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# New Problem-Solving Scholarship: An Historical Tale with a Happy Ending

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# *Review Essay*

## New Problem-Solving Scholarship: An Historical Tale with a Happy Ending

*Jacqueline Nolan-Haley*

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*The teaching of negotiation in law, business, and other professional schools has greatly increased over the last quarter-century. The author sets the stage for a review of two negotiation texts and an educational video by opening with an historical overview of the development of negotiation pedagogy, which has been informed by scholars from many different academic disciplines. Teaching negotiation in law schools (which have a long tradition of the “case method” style of teaching, which often encourages an energetic but adversarial approach to problem solving) is still relatively new. The two texts and the educational video examined in this essay offer lessons in a “wide angle” approach to negotiation, which includes (among many other useful topics): ideas fundamental to theory and practice; social and emotional considerations; the role of cultural and gender difference; relationships between principals and representatives; differences among various types of ADR; and applications of various forms of negotiation in many different contexts.*

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**D**espite the fact that lawyers spend most of their professional lives “negotiating,” back when I was in law school there were few opportunities to learn about and practice the processes of negotiation, mediation, conciliation, and other forms of dispute resolution. That situation, thankfully, has changed in American law schools, as well as in schools of business, govern-

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ment, and other professions. Today, few students graduate from American law schools without some exposure to negotiation either as part of a free-standing negotiation course, dispute resolution or lawyering skills course.<sup>1</sup> The *2000 Directory of Law School Alternative Dispute Resolution Courses and Programs*, published by the Dispute Resolution Section of the American Bar Association (ABA), contains an impressive description of 830

courses and programs at 182 ABA-approved law schools. Business schools are moving in the same direction with innovative course offerings in negotiation studies.<sup>2</sup>

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**Menkel-Meadow, Carrie**, editor. *Mediation*. Burlington, Vt.: Ashgate Publishing Co., 2001. 676 pages. \$245.00. ISBN: 0-7546-2052-2.

**Nelken, Melissa L.** *Understanding Negotiation*. Cincinnati: Anderson Publishing Co., 2001. 462 pages. \$36.95 (paperback). ISBN: 1-58369-765-X.

**Mnookin, Robert H., Jack Himmelstein, and Gary J. Friedman.** *Saving the Last Dance: Mediation through Understanding*. A mediation teaching and training video produced by the Program on Negotiation at Harvard Law School and the Center for Mediation in Law. 51 minutes. Distributed by the Clearinghouse of the Program on Negotiation ([www.pon.org](http://www.pon.org)). \$225.00 for academic, government, and nonprofit organizations; \$300.00 for profit-making groups.

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The gradual curricular transformation of American law and business schools in the late Twentieth Century is a natural byproduct of the developing field of conflict resolution and negotiation studies. From an historical perspective, of the multiple disciplines that have been drawn into this new field, the legal profession's influence can perhaps be considered the most paradoxical. While lawyers have made significant contributions to negotiation and conflict resolution through leadership in developing regulatory and ethical standards, they have often stymied the field's overall creativity.

The historian's short version of this story would go something like this: Toward the middle of the last century, there emerged a new field of study that concentrated on the phenomena of conflict and its resolution. For over fifty years, a tremendous amount of research by cultural anthropologists, philosophers, psychologists, and sociologists, on the nature and social psychology of conflict, and various methods of dispute processing, established the foundational structure for the field. The infusion of ideas from labor and industrial relations, game theory and decision analysis, international relations and management, helped scholars to "build" a rich field of study that blossomed with the development of

undergraduate and graduate programs, a proliferation of specialty journals and hundreds of websites linking scholars with practitioners.<sup>3</sup>

Scholars began to devote significant energies to understanding conflict and its constitutive elements. Mary Parker Follett, affectionately referred to as one of the "mothers" in this field, explored the functions of conflict and