

The real world

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By David Marcus

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Guhan Subramanian is one of the most prominent -- and ambitious -- legal academics of his generation. The 39-year-old is the only person who's ever held tenured positions at Harvard's law and business schools, and on the side he advises companies on M&A and corporate governance. After authoring numerous academic papers and a corporate law textbook with former Delaware Chancellor William Allen and Harvard Law's Reinier Kraakman, Subramanian is set to publish "Negotiauctions: New Dealmaking Strategies for a Competitive Marketplace" next month with W. W. Norton & Co.

Subramanian is aiming high with his first foray into trade publishing. Commercially, he's trying to provide the successor to "Getting to Yes: Negotiating Agreement Without Giving In," the 1981 how-to guide on negotiation that became a business-world standard. William Ury, who co-authored that book with Roger Fisher and Bruce Patton, even gives Subramanian a back-cover blurb.

However rich the revenue stream from "Negotiauctions" ends up, it is a good read. The title of the book comes from the insight that many commercial situations are neither negotiations between two parties nor auctions with many bidders, but feature aspects of both, a melding that Subramanian asserts should inform and drive participants' strategies. He says those strategies fall into three broad categories: "set-up moves," which establish the terms of entry into a bidding situation; "rearranging moves," which realign the assets or the parties (think PE club deals); and "shut-down moves," which help a party reach a resolution, such as a bidder's firmly making a best and final offer.

To illustrate, Subramanian uses a range of examples from his buying a luxury car to NBC's negotiations with Paramount Studios over the rights to the television series "Frasier" to M&A deals whose participants visited Subramanian's classes at Harvard.

Despite the book's pragmatic orientation, Subramanian is enough of an academic to have a deconstructionist streak, which comes out in a chapter entitled "The Limits of Existing Theory." As he notes at the start of the book, negotiation and auction theory are recognized disciplines whose roots lie in microeconomics and game theory. Mentioning two central concepts of negotiation theory -- the "Getting to Yes" concept of "best alternative to negotiated agreement," or Batna, and the "negotiator's dilemma" of how much information to reveal to the other side -- Subramanian writes that in five years of teaching a dealmaking course at Harvard, neither "generated non-obvious insights about the case. Nor can I recall an instance in which an understanding of behavioral effects in negotiations unlocked our diagnosis of the negotiation situation."

If the theory is of little practical use, the empirical research on negotiations is dubious, Subramanian writes -- a bold stance for him to take, since Harvard Business School's Computer

Lab for Experimental Research is a leading center of such research. Experiments on students who make \$20 or \$25 for their time are a poor way to understand the real world, in his view.

"Experimental studies require precise specification of the negotiation process. But in most complex negotiations, the process is murky and messy, itself subject to negotiation, and not conducive to precise specification. Experimental research in negotiations can't possibly capture the way in which real deals are done, or ought to be done." Auction theory fares little better; when presented with one well-known theorist, participants in a deal that closed a few months before sniff at "what auction theory could offer them in the heat of battle."

One participant, Wachtell, Lipton, Rosen & Katz partner Mark Gordon, who has taught M&A at Harvard and New York University, thinks this is a sad state of affairs. He says, "How to conduct an auction when you have seven different interested bidders all bidding on the same thing -- this is something we should have learned in business or law school. There should be an answer to it."

There isn't. The belief that there is stems from social scientists' envy of the certainty achievable in the hard sciences, a theme that runs through the century-plus history of Harvard's law and business schools.

Even a book such as Subramanian's, informed by deep study of the M&A market and considerable engagement with its leading practitioners, can offer a framework of only modest utility for conducting complex negotiations and auctions. It's up to practitioners like Gordon to provide case-specific expertise, which helps to explain why they're paid what they are.

David Marcus is a senior writer at Corporate Control Alert.