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Carrie Menkel-Meadow: Leading Us toward Justice and Peace

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I. INTRODUCTION

Carrie Menkel-Meadow came of age in the 1960s, an era filled with promise and excitement as well as violence and tumult. In many ways we seemed poised to make great strides forward, perhaps entering that dawning of the "Age of Aquarius" in which "peace will guide the planets and love will steer the stars."[1] Youth were seemingly leading the way to empower women and minorities, to end the Vietnam War, to ameliorate poverty, and to throw off the bonds of conventional lifestyles.[2] The "Times They [Were] a-Changin'."[3] However, all was not rosy in this era. Police were also beating up protesters,[4] and riots[5] and assassinations[6] were occurring as well. The drugs and alcohol that many enjoyed were also undoubtedly causing real harm. Groups and individuals that led the charge for positive change were also imperfect, sometimes engaging in violent excesses[7] or gender discrimination.[8]

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1. THE 5TH DIMENSION, *Aquarius/Let the Sunshine In (The Flesh Failures)*, *on* THE AGE OF AQUARIUS (Soul City Records 1969).

2. Arthur Marwick, *The Cultural Revolution of the Long Sixties: Voices of Reaction, Protest, and Permeation*, 27 INT'L HIST. REV. 780, 789 (2005).

3. BOB DYLAN, *The Times They Are a-Changin'*, *on* THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1964).

4. PETER B. LEVY, THE GREAT UPRISING: RACE RIOTS IN URBAN AMERICA DURING THE 1960s 3, 41, 180 (2018) (discussing the 1968 Chicago Democratic Convention, Kent State, and Selma riots).

5. *Id.* at 1.

6. JOHN C. MCWILLIAMS, THE 1960s CULTURAL REVOLUTION, at xxii, xxv, xxxi–xxxii (2000).

7. BRYAN BURROUGH, DAYS OF RAGE: AMERICA'S RADICAL UNDERGROUND, THE FBI, AND THE FORGOTTEN AGE OF REVOLUTIONARY VIOLENCE 87 (2015).

In the 1960s, as today—and likely in all eras—there has been tension and often debate regarding how best to work toward social change. From a big picture standpoint, can there be justice without peace, or can there be peace without justice?[9] From a more individual perspective, is change best achieved through activism or even violence, or is change best achieved through communication, empathy, and understanding?[10] Or, if both approaches can sometimes be appropriate, how do we decide which choice is best in a given situation?

Carrie Menkel-Meadow, through both her life history and her scholarship, has helped us to see that both paths are important, and that the role of the activist can be blended with the role of the mediator or peacemaker. Addressing this issue from a personal standpoint she explains:

> [G]iven my political and social concerns, it has never been enough for me to heal, solve, or reframe people's disputes as they come on an *ad hoc* basis. Like many of us searching for social justice through problem-solving, I want more. I want the world to develop . . . an approach . . . that treats all people as ends, not means, and that seeks to empower the disempowered, to be fair, and, where possible, to correct, not just to ameliorate wrongdoing, inequalities, pain, and suffering . . . .[11]

Ever the theoretician, as well as the pragmatist, Menkel-Meadow has examined this tension between activism and conflict resolution in her own work, explaining how she has "reconciled [her]self, a committed political activist and poverty and civil rights lawyer, to the mediation canons of neutrality, confidentiality, and self-determination of the parties."[12] And Carrie has considered this dilemma by looking at the work of others, including South African anti-apartheid revolutionary

8. SARA EVANS, PERSONAL POLITICS: THE ROOTS OF WOMEN'S LIBERATION IN THE CIVIL RIGHTS MOVEMENT AND THE NEW LEFT 112 (1980) ("Women's invisibility was heightened by the fact that public positions were virtually monopolized by the men."); *see also* Carrie Menkel-Meadow, *Toward a Jurisprudence of Law, Peace, Justice, and a Tilt Toward Non-Violent and Empathic Means of Human Problem Solving*, 8 UNBOUND: HARV. J. LEGAL LEFT 79, 86 (2013) [hereinafter Menkel-Meadow, *Toward a Jurisprudence of Law*] (observing that for some women protesters the "sexist behavior" of protest leaders at Columbia was "the beginning of our feminist consciousness" and of the "women's liberation" movement) (internal quotation marks omitted).

9. Menkel-Meadow, *Toward a Jurisprudence of Law*, *supra* note 8, at 90.

10. The question of whether to respond to outrageous acts of violence either by punishing or seeking revenge, or instead by "turning the other cheek" or seeking reconciliation is one version of these issues. *Id.* at 100.

11. Carrie Menkel-Meadow, *When Should I Be in the Middle? I've Looked at Life from Both Sides Now*, *in* EVOLUTION OF A FIELD: PERSONAL HISTORIES IN CONFLICT RESOLUTION 421, 436–37 (Howard Gadlin & Nancy A. Welsh eds., 2020) [hereinafter Menkel-Meadow, *In the Middle*].

12. *Id.* at 428.

and Nobel Peace Prize laureate Nelson Mandela.[13] As will be discussed, Menkel-Meadow has lauded Mandela for his commitments to both peace and justice, but particularly for his emphasis on justice.[14]

This Essay explores how Carrie Menkel-Meadow's life and work have both highlighted the path of "And"—showing and explaining that it is not only possible but also desirable to seek justice as well as peace, to be both activist and neutral.[15] Of course, tensions will remain. Regarding particular issues in specific moments we all must decide which path we can and should take. Which activism is best, and which goes too far? With whom can we or should we negotiate, and when should we instead say, "I can't negotiate with this person or group"?[16] When should we talk and listen, and when are we realistically beyond that possibility? These questions do not have simple answers, but Carrie's life and work offer important insights.

II. CARRIE'S PERSONAL HISTORY

Carrie Menkel-Meadow (originally Menkel) comes from a family tradition of both activism and neutrality. Daughter of two Holocaust refugees, one Catholic and one Jewish,[17] she is also granddaughter to a man who shot off part of his own finger to avoid having to serve on the front line of the German army during World War I.[18] That grandfather was not only a pacificist but also a promoter of Esperanto, a

13. *See generally* NELSON MANDELA, LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA (1st paperback ed. 1995) (1994).

14. Jean R. Sternlight, Andrea Schneider, Carrie Menkel-Meadow, Robert Mnookin, Richard Goldstone & Penelope Andrews, Transcription, *Making Peace with Your Enemy: Nelson Mandela and His Contributions to Conflict Resolution*, 16 NEV. L.J. 281, 285, 290 (2015) [hereinafter Sternlight et al., *Making Peace with Your Enemy*] (emphasizing the importance of seeking principled justice, and not merely peace, and thus honoring Mandela's contributions to conflict resolution by remembering both the conflict and the "resolution"). For this reason, the title of this Essay puts "justice" before "peace," even though "peace and justice" has a better poetic flow than does "justice and peace."

15. Carrie J. Menkel-Meadow, *Remembrance of Things Past? The Relationship of Past to Future in Pursuing Justice in Mediation*, 5 CARDOZO J. CONFLICT RESOL. 97, 115 (2004) ("As they say, without peace there will be no justice, but with no justice, there will be no peace."); *see also* Carrie Menkel-Meadow, *And Now a Word About Secular Humanism, Spirituality, and the Practice of Justice and Conflict Resolution*, 28 FORDHAM URB. L.J. 1073, 1076 (2001) ("We all worked for peace and disarmament—very important and difficult values to work for in the era of the Cold War—and for civil rights (which is why peace, justice, and harmony always have seemed fused for me in dispute resolution work, not separated or antagonistic, as some have argued they are).").

16. Other conflict resolution scholars have also addressed this important question. *See, e.g.*, ROBERT MNOOKIN, BARGAINING WITH THE DEVIL: WHEN TO NEGOTIATE, WHEN TO FIGHT (2010).

17. Menkel-Meadow, *In the Middle*, *supra* note 11, at 422.

18. Menkel-Meadow, *Toward a Jurisprudence of Law*, *supra* note 8, at 84.

language some hoped could achieve world peace and understanding by drawing from languages throughout the world.[19]

Having grown up in New York City, where she was a student at a public high school in Queens,[20] Carrie Menkel attended Barnard College where she describes herself as having been "an advocate for social justice, bordering on the radical, from the comfortable political liberal left of New York (think anti-nuclear activity, the civil rights movement, the consumer movement, and . . . the cusp of the modern feminist movement . . .)."[21] In 1968, Carrie was a student activist who participated in a major protest and shutdown of Columbia University that was focused on the school's complicit relationship with the "military-industrial complex" and on its "racist" plans to build a new gymnasium that would adversely impact the largely African-American community in which Columbia was situated.[22] In her oral history interview for the Association for American Law Schools, Carrie proudly recounts what she told the police at the protest: "Cops eat shit; you are what you eat."[23]

Once she finished college Carrie attended law school at the University of Pennsylvania.[24] Having married high school friend Bob Meadow, and after angsting about whether or how to change her surname, she became Carrie Menkel-Meadow.[25] Carrie then took a position as "a poverty lawyer who sued governmental and private entities for discrimination, tenant and welfare rights, bad prison conditions, special education rights, due process, and other legal claims of social justice."[26] After becoming a law professor Carrie taught clinics in which students brought similar lawsuits on behalf of their clients.[27] Throughout her career as a legal academic Carrie has been a staunch

19. *Id.* (noting that her grandfather was "part of the *friedengescellschaft* (Association of Peace) '*nie wieder Krieg*' movement (Never Again War!)"); Menkel-Meadow, *In the Middle*, *supra* note 11, at 422, 438 (stating that her grandfather was both "anti-Nazi and pacifist" and "an activist in the Esperanto movement").

20. Association of American Law Schools, *Carrie Menkel-Meadow—Women in Legal Education Oral History Project*, YOUTUBE, at 04:20–25 (Jan. 4, 2019), https://www.youtube.com/watch?v=wHwvn_jL7_E [hereinafter Ass'n Am. L. Schs., *Oral History Project*].

21. Menkel-Meadow, *In the Middle*, *supra* note 11, at 422.

22. *Id.*; *see also* A TIME TO STIR: COLUMBIA '68, at LI, LIX, LXI–LXIX (Paul Cronin ed., 2018) (outlining a chronology of events related to the protest at Columbia); *Columbia Closes Campus After Disorders*, N.Y. TIMES, Apr. 25, 1968, at 1, 41 (describing the protest in which Menkel-Meadow participated).

23. Ass'n Am. L. Schs., *Oral History Project*, *supra* note 20, at 20:16–20.

24. *Id.* at 25:40–45.

25. *Id.* at 26:20–37. Carrie explained that she needed to change her name to include Bob's last name in order for the couple to be able to qualify for jobs as dorm counselors at the University of Pennsylvania. *Id.*

26. Menkel-Meadow, *In the Middle*, *supra* note 11, at 424.

27. *See* Ass'n Am. L. Schs., *Oral History Project*, *supra* note 20, at 43:28–51; *see also* Menkel-Meadow, *In the Middle*, *supra* note 11, at 427 (discussing how Carrie and her students would mediate landlord-tenant and employment cases, university disputes, and more).

feminist who was for a time a professor in the UCLA Women's Studies program and Acting Director of the UCLA Center for the Study of Women.[28]

Yet, despite this early history of advocacy, Carrie's personal history as a mediator, or at least a person "in the middle," also can be traced to her days as a long-haired, white-lipsticked Barnard student.[29] While some of her fellow students were protesting and occupying buildings at Columbia, Carrie "helped organize a group who took their sleeping bags to camp out in front of the occupied buildings."[30] She states: "[W]e believed, if we interposed our human bodies 'in the middle,' [between the student protestors who were occupying the building and the police who were expected to arrive to arrest the students] the university would certainly not trample on its own 'innocent' and peace-seeking 'neutral' students."[31] While observing that "[w]e were wrong"—in that the university did call in police who trampled on, beat, and arrested many occupiers (not Carrie)—Carrie still sees this incident as marking the beginning of her formation as a mediator.[32] She recalls that she tried to communicate with the police to explain that the protests were really on their behalf, as well as the behalf of others, to try to secure higher pay, support union membership, and secure social justice for all.[33]

From early in her history Carrie has seen these two roles—activist and mediator—as generally being consistent with one another. Reflecting on her experience during the demonstration at Columbia at which she interposed her body "in the middle" and tried to both prevent violence to the protesters while also seeking to persuade the police on the "'other side' to see the justness of our cause," Menkel-Meadow writes, "I remained committed to the causes we were fighting for in the student strike."[34]

> I was literally caught up in what later became my career of resistance, protests and struggles (and litigation), and at the same time, I felt the desire to "mediate" and calm things down. I was horrified by the violence I saw that night and also by the failure of the largely "working class" police to see that we (mostly, but not all, middle

28. *Carrie Menkel-Meadow*, UCI L., https://www.law.uci.edu/faculty/full-time/menkel-meadow/ [https://perma.cc/9GLW-GLGL] (faculty page).

29. Ass'n Am. L. Schs., *Oral History Project*, *supra* note 20, at 15:35–45 (discussing how she used to like to hang out in cafes in Greenwich Village in New York and pick up "inappropriate men"); *see also id.* at 10:11–16 (explaining how she used to dress with "white lipstick, black eyeliner").

30. Menkel-Meadow, *In the Middle*, *supra* note 11, at 423. Carrie also recalls that she ended up being outside the building, rather than inside protesting, in part because she had acceded to her then-boyfriend's (now-husband) demand that she attend a ROTC ball being held in Philadelphia. *Id.*

31. *Id.*

32. *Id.* at 423–24.

33. *Id.* at 424.

34. *Id.*

> class students) were fighting for "their" justice too. When the tear gas cleared we regrouped and [Students for Democratic Society], like many political action groups, splintered. Part of SDS became more committed to violence . . . and I quit.[35]

Similarly, as a poverty lawyer Carrie began to learn that while she could obtain significant victories for her clients by litigating their rights, both individually or in class actions, sometimes she or her fellow attorneys could obtain better or more lasting solutions through negotiation than through litigation.

> I sat in my office and saw that even when we won (often easily through statutory and constitutional summary judgments) "the battle," we would then lose "the war." Regulations would be changed, business would return to usual, another ground for welfare or Social Security denial would be "found" or manufactured. Class actions changed or voided rules but they did not change lives often enough. I watched as one very quiet lawyer in my office . . . conscientiously and diligently negotiated her cases on behalf of individuals, often, but not always, securing more long lasting, if more individualized, results for her clients.[36]

Carrie notes that her favorite case "was one in which I settled a race discrimination case against a trucking company by getting my client what he really wanted—a truck of his own to begin his own independent trucking operation."[37]

Once Carrie became a law professor she drew upon these insights, as well as her undergraduate work in sociology, to look for ways to solve problems rather than "merely" win cases. Her pathbreaking 1984 article *Toward Another View of Legal Negotiation: The Structure of Problem Solving*[38] sought to "change the legal culture and teach students to listen to both sides, examine needs and interests . . . and look for creative, value-enhancing, integrative solutions to legal and

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35. Menkel-Meadow, *Toward a Jurisprudence of Law*, *supra* note 8, at 86. Specifically, Menkel-Meadow has explained that:

> I quit as SDS morphed into the more violent Weathermen and the Boudin household was bombed, in error, in Greenwich Village. Instead, I became a mediating body sleeping on the ground of the University for days to prevent the police from coming in, but they were called in by the University's President Grayson Kirk, and the NYPD beat students bloody and many were arrested.

Sternlight et al., *Making Peace with Your Enemy*, *supra* note 14, at 286 n.3.

36. Menkel-Meadow, *Toward a Jurisprudence of Law*, *supra* note 8, at 87.

37. Menkel-Meadow, *In the Middle*, *supra* note 11, at 425.

38. Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984). Note that Menkel-Meadow's article came out in a similar time frame as another work, ROGER FISHER ET AL., GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (Penguin Books, 3d ed. 2011) (1981), which popularized the "win win" approach to negotiation for both lawyers and the public at large. Carrie has explained that the Fisher and Ury focus on instrumental interests was somewhat different from her own approach. Menkel-Meadow, *In the Middle*, *supra* note 11, at 425.

social problems that were both tailored to parties' particular needs and circumstances—but also to consider social justice outcomes and effects on third parties."[39] This article was but the first of many books, articles, projects, and awards as Carrie became a leading figure in the world of law school conflict resolution and dispute resolution.[40] Appropriately, in 2011 she was named the recipient of the American Bar Association Dispute Resolution Section's inaugural Award for Outstanding Scholarly Work.[41]

III. THE PATH OF "AND"

Our current political climate brings the tension between justice and peace to a head.[42] We live in a time when many people of varying political perspectives believe great advocacy is needed. Think climate change, racial justice, personal freedom, abortion, gender issues, guns, and so much more. We also live in a highly divided time when many, especially in the dispute resolution community, believe it is more important than ever to try to learn from one another, talk to one another, and work toward common solutions. Which approach is needed, and when? Carrie Menkel-Meadow's life and work offer key insights.

A. *Justice over Peace*[43]

In living with and discussing the tensions between justice and peace Carrie Menkel-Meadow has always been clear that while she is an avid supporter of peace, nonviolence, and collaboration, sometimes one must choose justice over peace. Looking to her personal history, Carrie proudly notes that her Holocaust refugee father joined the U.S. war effort against Hitler, even though in general she favors non-violence.[44] And, in discussing the work of Nelson Mandela, Carrie has

39. Menkel-Meadow, *In the Middle*, *supra* note 11, at 425–26.

40. *See* Carrie J. Menkel-Meadow, *Curriculum Vitae*, UCI L., https://www.law.uci.edu/faculty/full-time/menkel-meadow/menkelmeadowCV.pdf [https://perma.cc/8CRT-M4BU].

41. *Id.* at 24.

42. *See* Carrie Menkel-Meadow, *Why We Can't "Just All Get Along": Dysfunction in the Polity and Conflict Resolution and What We Might Do About It*, 2018 J. DISP. RESOL. 5, 5 [hereinafter Menkel-Meadow, *Dysfunction in the Polity*] ("These are very troubled times. The polity is seriously divided . . . .").

43. While I was tempted to title this section "justice trumps peace," I am going to try to avoid using the word "trump" for some time to come.

44. Menkel-Meadow, *Toward a Jurisprudence of Law*, *supra* note 8, at 84 ("[M]y pacificist, but political, paternal family escaped Nazi Germany and my father joined the American army to help defeat the Nazi monster."); *see generally* Carrie Menkel-Meadow, *Compromise, Negotiation, and Morality*, 26 NEGOT. J. 483, 493 (2010) [hereinafter Menkel-Meadow, *Compromise, Negotiation, and Morality*] (reviewing AVISHAI MARGALIT, ON COMPROMISE AND ROTTEN COMPROMISES (2010), and discussing the general issue of when it is and is not appropriate to try to compromise with oppressive regimes).

given remarks endorsing Mandela's own mixed approach. She emphasized that while:

> Nelson Mandela has been revered, rightly, as a hero, mentor and model of reconciliation, forgiveness and peace seeking, . . . [h]is early years as a committed revolutionary were not peaceful, nor concessionary and his political commitments were models then and later for many generations of justice seekers, even as many of whom, like him, became mediators, conciliators and peace seekers later in life.[45]

She further explains: "Ultimately he was committed to both [peace and justice], but he put justice first. There are lessons in this for all of us in conflict resolution, as the challenge of seeking justice is sometimes not so peaceful."[46]

While Carrie is partly saying that a person's perspective on this tension may change and perhaps mellow with age, her overriding point is that "the challenge of seeking justice is sometimes not so peaceful."[47] That is, there are times when one must speak out, stand by one's principles, and even, unfortunately, engage in violence in order to achieve social justice. "Mandela's legacy as a 'peacemaker' is rooted in his principled belief in social justice and the use of *all tools* needed to accomplish that end. . . . His lesson: peace—yes, eventually with hard work; unnecessary death—no; violence—hopefully not, but a principled justice first . . . ."[48]

Menkel-Meadow has also appreciated the preeminence of justice over peace as she has worried about cooptation—both potential cooptation of disputants, who might be forced or coerced into making agreements to which they do not really consent, and cooptation of dispute resolvers, who might be party to such a process. She states that as a neutral or mediator she never wants to be part of a "forced harmony," and observes that in some cultures, mediation has been used to diminish "real autonomy" and defer to hierarchy.[49] For this reason, Menkel-Meadow explains that it is sometimes appropriate for a neutral to resign or to refuse to participate in a process they find unjust. "There are lines I will not cross and compromises I will not make about some basic values. My culture, or 'religion,' is feminism—in the humanist sense of equality for all people, so there are limits in where I think mediation is appropriate."[50] More broadly, she has explained, "I don't want to be 'in the middle' of a process that imposes agreements or solutions to enforce peace or harmony or par-

45. Sternlight et al., *Making Peace with Your Enemy*, *supra* note 14, at 284–85.
46. *Id.* at 285.
47. *Id.*
48. *Id.* at 290.
49. Menkel-Meadow, *In the Middle*, *supra* note 11, at 438–39.
50. *Id.* at 438.

ticular political outcomes just to enforce someone else's ideas of what that peace or harmony should be."[51]

B. *Multiple Types of Justice with Process as Bridge*

In pondering the tensions between justice and peace Menkel-Meadow has asserted that "[p]rocess is the human bridge between justice and peace."[52] Delivering her 2005 inaugural lecture as holder of the A.B. Chettle, Jr. Chair in Dispute Resolution and Civil Procedure at the Georgetown University Law Center, Carrie observed that as a "process person" who has devoted much of her professional life to teaching and practicing negotiation, mediation, and other more complex forms of dispute resolution, she is often asked what her "substantive commitments" might be.[53] Carrie's response was as follows:

> We have many conventional institutions of law and justice and governmental decisionmaking, but, in my view, they have been inadequate to make the kind of justice and peace I want for this world. So my study of "process pluralism" comes from a belief that new processes of human engagement, including reason, principle, fair bargaining, passions, and moral and emotional empathy, will be necessary for us to solve new (and old) human problems so we can live together in peace, with justice.[54]

Exploring prior works by a broad array of legal and political philosophers, as well as practitioners of process, Menkel-Meadow conceptualizes how to use a broad array of processes to build a "house" of justice that, despite its strengths, will inevitably be at risk of being damaged or even torn down.[55]

Menkel-Meadow does not suggest any single process is best or most just, but rather advocates "process pluralism":

> Process pluralism means paying attention to a variety of different systemic values (some of which may seem oppositional to each other) and party needs at the same time, and offering variegated possibilities of process for engagement and decisionmaking. Such values include the attempt to achieve peace with justice, choice and self-determination of the individual with care and responsibility for others, and recognition of the harms of the past with hopes for reconciliation in the future.[56]

While laying out many "nettlesome issues," not all of which I can reiterate here, Menkel-Meadow asserts that "the key question for me (as

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51. *Id.* at 439.
52. Carrie Menkel-Meadow, *Peace and Justice: Notes on the Evolution and Purposes of Legal Processes*, 94 GEO. L.J. 553, 553 (2006) [hereinafter Menkel-Meadow, *Peace and Justice*].
53. *Id.* at 554 (internal quotation marks omitted).
54. *Id.*
55. *Id.* at 555.
56. *Id.*

it was for Emma Goldman) is how to remake the world to be fair and just while using processes that honor the world we want to create through those processes."[57] She urges that we should adopt processes that allow us to better understand all sides of the issues, and that "[m]odern social and legal life needs to get beyond the binary, adversarial idea that there are only two sides to an argument or the 'truth.'"[58] Menkel-Meadow's fundamental point, citing prior theorists and practitioners including Lon Fuller,[59] John Elster,[60] Stuart Hampshire,[61] and Deborah Tannen,[62] is that even if our society is unlikely to reach a consensus on the substantive good, we may nonetheless be able to agree on "processes that enable us to live together within these differences."[63]

C. *Limits to Process*

While Menkel-Meadow remains hopeful, even today, that plural processes can help us achieve justice, she also is very much a realist and thus is appropriately depressed by the contentiousness of our current situation. In a 2018 article she examines the underlying challenges that make it so difficult for us to get along sufficiently to make progress on such modern problems as poverty, inequality, and environ-

57. *Id.* at 555–56. Carrie goes on to quote a statement attributed to Emma Goldman: "If I can't dance, I don't want to be in your revolution." *Id.* at 556 n.11 (internal quotation marks omitted). She, however, appreciates that the pedigree of the quote is complicated and explains that "[w]hat I take from this infamous quote, emblazoned on the tee shirts of my feminist 1960s, was that the process used to create a new society . . . should be a process that should survive the revolution—we should employ the same means to govern and run our society as those which created it." *Id.*

58. *Id.* at 557.

59. *Id.* at 561–65 (compiling a variety of Lon Fuller's ideas and writings about different legal processes and their relevance to resolving specific issues).

60. *Id.* at 565–66, 566 n.56 (citing and analyzing Jon Elster, *Strategic Uses of Argument*, *in* BARRIERS TO CONFLICT RESOLUTION 236 (Kenneth J. Arrow et al. eds., 1995)).

61. *Id.* at 557 & n.13 (citing and analyzing STUART HAMPSHIRE, JUSTICE IS CONFLICT 8–12, 16–17 (2000)); *see also* HAMPSHIRE, *supra* note 61, at 79 ("These fair procedures, political and legal, constitute the cement that holds the state together, and supply a common ground of loyalty shared by the citizens who recognize this institutional bond between them . . . that makes itself felt when there is a conflict of loyalties, and when the state has by fair processes arrived at a decision that is morally repugnant to some individual citizens."). Menkel-Meadow observes that whereas Hampshire sees the potentially unifying process as Anglo-American adversarialism, she instead would substitute a process that fosters understanding all sides of complex issues. Menkel-Meadow, *Peace and Justice*, *supra* note 52, at 557; *see also* Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 WM. & MARY L. REV. 5, 5–6 (1996) (pushing us to rethink legal goals and processes through reexamining our adversary system's "oppositional" and "binary nature").

62. Menkel-Meadow, *Peace and Justice*, *supra* note 52, at 557 & n.15 (citing generally DEBORAH TANNEN, THE ARGUMENT CULTURE: MOVING FROM DEBATE TO DIALOGUE 3–26 (1998)).

63. *Id.* at 557.

mental change.[64] Indeed, in contrast to her relatively upbeat tone in 2005, in 2018 Carrie admits, "Never since I have been on this earth have I been so discouraged about our current polity."[65] Yet, in typical Carrie fashion, rather than give up in despair, she explores the impediments to effectively using the dispute resolution processes to bridge our divides, and is ultimately "somewhat optimistic" that we can use an array of conflict resolution tools and sensible policy management to "innovate new policy solutions to seemingly intractable problems."[66]

Menkel-Meadow emphasizes that our differences cannot simply be reasoned away, no matter what processes we use.[67] Rather, she explains, "[T]here are at least three 'modes' of discourse in all decision making—the *rational-principled*, (brain) *interest-based bargaining and trading*, (stomach) and the *affective-emotional-value based* (heart) set of claims that people make on each other and within themselves, in different fora."[68] She suggests that taking all of these modes seriously and seeking to manage them through our processes is necessary for us to try to handle our differences. Carrie argues that the best hope of harnessing all three modalities to bridge our differences is "empathy and human connections that allow people to talk and listen to each other, across great differences in a mutual desire for some understanding, if not agreement."[69] As blues singer Nina Simone famously put it, "Don't Let Me Be Misunderstood."[70] In her research and teaching Menkel-Meadow has found examples of these transcendent moments in literature, film, and arts as well as, perhaps more rarely, in legal or political contexts.[71] Carrie has also spent a large portion of her professional career, whether teaching, writing, or in practice, helping people get to know one another, use and build their empathy to communicate more effectively, and appreciate one another's perspectives.[72]

Yet Menkel-Meadow also recognizes that despite our best efforts we still "may not be able to get beyond some basic value polarizations."[73] She worries, for example, that the tools she has espoused re-

64. Menkel-Meadow, *Dysfunction in the Polity*, *supra* note 42, at 6.
65. *Id.* at 24.
66. *Id.* at 25.
67. *Id.* at 7.
68. *Id.* at 9–10.
69. *Id.* at 11.
70. NINA SIMONE, *Don't Let Me Be Misunderstood*, *on* BROADWAY-BLUES-BALLADS (Philips Records 1964). Some have interpreted this song as being about a perpetrator of domestic violence or someone suffering from bipolar disorder. Comments to *Don't Let Me Be Misunderstood (Nina Simone Cover)*, SONGMEANINGS, https://songmeanings.com/songs/view/108918/ [https://perma.cc/9622-RP8W]. However, I and others interpret it more broadly as covering the human condition. *Don't Let Me Be Misunderstood*, SONGFACTS, https://www.songfacts.com/facts/the-animals/dont-let-me-be-misunderstood [https://perma.cc/E4CU-XZ7R].
71. Menkel-Meadow, *Dysfunction in the Polity*, *supra* note 42, at 11.
72. *Id.* at 16–19.
73. *Id.* at 11.

quire "good will and trust and a willingness to be in the same room," and that these factors may not always be present.[74] She similarly worries whether tools such as deliberative democracy can work in a world, or portions of a world, that is unjust.[75] Still, at least in her more optimistic works, Carrie expresses hope that these polarizations are changeable rather than somehow inherent to human nature. Citing the work of futurist Jeremy Rifkin,[76] Menkel-Meadow states, "[W]hatever your views about the 'nature' of human nature, my own are that human nature is more complex than the simple origin stories of political philosophy and that our human natures are in fact, more 'plastic' and capable of being transformed by will, circumstances, and education."[77]

D. *Pragmatic and Contextual*

So where does all of this leave us on the big question of justice and peace? Between Carrie Menkel-Meadow's family's history, her personal history, and her writing, when does one fight for justice, when does one work toward reconciliation, and how do the two relate?

Part of the lesson we can take from Carrie's life, and her writing, is that there are and can be no simple answers and that we must own the complexities and appreciate that these answers will be highly contextual. Reviewing Avishai Margalit's book *On Compromise and Rotten Compromises,* Menkel-Meadow considers the question of which compromises should be absolutely, morally prohibited. While this is not exactly the same as the "peace or justice" question, it is at least a close cousin, and Carrie brings the two issues together when she states, in her review, "[P]eace and justice cannot only be reconciled but must exist together in some 'compromised' form if we are to survive as a human race."[78] As to both issues she urges that we focus on context, rather than strive to find dichotomous principles that might answer our questions. Considering which clauses in an agreement might be so rotten that they make the whole deal rotten, she talks about the purported difference between a "fly in the ointment," which can be removed, and a "cockroach in the soup," which ruins the whole bowl.[79]

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74. *Id.* at 24.

75. Menkel-Meadow, *Peace and Justice, supra* note 52, at 556 n.11 (citing Archon Fong, *Deliberation Before the Revolution: Toward an Ethics of Deliberative Democracy in an Unjust World*, 33 POL. THEORY 397, 397–401 (2005)).

76. JEREMY RIFKIN, THE EMPATHIC CIVILIZATION: THE RACE TO GLOBAL CONSCIOUSNESS IN A WORLD IN CRISIS 2, 447 (2009) (arguing that our modern consciousness will lead us to empathize with others, at least out of necessity, in order to solve our interdependent problems).

77. Menkel-Meadow, *Toward a Jurisprudence of Law*, *supra* note 8, at 97 (footnote omitted).

78. Menkel-Meadow, *Compromise, Negotiation, and Morality*, *supra* note 44, at 489.

79. *Id.* at 492.

However, in a beautifully vivid explanation that context matters, Carrie states:

> I have eaten soups with bugs in them, and I have never faced starvation. I suspect that those who are actually starving would eat soups with all kinds of otherwise objectionable items. (Not to mention that one person's spice is another person's allergic death.) Thus, what a "rotten compromise" is will still largely depend on the contextual circumstances faced by the negotiator. I am wary of these attempts to generalize in advance . . . .[80]

The circumstances will determine the answers to important questions, including whether, when, and how to fight for justice and whether, when, and how to seek conciliation. These will presumably include the prospects for harm and gain of various courses of action, but may include many other more principled factors as well. One thing I have always particularly appreciated about Carrie's thinking is its breadth. When she considers context she invariably looks to the past but also takes into account the future, and she has always examined issues from a comparative and international standpoint, rather than merely from the insular perspective of the United States and its denizens.[81]

Carrie recognizes that an individual's perspective on the tensions between justice and peace may well change over time to some degree, as hers appears to have done. Reflecting on how she began life primarily as a fighter for justice and then morphed into someone who spends more time and energy thinking about reconciliation, she essentially asks herself whether she has "sold out" when she has done consulting work for powerful entities such as the Smithsonian Institution and the World Bank.[82] She also recounts how she reconnected with Mike Sovern, who had been a professor at Columbia when she was a student activist, and whom she had asked why the students and administration could not "just all sit down and talk about it."[83] Meeting again, many years later, when Sovern had become president of Columbia University and Menkel-Meadow was a law school accreditation examiner, Sovern reportedly said, "Well, now you have joined the Establishment, too."[84] While Carrie does believe in the "and"—that one can "search[ ] for social justice through problem-solving,"[85]—my sense is that she has (like many of us) mellowed at least a bit with age.

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80. *Id.* at 492–93.

81. Carrie Menkel-Meadow, *Are There Systemic Ethics Issues in Dispute System Design? And What We Should [Not] Do About It: Lessons from International and Domestic Fronts*, 14 HARV. NEGOT. L. REV. 195, 197, 201–02 (2009); *see also* Carrie Menkel-Meadow, *Variations in the Uptake of and Resistance to Mediation Outside of the United States*, *in* CONTEMPORARY ISSUES IN INTERNATIONAL ARBITRATION AND MEDIATION: THE FORDHAM PAPERS 2014, at 189–91 (Arthur W. Rovine ed., 2015).

82. Menkel-Meadow, *In the Middle*, *supra* note 11, at 433.

83. *Id.* at 424.

84. *Id.*

85. *Id.* at 436.

She is somewhat less of that 1960s radical with long hair and white lipstick,[86] and more of the law professor/mediator who likes to hear all perspectives. After all, Menkel-Meadow notes that Joni Mitchell's song *Both Sides Now*, particularly the Judy Collins version,[87] is her anthem for both life and mediation: "I've looked at life, love and clouds from both sides now, from win and lose, but I still really don't know life/love/clouds at all."[88] Carrie observes that the song is about curiosity and continued engagement,[89] and I think most listeners would say it is also about gaining perspective with age.

IV. CONCLUSION

In short, Carrie Menkel-Meadow is leading us toward justice *and* peace. While she admits to sometimes despairing as to whether we will reach these ends, particularly in these most divisive times,[90] she has overall remained optimistic that the next generation at least "can create less adversarial ways of dealing with differences to try to create a better world, both for individuals and for larger groups of people in pain or need of justice and fairness."[91] She does not pretend to have all the answers, but I really can't think of anyone who asks better or more important questions to try to help us move toward justice.[92] As a Founding Mother of our field,[93] Carrie would in any event likely agree with Holocaust diarist Anne Frank that "[p]arents can only advise their children or point them in the right direction. Ultimately, people shape their own characters."[94] Thus, while Menkel-Meadow has not provided us with a simple answer to the question of how to achieve justice and peace, perhaps by following the lead of her life, work, and questions "We Shall Overcome."[95]

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86. Ass'n Am. L. Schs., *Oral History Project*, *supra* note 20, at 10:11–16. But she does still have long hair!

87. JUDY COLLINS, *Both Sides Now*, *on* WILDFLOWERS (Elektra Records 1967).

88. Menkel-Meadow, *Dysfunction in the Polity*, *supra* note 42, at 18 n.58 (noting that the Judy Collins version is Carrie's favorite and paraphrasing lyrics from the song).

89. *Id.*

90. *Id.* at 25.

91. Menkel-Meadow, *In the Middle*, *supra* note 11, at 440.

92. *See id.* at 434, 437–40; *see also* Menkel-Meadow, *Dysfunction in the Polity*, *supra* note 42, at 13 ("How then can we harness what is good about human diversity to greater mutual empathy and understanding of others who do not share our own views? And, even more importantly, how can we agree to disagree, but still prevent violence, increase human well-being, and adopt some concrete policies?"); Menkel-Meadow, *Toward a Jurisprudence of Law*, *supra* note 8, at 79, 81.

93. Some have called Carrie a "founding mother" of the field. *See* Menkel-Meadow, *In the Middle*, *supra* note 11, at 427–28. However, Carrie herself modestly credits others as the intellectual founders of the field. Carrie Menkel-Meadow, *Mothers and Fathers of Invention: The Intellectual Founders of ADR*, 16 OHIO ST. J. ON DISP. RESOL. 1 *passim* (2000).

94. ANNE FRANK, THE DIARY OF A YOUNG GIRL: THE DEFINITIVE EDITION 330 (Otto H. Frank & Mirjam Pressler eds., Susan Massotty trans., Doubleday 1995).

95. JOAN BAEZ, *We Shall Overcome*, *on* CARRY IT ON (Vanguard Records 1971).