courses of action, whether in line with their intuitive orientation, or at odds with it.137 The stories shared in this group demonstrate, clearly, how people engage in online activity and emerge either wired anew on the level of orientations, or with new capacity for choice on the strategic level. In each story, online activity results in new behavior in face-to-face interactions. Each story reports a different flavor of change; whereas in the past some would have avoided, they now engaged; where some had previously yielded, they now competed; and, in situations where some had previously competed, they now cooperated.138

Closer examination of a collection of these stories might uncover further significant negotiation transformations. However, for the purposes of this Article, an important theme emerges from them: engagement with and through technology has a powerful effect on people’s negotiation and conflict behavior in face-to-face interactions. This is a powerful example of technology-related negotiator change. What brought this about, though? From the perspective of negotiation theory, what were the specific elements of interaction with technology that led to these shifts? Might these shifts point at a new map of negotiation orientations, or new connections between orientation and strategy? From the perspective of negotiation education, here is an example of an educational, or influential, environment, in which perceptual and behavioral shift in negotiation was effected, carrying over to real-world experiences. The negotiation training industry has been attempting, for decades, to achieve just that. Negotiation educators might explore the forces allowing these shifts to happen, and consider how they might be harnessed and replicated, for advancing negotiation education – in general, and at scale. Advancing such education at scale is a challenge, and a target, the field faces.139 If the ideas sug-

138. Another way to look at this last manifestation, is to suggest that the storytellers’ capacity to integrate cooperation and competition was altered, indicating an increase in their capacity to engage in paradoxical thinking and acting – a core attribute for engaging in conflict constructively. See BERNIE MAYER, THE CONFLICT PARADOX 25-59 (2015).
139. Further articulation of this challenge can be found in Ebner, supra note 123, at 256.
suggested in this Article concerning changes in negotiation and negotiators are accepted, such education-at-scale is more necessary than ever. We may now need to re-educate those we’ve already educated - helping them to unlearn some of what we’ve taught them, and to adapt other parts of what they’ve learned about negotiation to a changing world.

V. A CHALLENGE TO THE FIELD: ASSESSING AND INCORPORATING CHANGE

Negotiation theory has developed around a certain set of assumptions about people: how they live, how they interact, how they think, what motivates them, and more. Since the first foundational writing in the field, people have been changing regarding all those assumptions. If people have been changing, then negotiators have been changing and negotiation has as well. However, our theories, while becoming more refined and more detailed, have not changed, and neither has our articulation of the very assumptions at their core. By continuing to build theory around these assumptions, we have overlooked change processes we have been undergoing. If these change processes are found to be as significant as research in other fields currently indicates, negotiation theory, or elements of it, must be adjusted, or significantly revised.

There are, admittedly, several big “ifs” in the previous paragraph. However, as I’ve tried to demonstrate in this Article, there is every reason to believe these suggestions have merit, and, at the very least, they warrant exploration. This calls upon the negotiation field to consider significant change in its research agenda.

As I’ve explained, in order to look deeply at the effects of the technological revolution on negotiation, we must move beyond the literature on negotiating via technological media. This literature is important and helpful for those ever-increasingly common situations, but it is largely uninformative as to the deeper effects that living and negotiating in a technology-immersed environment has had on negotiators and on negotiation. Rather, the negotiation field is challenged to reflect upon what it has learned and formulated so far about negotiation in general, and consider which aspects continue to hold true, which require updating and adaptation, and which simply do not reflect the way people engage in negotiation anymore.

Looking to the big-picture frameworks which served as the backdrop to the symposium this Article emerged from, which provide the foundations that ensuing negotiation knowledge built upon: do labor negotiations still bear the same characteristics and dynamics described by Richard Walton and Robert McKersie? If people have been changing, then negotiators have been changing and negotiation has as well. However, our theories, while becoming more refined and more detailed, have not changed, and neither has our articulation of the very assumptions at their core. By continuing to build theory around these assumptions, we have overlooked change processes we have been undergoing. If these change processes are found to be as significant as research in other fields currently indicates, negotiation theory, or elements of it, must be adjusted, or significantly revised.

There are, admittedly, several big “ifs” in the previous paragraph. However, as I’ve tried to demonstrate in this Article, there is every reason to believe these suggestions have merit, and, at the very least, they warrant exploration. This calls upon the negotiation field to consider significant change in its research agenda.

As I’ve explained, in order to look deeply at the effects of the technological revolution on negotiation, we must move beyond the literature on negotiating via technological media. This literature is important and helpful for those ever-increasingly common situations, but it is largely uninformative as to the deeper effects that living and negotiating in a technology-immersed environment has had on negotiators and on negotiation. Rather, the negotiation field is challenged to reflect upon what it has learned and formulated so far about negotiation in general, and consider which aspects continue to hold true, which require updating and adaptation, and which simply do not reflect the way people engage in negotiation anymore.

Looking to the big-picture frameworks which served as the backdrop to the symposium this Article emerged from, which provide the foundations that ensuing negotiation knowledge built upon: do labor negotiations still bear the same characteristics and dynamics described by Richard Walton and Robert McKersie? If people have been changing, then negotiators have been changing and negotiation has as well. However, our theories, while becoming more refined and more detailed, have not changed, and neither has our articulation of the very assumptions at their core. By continuing to build theory around these assumptions, we have overlooked change processes we have been undergoing. If these change processes are found to be as significant as research in other fields currently indicates, negotiation theory, or elements of it, must be adjusted, or significantly revised.

140. RICHARD WALTON, A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS: AN ANALYSIS OF A SOCIAL INTERACTION SYSTEM (1965).
142. FISHER, URY, & PATTON, supra note 116.
The first step of the field’s new research agenda, therefore, needs to look back at what we have formulated so far, and—through a combination of candid reflection and research replication—subject it to tests of relevancy, accuracy and suitability. This is not to suggest anybody go on a crusade of slaying sacred cows, and a review process might certainly culminate with the conclusion that many of these foundational notions remain relevant, and merely require updating rather than abandonment. This opportunity for deep conceptual reflection might also present opportunities for deep conceptual creativity; one outcome of the process might be a new set of models to consider.

Just below the “models” level, is research into particular core elements of negotiation. For example, if we discovered that objective standards no longer deliver a persuasive punch, negotiators must find alternative methods of persuasion. What persuades people, nowadays? Conversely, perhaps the influencing power of a good BATNA has grown; how can negotiators best capitalize on this discovery?

Another area of research I recommend putting on this new agenda is a reexamination of the efficacy of the most basic tools and skills of negotiation. It may be that our maxims are outdated. Perhaps ‘use the power of silence’ is not as helpful as it used to be? Perhaps ‘counting to ten’ is no longer relevant, to someone who has grown up conditioned by media governed by a directing rule changing the angle of a video shot every 2-3 seconds, to maintain viewer attention? It may be that the measurable effects of our more scientifically-grounded methods have changed. Perhaps communication skills that have always been in the top drawer of our negotiation toolbox are simply not as effective as they used to be. Perhaps they must be improved, and perhaps new tools are required. For example, what communication tools might be most helpful in dealing with a counterpart with a short span of attention? Perhaps a new level of differentiation is necessary, with communication tools having different degrees of efficacy depending on whether you or your counterpart are digital natives or digital immigrants.

Ideas for such areas requiring renewed examination are likely to be proposed by negotiation students. Recognizing the age and experience-related elements of the gap between old and new patterns of human behavior discussed in this Article, requires that we listen closely for instances in which we are told that our descriptions of negotiation dynamics, elements, or tools do not track with students’ experience. The more open a negotiation teacher is to hearing such comments, the more likely they are to receiving eye-opening suggestions for research projects.

A final area of research relates to the very notion of change itself. Negotiation itself is an area of study that could be situated within a field of Change Studies just as readily as it is in professional and academic disciplines such as business, dispute resolution, or law. That such a field does not yet exist (although emerging fields of innovation and entrepreneurship could be extended to begin its construction) does not diminish the fact that negotiation is the study and practice of how people conduct themselves when they wish to change their situation with the assistance, the agreement, or the resources of someone else. Negotiation study and practice is strongly connected to conflict study and practice. Conflict, too, can be seen through a Change Studies perspective: people not only engage in conflict in an effort to

145. For discussion of the multisituational nature of negotiation, see Borbély et al., supra note 8.
change their situation unilaterally, or to defend it from imposed change; conflict is also a nearly inevitable outcome of any change process, as anyone who has ever been involved in a corporate merger, a personal relocation, or a political shift in power, knows well. Conflict experts and negotiators are change facilitators. The benefits of conducting research regarding negotiation from a change perspective are twofold. For one, it would provide the field with a new perspective through which to explore its own practices. For another, it would heighten the field’s sensitivity to change, something that might enable it to adapt more nimbly to future shifts in human psychology, behavior, and interactions as these continue to impact negotiation in the future.  

For, have no doubt—more change is on the way. There are different views on what the future might hold in store for us. Ray Kurzweil anticipates an event or threshold dubbed The Singularity, in which technological development takes place at a pace, and in ways, that current human intelligence cannot even comprehend. Along the way, human intelligence will be enhanced through our merging with machine intelligence. How might negotiator superintelligence effect negotiation? Yuval Noah Harari, shifting his comprehensive grasp of the past to anticipating the future, paints a similar picture of unprecedented technological advancement, yet suggests a bleaker future for humanity. We will become nigh-omnipotent, he projects, yet may be unhappy. We will have eliminated disease and granted ourselves near-immortality, we may even have developed the ability to create new life. However, just as the first wave of technological development displaced manual labor with machine labor, so, too, the next wave will displace human cognitive labor with machine cognitive labor. Many people, brought up with a work ethic as a major value, will become purposeless in the traditional sense of leading productive lives. In our search for new sources of meaning, we are likely to undergo significant changes in aim, purpose, gratification, and reward. Richard Susskind sees elements of these processes happening on a shorter timeline, focusing on the disruption and even dismantling of professions. With some tasks better performed by technology, and much knowledge no longer preserved behind walls of formal education and intentionally-preserved mystique, the distribution of practical expertise in society has changed and will continue to do so. In this process, people’s expectations from experts will change, as will the services these experts provide.

146. For a suggestion to adopt a similar change-anticipation mindset for the dispute resolution field, which I made together with co-panelists John Lande, Cynthia Alkon and Lydia Nussbaum, see John Lande, Where the “Puck” is Going—And What Faculty Should Do To Help Students Get There, INDISPUTABLY BLOG (June 26, 2016), http://www.indisputably.org/?p=9280.
147. See Kurzweil, supra note 16.
148. Id.
150. Id.
151. Id.
152. Id.
153. Id.
154. See THE END OF LAWYERS, supra note 80; TOMORROW’S LAWYERS, supra note 80.
155. Id.
156. Id.
157. Id.
One aspect of this disruption is widespread unemployment. Another is a development of new roles, new methods of offering services, and new framing of specialist skills.

Are any of these projections accurate? If so, which one? And—what change does it portend for negotiation? It is hard to foresee whether any (or all) of these futures await us. The one thing all these authors (and many others) agree on, though, is that change happens, and will happen again; only more of it, and accelerated. The negotiation field must keep a figurative post-it note reminding itself of the constancy of change on its communal bulletin board, permanently. Perhaps this is one important “take away” for our field from the story of the Tower of Babel: when change happens, only contemporary, cutting-edge understanding of conflict and its resolution through negotiation will make the difference between success and failure in addressing individual situations, and between human advancement and societal calamity in navigating broader upheavals.

This new research agenda may be particularly suited for a new generation of negotiation researchers. They may be more attuned to elements in traditional models of negotiation that don’t resonate with their own interactional patterns or negotiation experience—and able to frame these as hypotheses to be explored. They may be more likely to embrace change as a research perspective, given that they experience change as a tangible, constant, part of their lives.

I hardly anticipate this new research agenda, and its underlying assumptions, to be universally embraced. On the contrary, I think the suggestions I’ve put forward in this paper need challenging, through which I hope they will be clarified and refined. Suggesting that past findings must be re-examined and that research might be heading, or leading, astray is bound to step on some toes. However, I believe our toes could stand some stepping on, in this regards. As I have suggested in this Article, some of my own work might fall under this category of “leading astray,” and I welcome any cautionary toe-stepping.

VI. CONCLUSION

In this Article, I have emphasized the profound changes in all areas of life resulting from the technological revolution of the past few decades, and suggested that there is no reason to assume that negotiation, as a human interaction, would be exempt from such change. Having demonstrated changes directly pertaining to negotiation, I’ve suggested a self-reflective phase for the negotiation field, and a broad outline of a new research agenda.

There is always the possibility that something one perceives as huge change is actually only a single changing element in an even vaster system. My focus on the impacts of technology on human activity might only be one entry-point into a far greater convergence of flux that the negotiation field should be aware of. As Roger Fisher, Elizabeth Kopelman and Andrea Schneider wrote in their book *Beyond Machiavelli*, “There is a Russian saying, that everyone looks at the world from the...
belltower of his own village.” It may well be, that we are experiencing other significant shifts that may profoundly affect negotiation and negotiators, beyond those catalyzed by the spread of technology across society. Some might point to a type of spiritual awakening more present in some areas of the world than ever before; others may suggest focusing on a new environmental awareness, coupled with environmental urgency. Still others might point to tangible shifts in consciousness related to advances in gender equality. The shifts that one notices are surely affected by their own mattering-map. I have focused on the technological, owing to my own work in this area, but it is important to remember that no one factor operates in a vacuum. The technological revolution is so overwhelming, and so overwhelmingly granted attention by the media, that it is likely to steal the spotlight from other, equally important, engines of change. If your overarching response to this article is “why is he focusing on technology, and ignoring the profound impact of gender, environment or anything else on human behavior and activity?” my response would be to urge you to write an Article along the lines I have adopted in this one, redoubling the field’s motivation to engage in internal reflection and to consider redesigning its research agenda.

159. ROGER FISHER ET AL., BEYOND MACHIAVELLI: TOOLS FOR COPING WITH CONFLICT 21 (2d ed. 1996).