

# Gender Differences in Content and Style of Argument Between Couples During Divorce Mediation

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*Analysis of the negotiation process of thirty Israeli couples, chosen randomly, who participated in divorce mediation shows several gender differences in both style and content. Men tend to use more legalistic arguments that are based on principles of law and customary practice. Women tend to use more relational arguments based on interpersonal responsibility to a relationship. Men's style tends to be unemotional and reserved, women's style emotional with more expression of insult and pain. Psychological theories help explain these gender differences. Couple therapists, divorce counselors, and mediators should be aware of these differences and their practice implications.*

Divorce is a painful process for most couples and their children (Amato, 1996; Riessman, 1990; Tucker and others, 1997). During this turbulent, difficult, painful time, divorcing couples face the immense task of making critical decisions about dividing property as well as recovering and facing an uncertain future. The customary means of arriving at a divorce settlement is a court battle.

Divorce mediation is an alternative way to reach a settlement. It is based on philosophical commitment to self-determination (Cauble, Thoennes, and Pearson, 1985). The mediator, acting in some sense like a couple therapist (Walsh, Jacob, and Simon, 1995), helps the couple neutralize their anger and hostility and focus on their true needs (and their children's)

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and options for satisfying those needs (Bautz and Hill, 1991; Bohmer and Ray, 1996; Cauble, Thoennes, and Pearson, 1985; Dillon and Emery, 1996; Emery, 1994; Erickson and McKnight Erickson, 1988; Folberg and Milne, 1988; Hansen and Grebe, 1985; Haynes, 1994; Kelly, 1996; Sauber, Beiner, and Meddoff, 1995; Shellenberger, 2001; Zaidel, 1991).

Research suggests a number of positive outcomes associated with divorce mediation compared to traditional adversarial methods (see, for instance, Cauble, Thoennes, and Pearson, 1985; Dillon and Emery, 1996; and Kelly, 1996). A number of variables were found to predict the outcome of divorce mediation, above and beyond the mediator's skill: the quality of the relationship between the ex-spouses, their acceptance of the divorce, the balance of power between them, their perception of the likelihood of gaining custody, and the duration and the perceived magnitude of the dispute (Thoennes and Pearson, 1985). It was also shown that spouses with good capacity for empathy were more successful in the mediation process than those who lacked it (Salikeu, Culler, Pearson and Thoennes, 1985).

Despite the obvious relevance of gender to divorce mediation, little research attention has focused on it directly (only twelve studies in the last decade). Of the few studies that have, one found gender differences in preference for divorce mediation over other methods of litigation. The study involved forty pairs of separated parents who were randomly assigned to settle their child custody dispute with either mediation or an adversarial procedure. Results showed that fathers clearly preferred mediation over an adversarial approach. Mothers did not show such a clear preference. Although mothers who went through mediation noted some favorable effects of mediation, those who used litigation felt they won more and lost less relative to those in mediation. Mothers in litigation also reported fewer feelings of depression than those in mediation (Emery and Weyer, 1987). Other studies found women more satisfied with their divorce settlement than men (Kelly and Duryee, 1992; Sheets and Braver, 1996).

Although these studies reported some gender differences in the effect of divorce mediation, three other studies reported no such difference. One showed no gender differences in satisfaction from mediation (Sullivan, Schwebel, and Lind, 1997), and the other two showed that the interactional organization of mediation sessions inhibits a gendered pattern of interaction (Garcia, 1998; Dingwall, Greatbatch, and Ruggeron, 1998).

Clearer gender differences are reported in the negotiation literature (Calhoun and Smith, 1999; Halpern and Parks, 1996; Kolb and Watson, 1997; St. John, 1996; Stuhlmacher and Walters, 1999; Walters, Stuhlmacher,

and Meyer, 1998; Watson, 1994). Although there are differences between negotiation and mediation (Lyon, Thoennes, Pearson, and Appleford, 1985) the findings regarding gender difference in negotiation seem quite relevant to mediation. A metaanalysis of studies that reported the settlements obtained by men and women in negotiation revealed that men negotiated significantly better outcomes than women (Stuhlmacher and Walters, 1999). In addition, a study that investigated gender differences in the process and outcome of negotiation showed contrasts in negotiation process and style (Halpern and Parks, 1996).

Two explanations were offered for the gender difference in negotiation (Kolb and Watson, 1997). One attributed them to situational power (Watson, 1994; St. John, 1996). Power imbalance was also discussed as a threat to mediation integrity (Kelly, 1995) and the power imbalance between the genders was noted as a major criticism of mediation (Sauber, Beiner, and Meddoff, 1995). The second explanation attributed difference in negotiation style and outcome to gender differences, such as women's special negotiating voice (a voice that is not often heard; Kolb, 1993), or to women's tendency to behave more cooperatively in a negotiation (Walters, Stuhlmacher, and Meyer, 1998). However, gender differences in content and style of argument—the subject of our study—have not been studied directly by divorce mediation researchers.

The assumption of gender difference in the *content* of arguments brought up by men and women during divorce mediation is based on cognitive development theory and research (Piaget, 1965; Lever, 1976; Kohlberg, 1981). Support for this assumption is also found in feminist psychoanalytic theory (Chodorow, 1978; Miller, 1987; Gilligan, 1982) and the critique of that theory (Bohan, 1997; Ferree, Lober, and Hess, 1999; Wodak, 1997).

Both cognitive development theory and feminist psychoanalytic theory (termed “cultural feminism” by critics such as Janice Bohan, 1997) concur that for women interpersonal relationships and obligations are more important than abstract rules, whereas for men the opposite is true. Gilligan describes men and women as using “a different voice” in their moral reasoning. Women's moral reasoning is based on interpersonal relationships and responsibility; men's reasoning is based on rights and laws (Gilligan, 1982). In support of this view, negotiation research shows that women tend to view negotiation within a framework of responsibilities and commitments and as part of the larger context of a relationship in which laws of loyalty and personal responsibility operate. Men, on the other hand, tend to see it as an isolated segment in which legalistic and universal laws operate (Kolb, 1993).

On the basis of this research, it can be expected that the positions women tend to bring to the bargaining table during divorce mediation are predicated on notions of responsibility and care in the context of their particular marriage, whereas men's positions tend to have more to do with general law and customary rules.

The assumption regarding the *style* men and women use during divorce mediation is based on findings such as those reported by Gottman and Levenson (1986) regarding the emotional styles women and men use in a conflict situation. According to their findings, men tend to suppress their emotions ("stonewalling") during marital conflicts, and women tend to express much more freely their feelings of hurt, pain, and insult. Similarly, Fujita, Diener, and Sandvik (1991) reported that women experience positive and negative emotions more intensely and vividly than men do. Negotiation research also suggested that for women expressing feelings and emotions and learning how others feel are as important as the substance of the discourse (Kolb, 1993).

Linguistic research (Tannen, 1990; Lakoff, 1990; Wodak, 1997) attests to gender differences in verbal communication. Women's voice tends to be heard less in a public formal sphere (such as negotiation), and conflict requiring assertive arguing is uncomfortable for many women. Men's style typically involves impersonal argument and is more directional, while women speak with more qualifiers to show flexibility and an opportunity for discussion (Krieger, 1987). Men and women's styles are part of their prescribed social roles and fit masculine and feminine identities (Chodorow, 1978; Gilligan, 1982). Negotiation research suggests that women's style may be a liability in formal negotiation.

From these theories and research, it can be expected that men and women use differing styles during divorce mediation. Men's style is largely unemotional, whereas women's style tends to be emotional.

This study presents divorce mediation information from Israel, a country whose research is not often reported in English language conflict resolution journals. Since the culture of the couples in the study is embedded in the particular social and political mores and temper of Israeli society, a brief introduction regarding Israel is offered to give the study relevance in context.

Israel is for the most part modern, democratic, egalitarian, and Western (Florian, Mikulciner, and Weller, 1993). The Israeli family is democratic, with relatively permissive parental control, similar in many ways to other Western cultures (Davids, 1983; Florian and Har-Even, 1984; Florian,

Mikulincer, and Weller, 1993; Peres and Katz, 1990). Women live under the rule of religion-supported patriarchy. Still, because Israeli society is oriented toward democracy and egalitarianism (in conflict with religious laws), these patriarchal values cannot be strongly implemented. As a result, despite the patriarchy women in recent years entered the public sphere in great numbers, have high educational attainment and high workforce participation, experience a relatively low fertility rate, and find that feminist ideas are spreading fast (Moore, 1998).

Israel is more traditional, and divorce is less frequent, than in the United States. Fewer than one-third of Israeli couples get divorced. As a result of the lower acceptance of divorce as an option, Israeli couples in divorce mediation tend to be more distressed.

During the half century of Israel's existence as a nation, the national identity has shifted from a coherent collectivist one to a more diversified and individualistic identity with such elements as commitment to democracy, a desire for peace, social solidarity, and a Jewish added value (Ohana, 1998). Israel is characterized by extremely small "power distance," the degree of inequality among people that is considered normal (Hofstede, 1991). In addition to small power distance, Israelis also have dense social networks. Their social networks were found to be denser than Americans' (Fischer and Shavit, 1995). The implication of the small power distance is that the divorce mediator has less authority in Israel than in the United States (as is evident in training tapes comparing divorce mediation in both countries). The implication of a denser social network is that a couple coming in for divorce mediation are likely to know someone who knows the mediator personally, which once again serves to undermine the professional distance between the divorce mediator and the couple.

Personal strength, stemming from a solid core of decisiveness, trustworthiness, and realism, is considered crucial (Katriel, 1992). Values of this kind encourage Israelis to face challenges, confront problems, and use active and direct coping (Brodai, 1998; Etzion and Pines, 1986; Pines and Aronson, 1988).

Because security issues and the army are at center stage in Israel, the military and militarism play an important role in Israeli society (Kimmerling, 1993). As a result, the role of a combat soldier is central to the identity of the Israeli male. It implies a number of well-known cultural characteristics: keeping up a tough appearance, not expressing emotion, and remaining calm in a stressful situation (Ben-Ari and Lomsky-Feder, 1999).

Although Israel is modern and industrialized, because state and religion are not separated it is consistently torn between two inherently contradictory ideological value systems: universalistic, democratic, and secular values (including feminism) on the one hand and particularistic, autocratic, and religious values on the other. One manifestation of this conflict is the existence of two courts dealing with divorce: the family court and the religious court. The religious court ("rabbinical court" in Hebrew) practices religious law; the family court practices civil law. The results of a claim can differ markedly, depending on the court to which it is submitted. For example, according to religious law a partner's property (a husband's retirement fund, the savings a woman has in her own name) is his or her own. According to family law, though, property acquired during the marriage belongs to both partners. Also, despite both courts' commitment to protect the welfare of children, if one of the partners becomes religious he or she gets custody of the children by the religious court, even if the parent has been less involved with them previously and even if the religiosity is recent and means a dramatic change for the children. The family court tends to give custody to the parent who is more involved with the children.

Divorce in Israel is according to religious law; it can be obtained only with the consent of both parties. An Israeli court can not decide on a divorce in the way a civil court can in most Western countries. The actual significance of this fact is that the partner who does not want the divorce has tremendous power, which can translate into significant financial gains if the other party is anxious to have a divorce. The existence of two legal systems, combined with the court's inability to impose a divorce on an unwilling partner, results at times in lengthy divorce proceedings because partners tend to run to whichever court is more likely to rule in their favor. The advantage of divorce mediation is that it avoids divorce blackmail as well as lengthy and costly court deliberation.

The goal of our exploratory study was to examine gender differences—in both content and style—in divorce mediation. Unlike most previous studies that looked at gender differences in divorce mediation through postmediation questionnaires or interviews, the current study involved *in situ* analysis of actual divorce mediation sessions. Since it was essential to present details of the arguments offered by the couples, the sample involved had to be limited. A sample of thirty couples seemed to offer the ideal balance between a number large enough to run some basic statistical tests and small enough for us to present information in some detail.

From the research presented earlier, two hypotheses were tested:

**HYPOTHESIS 1.**

*Gender differences will be found in the content of argument men and women use during divorce mediation; men's arguments tend to be more legalistic than women's, and women's arguments tend to be more relational than men's.*

**HYPOTHESIS 2.**

*Gender differences will be found in the style of argument men and women use during divorce mediation; women's style will be found more emotional than men's.*

## Method

A content analytic study of divorcing couples' argument content and style was conducted.

### *Participants*

Participants were thirty Israeli couples, chosen randomly from about one hundred that came for divorce mediation during 1996–1998, a time of relative peace in Israel. The mean number of years of marriage was 14.4, with an average of two children per couple. Mean age for the women was 39.4, for the men 41.4. Mean number of years of education for the women was 14.1, for the men 14.5. As for income, 30 percent of the women as compared to 3 percent of the men had low income; 32 percent of the women had average income (23 percent of the men), and 7 percent of women (40 percent of men) had high income. Seventeen percent of both men and women had no income, 7 percent of the women and 10 percent of the men had unknown income, and 7 percent of the couples came from a Kibbutz.

### *Procedure*

The content and style of the arguments couples presented was carefully recorded during the actual mediation sessions, with key phrases recorded verbatim. Five couples were interviewed jointly by two female counselors to ensure that their recordings were identical. The rest of the sessions were recorded by one of the counselors. The interviews, with special attention paid to the key phrases recorded verbatim, were then content-analyzed by two raters.

There was high agreement between the two raters (92 percent). Disagreements were discussed and decided by a third judge (a couple

therapist). There was no systematic bias between the raters or between agreed-upon and not-agreed-upon items.

Arguments were categorized in terms of content as either "relational" or "legalistic," and in terms of style as "emotional" or "unemotional." It should be noted that *emotional* refers to emotional expression, which does not equate with emotional experience. One may look sad without really feeling sadness, or be sad without looking sad.

*Relational* arguments focused on the relationship, its history, mutual obligations, and the children's (and couple's) needs. Examples: "I sacrificed my whole life for you"; "I took care of the kids, kept the family together, followed you"; "I followed you everywhere, and now you have to take care of me"; "I will not be able to survive; you have to take care of me." *Legalistic* arguments focused on the law, customary practices, and such things as the objective financial situation. Examples: "I want to do things according to the law"; "Everything belongs to both of us, and we have to split it equally"; "Your estimate of your expenses is not realistic"; "I am telling you how much I have and how much I'm willing to give." The *emotional* style was charged emotionally, with high voice and intensity, and often accompanied with tears. The *unemotional* style was characterized by calm and restrained presentation of facts and arguments.

## Results

Table 1 presents the characteristics (age, years of education, occupation, income, number of years married, number of children) of the husband and the wife, and who initiated the divorce, as well as the style and content of their main arguments during the divorce mediation. Content analysis reveals significant gender differences in the style and content of the arguments raised by husbands and wives during divorce mediation (see Table 2).

Significantly more women than men initiated the divorce ( $Z = -4.658; p = .000$ ; Table 2). This finding is rather typical of those reported in the scientific literature that suggest more wives consider separation and divorce and more wives actually initiate divorce proceedings (for reviews of some of this research, see Bernard, 1983; and Pines, 1996).

In Israel, it is hard to obtain information on the frequency of divorce initiated by the wife because both partners try first to reach the court (religious court or family court) more likely to rule in their favor. Consequently, the partner who initiated the legal proceedings is not necessarily the one who initiated the break-up of the family.



Table 1. Characteristics of Thirty Couples in Divorce Mediation and Style and Content of Main Arguments

Couple Number	Party	Age	Education, Work	Income	Years Married, Number of Kids	Style	Content of Main Arguments
1	Wife*	38	B.A., teacher	Low	10, 1	Very emotional, hysterical	I sacrificed my whole life for you. I invested in the child, went after you to places I didn't want, suffered many failures in my life because of you. (relational)
1	Husband	40	B.A., manager	Average	10, 1	Emotional, but less so than wife	You are lazy and pathetic; don't blame your failures on me. You are and have always been nothing, lived at my expense, never worked. You deserve nothing. (legalistic)
2	Wife	35	12, secretary	Low	12, 3	Emotional	Your suggestion is insulting and humiliating, I'm not ready to even talk about it. I took care of the kids, kept the family together, followed you. The money is not enough. (relational)
2	Husband*	38	12, technician	Low	12, 3	Very unemotional	That's all I can give, take it or leave it. The house is not yours, and you don't deserve it. I deserve to have a life too. (legalistic)
3	Wife*	37	B.A., designer	Average	13, 2	Emotional	You have a duty to continue taking care of me. You are a miser. The children and I got used to a certain standard of living. (relational)
3	Husband	42	B.A., high-tech	High	13, 2	Very unemotional	I want to do things according to the law. We will do what the law says. You [the wife] are a spendthrift; you throw money at stupid things. (legalistic)
4	Wife*	39	12, sales agent	Low	17, 2	Very emotional	You are ruining me. You are a miser. Although I deserve to get more I will give up in order not to see you anymore. (relational)
4	Husband	40	B.A., army	High	17, 2	Very unemotional	You are hysterical. I want you to pay for your unfaithfulness. You are a spendthrift; your estimate of your expenses is not realistic. (relational)
5	Wife*	38	M.A., housekeeper	No income	20, 2	Very emotional	I followed you everywhere, and now you have to take care of me. (relational)
5	Husband	40	M.D., dentist	High	20, 2	Unemotional	Let's check the expenses and then talk about it. (legalistic)
6	Wife*	37	12+, writer	No income	11, 1	Very emotional	I am not a businesswoman; I don't want to negotiate and to haggle. (relational)
6	Husband	42	12+, artist	No income	11, 1	Very emotional	I am going to be left with nothing. It's not fair. It's an excessive demand. You don't need so much. (relational)

(Continued)

Table 1. Characteristics of Thirty Couples in Divorce Mediation and Style and Content of Main Arguments (Continued)

Couple Number	Party	Age	Education, Work	Income	Years Married, Number of Kids	Style	Content of Main Arguments
7	Wife*	40	Ph.D., researcher	Average	17, 4	Very unemotional	I don't want to continue living with you. The kids should stay with me for their sake. According to the law, I own 50 percent of our property. (legalistic)
7	Husband	43	B.A., security	High	17, 4	Very emotional	You're destroying the kids' life and my life. I want revenge. I'm not ready to pay anything. The kids should stay with me and the property is all mine. (relational)
8	Wife*	40	M.A., sales	Average	12, 2	Very emotional	You have to take care of me. I raised the kids. Therefore, and according to the law, I am entitled to 50 percent. (mixed)
8	Husband	45	B.A., business	No income	12, 2	Unemotional	I am telling you how much I have and how much I'm willing to give. I built the business. You [the wife] never worked and therefore you have no part in the business. I am only willing to consider a certain sum of money as compensation. (legalistic)
9	Wife*	40	8, housekeeper	Average	15, 4	Very emotional and dramatic	To this egg omelet (our marriage) you can't add any spice anymore. I want to be by myself and grow. (relational)
9	Husband	38	12, blue collar	Not working	15, 4	Unemotional	I made mistakes that I regret. I don't want to get a divorce. I promise not to get upset and angry (and hit the wife) even when you are disrespectful. (relational)
10	Wife*	52	M.A., psychologist	Average	22, 2	Very emotional	I feel uncertain about the future. In the past, I helped you (the husband) and supported you; therefore I expect you to guarantee my future. (relational)
10	Husband	51	Ph.D., software	High	22, 2	Very unemotional	There are things I can give and things I can't give. I have no money for the monthly payments that will guarantee your [the wife's] future. (legalistic)
11	Wife*	31	12, nanny	Kibbutz member	7, 2	Very unemotional	It's important for the kids to know where their home is and where their things are; therefore it's better for them to live with me. (legalistic)
11	Husband	31	12, teacher	Kibbutz member	7, 2	Unemotional	We are living very close by and the kids visit me often. Formal definitions [about custody] are meaningless. (legalistic)
12	Wife*	33	B.A., teacher	Kibbutz member	10, 3	Emotional	Things [such as books, pictures] have emotional significance for me and are meaningless to you [the husband]. (relational)

12	Husband	36	M.D., veterinarian	Kibbutz member	10,3	Unemotional	Everything belongs to both of us, and we have to split it equally. Nevertheless, I'm willing to agree to your [the wife's] emotional demands. (legalistic)
13	Wife*	42	B.A., secretary	Average	19,4	Very unemotional	I don't want to live with you and don't need to explain why. I don't want alimony because our salaries are the same. It's better for the kids to stay with me because they are closer to me, and it's important for them to know where their house is. (legalistic)
13	Husband	42	12, electrician	Average	19,4	Very emotional	I don't want to break up the family. I want shared custody because I want a real relationship with the kids, and it will be easier for both of us. (relational)
14	Wife*	36	B.A., secretary	Average	13,2	Emotional	I want to stay in the apartment for the children's sake and receive appropriate child support. (relational)
14	Husband	45	M.A., engineer	Average	13,2	Unemotional	I can't afford to let you stay in the apartment. (legalistic)
15	Wife*	46	M.A., psychologist	Very high	25,2	Very emotional	Since my family gave us more money, I should get a larger share of the house. You should pay child support as is required by law. You took advantage of me and are a failure. (mixed)
15	Husband	48	M.A., engineer	High	25,2	Unemotional	I gave as much as I could during our marriage. The house belongs to both of us, and 50 percent of it is mine by law. I will give to the children as much as I can. (legalistic)
16	Wife	35	12, blue collar	Low	15,3	Emotional	I will not be able to survive. You have to take care of me. (relational)
16	Husband*	41	12, mechanic	Not working	15,3	Unemotional	That's what I have, and that's what I can give. (legalistic)
17	Wife	48	12, manager	Average	25,2	Very emotional	I don't know the value of the house and the property and I refuse to check it, but I know you [the husband] are cheating me. All my life you cheated me. (relational)
17	Husband*	48	12, pilot	Very high	25,2	Very unemotional	According to the law, we have to divide everything equally. I am willing to provide every document to prove the value of the property. (legalistic)
18	Wife	41	M.D., physician	Not clear	15,1	Unemotional	You should give me a certain amount of money because that's the way it's done. (legalistic)
18	Husband*	42	M.D., physician	Not clear	15,1	Very unemotional	I will pay only as much as I can. (legalistic)

(Continued)

Table 1. Characteristics of Thirty Couples in Divorce Mediation and Style and Content of Main Arguments (Continued)

Couple Number	Party	Age	Education, Work	Income	Years Married, Number of Kids	Style	Content of Main Arguments
19	Wife*	45	M.A., psychologist	Average	24, 3	Very emotional	I want the apartment because the kids are staying with me. You are leaving me with nothing. (relational)
19	Husband	47	12, manager	High	24, 3	Unemotional	According to the law, I own 50 percent of the apartment. I checked it with a lawyer and that's the way it should be. (legalistic)
20	Wife*	30	12, sales	Not clear	5, none	Very unemotional	I have rights to the shop because I worked in it and because I have economic needs. (legalistic)
20	Husband	34	12, shop owner	Not clear	5, none	Very unemotional, except for shop	I want to do things according to the law, except for the shop; that belongs to me, exclusively, because I invested my soul in it. (mixed)
21	Wife*	40	12, counselor	Low	15, 1	Very emotional	My parents paid for the apartment, and therefore it's mine. It's not fair that you [the husband] should get 50 percent of it. I took care of you all my life. (mixed)
21	Husband	40	B.A., clerk	High	15, 1	Unemotional	According to the law, I own 50 percent of the apartment, even if it's not fair. (legalistic)
22	Wife*	40	12, teacher	Average	8, 1	Very emotional	You have to continue supporting me. I don't want to check whether you can give more. You have to give the children and me a place to live in. (relational)
22	Husband	42	12, business	Very high	8, 1	Very unemotional	That's all I have to give. I can't give any more. I will not be made to pay more by the court. (legalistic)
23	Wife*	35	B.A., counselor	Low	8, 1	Very emotional	I am willing to give up everything, but I can't live with you anymore. I'm worried about you and afraid you'll do something stupid. (relational)
23	Husband	36	12, counselor	No income	8, 1	Unemotional	I want to continue living together but will agree to the divorce if my economic future will be guaranteed. (legalistic)
24	Wife*	35	B.A., architect	Low	5, 1	Very emotional	How will I manage? I can't work more hours because of taking care of the child, and even the money I am asking for will not be enough. (relational)
24	Husband	38	B.A., engineer	Average	5, 1	Very unemotional	You are using the child as an excuse not to work more, like you did throughout the marriage. I am not ready to pay any more. (relational)

25	Wife*	38	12, housekeeper	No income	10, 1	Very emotional	During our marriage, I helped you in the business and raised the children; therefore I couldn't work. I deserve to get more. Even the child support I'm asking is not enough. (relational)
25	Husband	39	B.A., business	Not clear	10, 1	Unemotional	I am not going to pay higher child support because I don't have more money. You chose to live as you did; don't come to me now complaining about it. (legalistic)
26	Wife*	38	B.A., housekeeper	No income	14, 2	Unemotional	The breakup is my fault [left for another man]. I'm to blame. But the children need to be taken care of. (relational)
26	Husband	40	B.A., businessman	Very high	14, 2	Unemotional	I will give for the children's sake but will not give more than the law requires. (mixed)
27	Wife	54	12+, artist	Low	25, 3	Very emotional	After all that we have gone through [a son who committed suicide], you have to take care of me. (relational)
27	Husband	56	B.A., consultant	Average	25, 3	Unemotional	I don't want to fight; I want to end things amicably. But I will give only as much as I can. (mixed)
28	Wife*	44	B.A., therapist	Low	16, 2	Emotional	I don't feel guilty [had an affair with the husband's best friend]. All my life I lived in your shadow. You betrayed me with your work. Now you're not fair toward me. (relational)
28	Husband	44	B.A., police	Average +	16, 2	Unemotional	You broke the rules between us [by having the affair] and you are responsible for the consequences. Everything has a price. I will give as much as I can. (legalistic)
29	Wife	42	12, housekeeper	No income	17, 4	Very emotional	I can't live like this. You are leaving us with nothing. How can you let your children live like this? (relational)
29	Husband*	43	M.B.A., businessman	Very high	17, 4	Very unemotional	I am willing to pay more than you will get from the court for the children but am not willing to give more. (legalistic)
30	Wife	32	B.A., teller	Very high	6, 1	Emotional	What is going to happen to me? How will I get by? You promised to take care of me. (relational)
30	Husband	32	B.A., teller	Average +	6, 1	Emotional	Don't worry. You will have enough. But I'm not willing to commit to more than is required by law. (mixed)

\* Divorce initiator.

Table 2. Style and Arguments of Men and Women in Divorce Mediation

<i>Characteristic</i>	<i>Men (n = 30)</i>	<i>Women (n = 30)</i>	<i>Z</i>	<i>p</i>
Initiated the divorce	5	23	-4.658	0.000
Emotional style	6	24	-4.909	0.000
Unemotional style	24	6	4.648	0.000
Relational arguments	7	22	-3.875	0.000
Legalistic arguments	18	5	3.452	0.001
Mixed arguments	5	3	0.760	0.448

Why do women initiate divorce? In most cases, the reason they give is lack of intimacy. A common refrain in the explanations divorced women give for the failure of their marriages is "lack of communication" (Tavris, 1992, p. 252). A bad marriage, they say, is by definition one in which there is "no talking" (Riessman, 1990, p. 97) which for women means lack of true intimacy (Rubin, 1983). In fact, it can be argued that women leave a marriage for the same reason they enter one: they want intimacy. They leave an unhappy and unsatisfying marriage when they can afford to.

### *Type of Argument*

Men tended to use, more than women, arguments based on legalistic principles and economic, businesslike justice, existing rules, and acceptable practices ("We will do what the law says"; "I will give only as much as I can"; "I'm not willing to commit to more than is required by law";  $Z = 3.45$ ,  $p = .001$ ). Women, on the other hand, tended to use, more than men, relational arguments based on ethics of familial responsibility and obligation deriving from the history and unique characteristics of the family or the relationship ("In the past, I helped you and supported you; therefore I expect you to guarantee my future"; "You have a duty to continue taking care of me. You are a miser. The children and I got used to a certain standard of living"; "It's important for the kids to know where their home is and where their things are; therefore it's better for them to live with me";  $Z = -3.88$ ,  $p = .000$ ).

It should be noted that both men and women sought primarily to achieve monetary gains, but they did so using contrasting argument. In all cases (except for couples who are Kibbutz members, where all property is communal) the argument centered on issues related to division of property or child support and alimony. Only in 20 percent of the cases were children

the subject of an argument (that is, whether they should be in the custody of the mother or in joint custody). Even in those cases, once the monetary issues were resolved the children's issues did not present a serious problem.

The reason is that in most cases there was no real disagreement regarding the children. Both partners knew who was more attached to the children and involved in caring for them daily (the wife). The argument about the money issue was in fact an argument over child support, with the explicit or implicit assumption that the children stay with the mother. The Israeli context has two implications. One, given the very small size of the country, is that there is usually no great physical distance between the father and the children after the divorce. Second, the vast majority (more than 90 percent) of the court decisions give child custody to the wife, and there are almost no decisions granting joint custody. As a result, fathers know that their chance of getting custody of their children is extremely small and the struggle for it futile. In the small number of cases in which there is a true conflict regarding the children, it tends to be fierce and bitter because one of the parents will have to give up daily contact with the children.

### *Style of Argument*

Men's style of argument tended to be more unemotional and reserved than women's style ( $Z = -4.65, p = .000$ ); for instance, "That's all I can give. Take it or leave it" or "I will only give what I can." Women's style tended to be more emotional than men's style ( $Z = -4.91, p = .000$ ) and included more overt expressions of hurt, pain, and insult ("Your suggestion is insulting and humiliating. I'm not ready to even talk about it"; "What is going to happen to me? How will I get by? You promised to take care of me").

Here are two cases that demonstrate the interplay between the content and style of couples' arguments. The first involves a couple married twenty-two years, with two children, who came to divorce mediation because it was very important for the wife that they have an amicable divorce so her husband would not withdraw from the children. The wife's parents' died and left her some money, which she used to buy the couple's apartment and support the husband during his Ph.D. studies as well as in the periods of time he was out of work.

During the divorce mediation, the wife was very emotional, crying often and looking pained and devastated. The main point she kept coming back to was her great anxiety and insecurity about the future. "I feel uncertain about the future," she kept saying. "In the past, I helped you and supported you" (during the years of studying and periods of unemployment).

“Therefore, I expect you to guarantee my future.” The husband, who was a software engineer, had an invention that, if it materialized, could earn him a great deal of money. The wife believed she deserved part of that money and expressed that belief, quite emotionally, during the sessions.

The husband was unemotional, restrained, and reserved. He spoke little during the sessions, and when he did his words were few and measured (“There are things I can give and things I can’t give”). He was willing to promise to give the wife a share of his earnings if his invention was bought, but he would not calm his wife’s anxiety by guaranteeing her future on the basis of his regular earnings (“I have no money for the monthly payments that will guarantee your future”).

The second couple came to divorce mediation because the wife was a counselor and thought that dissolving the marriage would be cheaper and easier that way. She probably also believed, consciously or unconsciously, that the divorce counselor would take her side. The couple were married twenty-five years and had two children. The marriage was quite good and stable until the wife fell in love with another man. She wanted her husband to leave the house because her father bought the couple’s flat when they got married and supported them during their first years together. During the divorce mediation sessions, she became emotional, at times even hysterical, threatening suicide if he did not leave the house and calling him a Nazi for the way he treated her: “Since my family gave us more money than your family ever did, including buying our first apartment, and since I supported your business with my earnings, I should get a larger share of the house. You took advantage of me and my family throughout our marriage, and you are a failure as a breadwinner.” The husband remained calm and controlled during the wife’s outbursts of anger and accusation. He kept saying that he “worked very hard and gave as much as he could during the marriage.” He paid the mortgage on their house from his own earnings. But the important reference point for him was the fact that “the house belongs to both of us, and 50 percent of it is mine by law.” He was only willing to promise to “give the children as much as I can.”

## Discussion

Despite its obvious limitations, most notably a small sample size (thirty), a unique cultural context (Israel), and a clinical methodology (writing detailed notes during the actual mediation sessions), the results of the exploratory study provide tentative support for both its hypotheses. They



suggest the existence of significant gender differences in both the style and content of argument men and women bring to divorce mediation. Specifically, men's arguments tended to be more legalistic and women's arguments more relational. In addition, women's style was more emotional than the men's.

Analysis of the *content* of the arguments brought up by the husbands and wives suggests that the position women tend to bring to the bargaining table are based on notions of responsibility and care in the context of the marriage, whereas the position men tend to bring have more to do with customary rules, rights, and reason. For some women, the mere presentation of this position was insulting and infuriating.

This gender difference confirms negotiation research quoted earlier, showing women's general tendency to view negotiation as part of the larger context of the relationship in which laws of loyalty and personal responsibility operate, whereas men tend to see it as an isolated segment in which legalistic and universal laws operate (Kolb, 1993). Men's negotiation typically involves impersonal legalistic arguments and is more directional than women's (Krieger, 1987).

The gender difference in content can also be explained by cognitive development theory (Piaget, 1965; Kohlberg, 1981), as well as feminist psychoanalytic theory (Chodorow, 1978; Miller, 1987; Gilligan, 1982) quoted earlier. Both theories concur that for women interpersonal relationships are more important than abstract rules, whereas for men the opposite is true.

The finding regarding the *style* men and women use during divorce mediation (unemotional or emotional) confirms negotiation research showing that for women expressing feelings and emotions and learning how others feel are as important as the substance of the discourse (Kolb, 1993). It also confirms the research quoted earlier on the emotional styles women and men use in a conflict situation. Men tend to suppress their emotions during marital conflict, but women tend to express much more freely feelings of hurt, pain, and insult (Gottman and Levenson, 1986). Another explanation for the gender difference in style of argument may be the difficulty women have in a formal situation and their discomfort in a conflict situation requiring assertive verbal confrontation (Tannen, 1990; Lakoff, 1990).

Other explanations for the gender differences found in the study are related to the realities of men and women's lives. It can be argued that the differences found are not a function of gender, but of social roles. In most

cases, a big part of the discussion had to do with the amount of child support. In all these cases, the woman asked for more money than the man was willing to give. In most cases, the husband made more money than the wife. A major part of the argument was a result of this simple fact: the man is asked to give, whereas the woman is demanding to get for her own sake and for the sake of the children.

These complementary tasks are part of the social roles of men and women. "Core role theory" (Barnett, 1993) describes breadwinning as men's "core role," while motherhood is women's core role. These complementary roles prescribe contrasting modes of emotional expression for men and women.

The difference between the "miser" (from the woman's perspective) and the "spendthrift" (from the man's perspective) can be explained by the fact that the man is the breadwinner and the woman is the one who does the shopping and manages the house. Men's tendency to underestimate household costs can be caused by being asked to pay for them as well as their not being personally involved in shopping. In addition, for women money often means security; for men, it often means power, control, and status (Blumstein and Schwartz, 1983). Another explanation for the difference between the miser and the spendthrift is offered by attribution theory, which views the perception of an actor and an observer as different (Jones, 1990). Although the actor attributes his or her behavior to the demands of the situation (family needs), the observer attributes it to a personality disposition ("spendthrift"). It is important to note that the division of labor between a man who is the breadwinner and a woman who shops and manages the house is characteristic of traditional couples whose number in the United States is shrinking. In Israel (a more traditional country, as the findings of the study also show), this division of labor still exists and influences divorce negotiation. Cross-cultural research has indeed documented the many ways in which culture affects negotiation (Salacuse, 1998).

The finding that in the majority of cases the wife initiated the divorce fits the results of studies documenting women's greater frustration, dissatisfaction, and burnout in marriage. Research suggests that women seek more marital counseling and therapy; more women than men feel disappointed in their spouse, think about separation and divorce, and (as noted earlier) actually leave their spouse and start divorce proceedings. After a divorce, women are less interested than men in getting married again right away (Bernard, 1983; Pines, 1996).

It could be argued that there is a link between women's greater dissatisfaction with their marriage and the style and content of their argument. In other words, the findings have less to do with gender and more to do with how serious the conflict is to the partners. The fact that even the men who were quite hurt by the divorce were less emotional in their style and legalistic in their arguments, and that the women who initiated the divorce and were well prepared for it and were emotional and relational, suggests that this is not the case.

After discussing the implications of the gender differences found in the study, it is important to note the criticism brought against the very focus on gender differences. The main proponent of this criticism is social construction theory (Bohan, 1997; Butler, 1990, 1993; Gergen and Davis, 1997; Goldner, 1991, 1998; Mednick, 1989; Tavis, 1992). This theory rests on the belief that reality is socially constructed (DeLamater and Hyde, 1998). There is no one particular reality that is simultaneously experienced by all people. Every culture has its own unique understanding of the world. People are not passive recipients of these societal scripts; they actively construct their perception of the world and use their culture as a guide. We love to divide the world into pairs of opposites, says Carol Tavis: we-them, good guys-bad guys, and of course men-women. After we divide things, the same tendency makes us emphasize the differences between them. This oversimplification hides the fact that the similarity is much greater than the difference (Tavis, 1992).

Central to the social constructionist position is the view that "facts" are dependent upon the language communities that have created and sustained them (Gergen and Davis, 1997). All forms of naming are socially constructed, including seemingly basic biological categories such as the female and male sex distinction (Butler, 1990, 1993). Social constructionists criticize the views of "cultural feminists" such as Chodorow, Gilligan, and Miller as an essentialist view that construes gender as residing within the individual and portrays men and women as opposites (Butler, 1990; Bohan, 1997). They urge us to be cognizant of the "coercive and regulatory consequences" of a portrayal of women or of men as a homogeneous class, a "seamless category" (Butler, 1990, p. 4). Instead of emphasizing the differences between men and women, they emphasize the subjective experience of every individual. Cultural influences are more important and significant than innate biological differences. Each individual is unique, and the relationship between any two people is unique. The danger of this perspective—a focus on diverse and distinctive contexts—is the threat of

lapsing into an extreme that particularizes the experience of each man and woman, because no two people share the same reality (Bohan, 1997; Butler, 1990).

From a social constructionist position, it can be argued that individual differences in divorce mediation (just like most other areas in psychology in which gender differences are examined) are large. At times, the individual differences within each gender are greater than the differences between the genders, and gender similarity greater than gender difference.

Indeed, as the findings reported in Table 1 show, not all the wives were emotional in their style or relational in the content of their argument, and not all the husbands were unemotional and legalistic. Furthermore, every couple had its own unique style and content of argument, the result of the uniqueness of the husband and wife making up the couple. If we take couple thirteen, for example, the wife (who initiated the divorce) was very unemotional during the divorce mediation. She was not willing to explain why she didn't want to live with the husband, did not want alimony (because, as she reasoned, she made as much money as he did), and gave reasons of convenience for her desire to have the children stay with her. The husband, on the other hand, was very emotional. He didn't want to break up the family and demanded shared custody because he wanted "a real relationship with the kids." This couple was one of the few in which the court agreed to such joint custody.

### Practice Implications

What are the practice implications of the findings on gender difference in content and style of argument during divorce mediation? Equally important, what are the ethical problems that might occur if a mediator assumes these gender differences and acts on this basis when the discourse in a specific session is really not gender-related? The position we want to suggest follows the feminist paraphrasing of a saying about racism: that to be gender-blind you need to first become gender-conscious.

Mediators, couple therapists, and other professionals assisting men and women during the painful process of divorce should be at least somewhat familiar with the gender differences in negotiation; they should be aware of the research and theories explaining the differences as well as the criticism of these theories. They should also strive to realize their own cultural, theoretical, and gender biases. Gender differences in negotiation need to be brought to the awareness of the couples *only* when evident and *only* when they hinder communication. If communication is effective—even in a case

where it reflects gender difference—the mediator does not need to intervene. In a case where communication is hampered because of gender differences, the role of the mediator is to translate the content and style such that the other partner can understand. The importance of caution against mistakenly identifying an issue as gender-related when it is not and consequently making an unnecessary intervention cannot be overstated.

When a gender difference in negotiation is evident and the mediator decides that it should be brought up, it is important to acknowledge that the gender difference reflects “a different voice” (Gilligan, 1982) and not a difference in quality. The fact that women tend to use an emotional style does not mean that they are childish or do not understand money matters, just as the fact that men tend to use an unemotional style does not imply being cold, heartless, and uncaring. Tannen (1990) believes that men and women use different languages. The mediator has to be fluent in both languages and able to accurately translate for the couple each other’s language, as well as explain what lies behind a typical style of talking (anxiety, helplessness, attempt to be fair, and so on).

The divorce mediator should also be familiar with negotiation techniques that can help a couple with the difficult task of negotiating a divorce settlement. These techniques come from two primary sources: couple therapy and negotiation.

In *couple therapy*, negotiation skills are most often taught in the context of behavioral marital therapy (Stuart, 1980; Jacobson and Christensen, 1996; Gottman, 1993). The behavioral approach views people as rational and negotiation as the best way for resolving conflict. The negotiation techniques include rules (be specific; don’t generalize; don’t change the subject; don’t attack; limit the discussion to the present and the future), communication techniques (each partner starts responding with a summary of what was heard and a check that it was understood correctly), and problem-solving skills (define a special time or place for the discussion; discuss one problem at a time; don’t start a discussion during an argument).

*Negotiation* experts developed principles that can help couples (don’t bargain over position; separate the people from the problem; focus on interests, not positions; find options for mutual gain; use objective criteria; Fisher and Ury, 1983).

Despite the relevance of negotiation and behavioral marital therapy techniques for divorce mediation, it is important to note that neither one addresses gender difference. They also do not address the emotional element, which is the primary component in divorce negotiation. Many times the “creative solution” aspired to by a conflict resolution expert requires

cooperation between partners aimed at increasing mutual gain (or at least avoiding loss). In a divorce situation, it is difficult to arrive at cooperation between partners who often seek to avoid any kind of contact with each other. (A couple may prefer to sell their home and terminate all contact with each other, rather than wait for an increase in real estate prices.) In the case of a hostile divorce, partners may be willing to suffer losses to end the marriage, or to cause a loss to the other.

In addition, many of the recommendations offered by negotiations experts—such as focusing on mutual interest, separating people from problems, and using objective criteria—emphasize an objective, rational approach to negotiation. This approach characterizes men more than it does women.

Several behavioral marital therapy techniques, such as the so-called rules customary in marital negotiation, are also inappropriate in the case of divorce mediation. For example, the rule forbidding relating to the past (limit the discussion to the present and the future) is not applicable because the past is directly relevant to the discussion (Who took care of the children? What was the source of the couple's belongings?).

Another example is the supposed rule that requires discussing one problem at a time. It is not applicable for divorce mediation because the subjects that come up are interrelated (the fact that the children are in the wife's or the husband's custody influences the amount of child support, which can influence division of property).

Furthermore, certain applications of couple therapy are inappropriate in the case of divorce mediation because of the legal aspects involved in divorce. These legal aspects are especially problematic in a country such as Israel because of dissimilar treatment men and women receive from the religious court. For example, a suggestion of temporary separation is especially problematic for women in Israel, because a woman who leaves the house she has shared with her husband is liable to be declared a "rebellious wife," which causes her to lose her rights for alimony.

Using objective criteria (such as the law, and customary amounts granted by the court) can help during divorce mediation, even if they are not compulsory. But they should be used cautiously. A shared concern for the children and other areas of agreement between couples can also be helpful in reaching a mutual agreement.

Another point has to do with the gender of the mediator. It is important for the mediator to be aware of the influence that his or her gender has on the men and women who come for divorce mediation, as well as of the effect that gender has.

Gender is a basic category in our social world. The couple, as well as the mediator, are gendered and part of a certain cultural and historical reality that influences them. The negotiators' worldview regarding gender is a powerful component in their work with couples. In this context, it is important to note that the three authors of this manuscript are women, a fact that no doubt had an effect on choice of the subject matter and how it was approached.

## Summary and Conclusions

*In situ* analysis of the negotiation process of thirty Israeli couples who participated in divorce mediation shows several gender differences in both style and content of argument. Theories from several areas of psychology help explain these findings. They suggest significant differences in how men and women approach negotiation in general, and negotiation on so sensitive and emotionally loaded a subject as divorce settlement in particular. If the "culture" of mediation gives preferential treatment to the culture of men's style of talking and that decision-making framework, as the results of the study imply, it is vitally important for mediators to attend to the unequal effects for women. Future research must examine how these gender differences are played out, and what influence they have in terms of outcome. Future research should also examine directly the practice implications of these gender differences. If they are in evidence, what exactly should the divorce mediator do?

The cultural context of divorce is central to how it is done. There is no doubt that this exploratory study having been conducted in Israel had an impact on its findings. In future studies, it is important to replicate the findings of the study in other cultures (especially a less traditional one, such as in the United States) with much larger samples and more rigorous methodologies.

Other important variables were also not addressed in the study and should be dealt with in future research. Beyond emotional or legalistic categories, some of the examples mentioned demonstrate issues of self-worth and degree of entitlement, which may propel the emotional style or be cloaked in emotional style and relational perspectives.

Analysis of these issue types requires more sophistication, with more categories and more differentiated rating of client communications, as well as execution with a much larger sample.

Another issue that was noted but not examined directly in our study is the effect that initiating the divorce has on the style and content of the

mediated issues (such as readiness to make concessions, or emotional reactivity during the mediation process).

Finally, it is important to examine the role of the mediator's gender and see if the findings of this study hold when the mediators are men.

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