

1985

## Book Reviews

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### Recommended Citation

Robert Coulson, *Book Reviews*, 1985 J. Disp. Resol. (1985)

Available at: <https://scholarship.law.missouri.edu/jdr/vol1985/iss/12>

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## BOOK REVIEWS

**DISPUTE RESOLUTION: NEGOTIATION AND CONSENSUS BUILDING.** By *John T. Dunlop*. Dover, Mass.: Auburn House Publishing Co. 1984. Pp. xx, 296. \$24.95.

ROBERT COULSON\*

This is an important book for anyone who needs to understand how changes can be orchestrated in our increasingly complex society and how major economic disagreements can best be resolved. Too many books and papers on dispute resolution are written by academics and others who have little practical experience with the process. Perhaps that is why negotiation is often described in terms of two people bargaining across a table, sometimes with the help of a single, neutral mediator. In real life, each "party" consists of numerous contesting individuals expressing conflicting demands, some resisting any tendency to compromise, others willing to settle at any price. Important disputes do not occur in a vacuum; the voices of legal advisors, interested outsiders, influential observers, and representatives of various public or private bodies are heard off-stage. The more important the dispute, the more cacophonous are those external voices.

Professor Dunlop has been at the center of many important economic controversies while serving as an advisor to business and labor leaders. Working as a neutral, he has shaped or influenced the resolution of numerous labor relations disputes. In this book, he shares his experience.

Dunlop has strong opinions, but his ideas are well worth extracting. This is a book written by an academic for fellow academics. It is by no means easy reading, but it should be mandatory reading for those who claim a professional interest in labor relations. This book rises well above the level of most seminar discussions. As Dunlop puts it: "A ringing declaration of the virtues of free collective bargaining, or of the evils of compulsory arbitration, or of the sacredness of the right to strike or to lockout, or that any government intervention as an opening wedge will lead inevitably to full government controls or socialism is not likely to provide a basis for serious discourse."<sup>1</sup>

How many labor or management spokesmen can say that they never rang those bells from a podium? I have heard more than a few such presentations.

In contrast, Dunlop carefully describes the various mechanisms that have been designed by legislative bodies or by management and labor to resolve

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\* President, American Arbitration Association.

1. J. DUNLOP, *DISPUTE RESOLUTION: NEGOTIATION AND CONSENSUS BUILDING* 166 (1984).

ongoing controversies. He knows them all. As Secretary of Labor and as chairman of numerous economic bodies, he has created, activated, and administered many such arrangements. He has monitored, appraised, and explained them to thousands of students and practitioners. A lifetime of stressful activity went into this book; therefore, it provides an expert's opinion of how our industrial relations system works.

The early chapters contain an analysis of negotiation and mediation as currently practiced by labor-management organizations in the United States. The past, present, and future of American labor relations are described. Traditional and evolving dispute resolution techniques are appraised, with emphasis on joint consultation and the tripartite labor-management-government committee, a process which Dunlop has pioneered. In the concluding chapter, Dunlop describes new techniques for managing human resources and attempts which have been made to increase productivity and make the American economy more competitive.

Dunlop is impatient with patchwork political solutions to industrial relations problems. As he puts it: "Neither industry nor labor can tolerate a world in which the legal status of collective bargaining is changed every two or four years, depending upon the latest election returns. Stable and constructive industrial relations cannot be built on such shifting foundations."<sup>2</sup> As a pragmatist, he recognizes that politics will continue to intrude in public employment and essential industries, such as transportation, natural resources, and national defense. Even so, he encourages parties in those industries to design their own dispute resolution machinery whenever possible.

Arbitration is used extensively in American labor relations. It is discussed more than a dozen times throughout the book. Correctly so. Arbitration is a vital function in the grievance procedure of almost every collective bargaining contract. When the government is unwilling to permit organized workers to strike, some form of arbitration is adopted to resolve bargaining impasses over wages and working conditions. Mediation receives almost as many references. Dunlop is a strong advocate of that process. In addition, he is a deft and powerful mediator who is skilled at putting together attractive packages and selling them to the parties and their auditors.

Deals are seldom made at the bargaining table. Dunlop quotes President Reagan, who while leading the screen actors' union was "surprised to discover the important part a urinal played in this high-altitude bargaining . . . standing side by side in that room that levels king and commoner, comes an honest question. 'What do you guys really want?'"<sup>3</sup>

Mediators know it takes agreement within each side to reach a deal across the table; three agreements to make one. Dunlop describes the fundamental neutral role:

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2. *Id.* at 15.

3. R. REAGAN & R. HUBLER, *WHERE'S THE REST OF ME?* 225 (1965).

The strategic position of the mediator relates fundamentally to the communication flow between the parties and . . . between the principal negotiators and their larger committees and constituencies. The mediator function often involves the development of mutually acceptable factual data to provide a setting for more informed and dispassionate discussion of particular issues.<sup>4</sup>

In addition, mediators help develop settlement packages, facilitate the acceptance of the final agreement, and exert moral authority or reflect the public interest in facilitating the resolution of the dispute. These are universal, but mediators also must bring appropriate working credentials and a technical understanding of the issues to their role. More important, a mediator must help the players move their constituency toward a compromise position. For the most part, people settle disputes because they feel like settling them. Try to put that in your computer!

In labor relations, mediation has become institutionalized, part of the process under which "labor and management have been able to shape to their own necessities the process of the administration of agreements and even the procedures for periodic negotiations."<sup>5</sup> In other complex dispute areas, mediation is gaining acceptability and, in this reviewer's opinion, will have major applicability in the future.

Government has important responsibilities in industrial relations, but effective systems are most often created by the parties through negotiations and consensus building. Professor Dunlop has served as an advisor for several prior administrations and his views are based on years of practical experience, particularly in the field of labor relations. As an authority on dispute resolution, he is impatient with shallow political slogans that reflect slapdash panaceas to chronic concerns.

This book, although largely focused on labor relations, has implications for other important economic sectors. Dunlop recognizes that employment is only one part of the social matrix. In his final chapter, he points out that major qualitative changes are taking place. Nevertheless, his analysis focuses upon human resources, productivity, and competitiveness and his concerns are the pragmatic and competitive problems of business and labor. For other values, such as environmental concerns, quality of life, morality, individual rights, one must turn to another text. "There appears to be widespread concurrence in the view that the long-term national objectives of the 1980s should be sustained economic growth, with high employment and reasonable price stability."<sup>6</sup>

Dunlop recommends seven guidelines for building a framework for future growth. These include a higher rate of expenditure in basic research, modernization of the economic infrastructure, agreement on a national energy policy, a sustained effort to train workers for future jobs adapting the public unem-

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4. J. DUNLOP, *supra* note 1, at 23.

5. *Id.* at 79.

6. *Id.* at 285.

ployment insurance system to encourage adjustments in the labor force, a joint labor-management approach to increasing the efficiency of American industry, and the revival of major metropolitan areas. These proposals raise important political issues.

Dunlop's awesome reputation ensures that national leaders will pay heed. I hope they also take time to listen to the robin in the tree, the lonely flute, and the other non-economic voices that deserve attention.

**MEDIATION: A COMPREHENSIVE GUIDE TO RESOLVING CONFLICTS WITHOUT LITIGATION.** By *Jay Folberg & Alison Taylor*. San Francisco: Jossey-Bass. 1984. Pp. xxi, 336. \$22.95.

**JAMES B. BOSKEY\***

As mediation has grown, in recent years, from a limited speciality practiced primarily by experts in labor relations to an important means of resolving disputes in many fields, the need for professional guidance and resources for practicing mediators has become acute. The great majority of labor mediators came from a background in the Federal Mediation and Conciliation Service or its state counterparts, and shared both an ideology and an approach to dispute resolution which guided them in the provision of mediation services. The new mediators, whose practice may range from matrimonial disputes through community disputes to issues of national and international importance often lack this background, and find a need for resources for skill development and a reference source for new ideas on conducting both mediations and conciliation practice.

Jay Folberg and Alison Taylor, in their new book, *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation*, have made a very valuable contribution toward meeting these needs. They have drawn together, in summary form, a great deal of information which will assist any mediator regardless of his or her speciality. The topics covered range from the nature of conflict resolution through the establishment of a mediation practice, and each chapter is supported by a carefully selected annotated bibliography for further reading.

The first section of the book provides an introduction to mediation and conflict resolution theory. An all too brief history of mediation is provided and the fundamental principles involved in mediation are introduced. The conflict resolution chapter provides brief summaries of the view of many of the major theorists, sufficient to whet the appetite of the reader and suggests those works which would be profitable reading. Discussion of the theories is admirably clear and concise, however, the section is marred, to an extent, by the use of inappropriate diagrams (i.e., the DNA helix on page 25), and the careless use of an inappropriate model for the process of adjudication and arbitration.

The second part of the book deals with the development of mediation skills and contains the most valuable materials for the mediation professional. The section begins with with a presentation of the authors' seven stage analy-

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sis of the mediation process. This analysis is of special value as it provides a framework within which different forms of mediation can be analyzed and evaluated comparatively. It allows the mediator in any given case to evaluate the success of the process as it is occurring. While different scholars might divide the process on alternative lines, the pattern suggested is one that is clear and useful in most mediation contexts.

After describing the stages in the mediation process, the authors suggest counseling concepts and means of enhancing communication which are of use to the practicing mediator in the field. These discussions are tied to the earlier discussion of conflict theory and the stages of mediation in such a way as to make the value of the theory to the mediator fully evident. The authors note, quite correctly, that the reading of one chapter will not qualify one as a counselor or communications expert, however, such a reading may sensitize individuals to issues that they otherwise would have overlooked.

The third part of the book presents a summary of various forms of mediation, and is perhaps the weakest section of the work. The first and third chapters appear to be attempts to create glossaries of forms and styles of mediation and of types of conflict situations to which mediation may be applied. Neither chapter is comprehensive, and any principle upon which the selection of covered topics was made escaped this reviewer. The brief summaries of conflict situations and the types of mediation that might apply to them are often both sketchy and inaccurate. Rather than leaving the desired impression that mediation has unlimited possibilities, the descriptions make each form of mediation seem distinct and appear to deny the universal applicability of mediation techniques suggested earlier in the book. The second chapter of this section provides an introduction to Family and Divorce Mediation. This chapter is an excellent general introduction to a topic that both authors clearly know well; however, the extended coverage of this one form of mediation seems overwhelming in the context of this work.

The final section of the book deals with Mediation as a Profession. Topics range from ethics and training of mediators to considerations involved in establishing a private mediation center and the receiving and making of referrals. Finally, the appendices to the book include various documents relating to mediation and a list of selected national organizations involved in mediation.

In general, *Mediation* is an important contribution to the literature. This is the first attempt to describe in book form the nature of mediation and mediation practice and to provide a manual for mediations that is not limited to a particular type of mediation or the mediation of a particular type of dispute. Too frequently the authors lose sight of their goal and seemingly attempt to tell us everything that they know about mediation. The active involvement of a strong editor would have led to a book more limited in scope, but somewhat less cursory in some areas of its coverage. Nonetheless, this is a volume no active mediator should be without.