

# BOOK REVIEW

## A New Guide to a Not-So-New Field

### THE HANDBOOK OF DISPUTE RESOLUTION

(Edited by Michael L. Moffitt and Robert C. Bordone). San Francisco, CA:  
Jossey-Bass, 2005. \$75.00 (hardcover).

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### I. INTRODUCTION

As Carrie Menkel-Meadow insightfully states at the beginning of Chapter Two: “Disputes are as old as humankind. Dispute resolution is probably just a bit younger.”<sup>1</sup> While disputants have been resolving their disputes for centuries, modern dispute resolution theory and practice arguably began in 1976 with Harvard Law Professor Frank Sander’s popular speech titled “Varieties of Dispute Processing.”<sup>2</sup> In the last thirty years, thousands of books and law review articles have been written discussing dispute resolution,<sup>3</sup> and thousands of individuals have been trained using a variety of methods.<sup>4</sup> What, one might ask, could possibly be left to ponder? Or even more direct: Could there possibly be enough new and relevant information to warrant a 31-chapter book?

The answer is a definitive “yes.” Editors Michael Moffitt and Robert Bordone have compiled a volume of never-before published articles that

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<sup>1</sup> Carrie Menkel-Meadow, *Roots and Inspirations: A Brief History of the Foundations of Dispute Resolution*, in THE HANDBOOK OF DISPUTE RESOLUTION 13, 13 (Michael L. Moffitt & Robert C. Bordone, eds., 2005).

<sup>2</sup> *Id.* at 19.

<sup>3</sup> In a Lexis search of the term “dispute resolution” occurring in law review articles published since 1976, more than 1,600 articles mentioned the term at least 15 times.

<sup>4</sup> Today, students are offered courses in dispute resolution in most professional schools, and an increasing amount of undergraduate and professional schools offer separate degrees in dispute resolution. Robert C. Bordone, et al., *The Next Thirty Years: Directions and Challenges in Dispute Resolution*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 507, 507.

represent the most current thinking in the field of dispute resolution. The two professors solicited specific contributions from their fellow dispute resolution colleagues, and the result is a reference book that considers many academic disciplines and includes essays written by several of the leading names in the field. In their conclusion to chapter four, Max Bazerman and Katie Shonk note that “[a] key motivation that drives negotiation research is practical relevance.”<sup>5</sup> This volume is filled with practical insights and conclusions, and at the very least, this book belongs on the shelf of every dispute resolution practitioner, academic, and student.

## II. AN OVERVIEW OF THE HANDBOOK ON DISPUTE RESOLUTION

The volume is arranged by 31 chapters, with each chapter devoted to one essay. The chapters are then divided into four Parts: (1) Understanding Disputants, (2) Understanding Disputes and Dispute Contexts, (3) Understanding Dispute Resolution Processes, and (4) Emerging Issues in Dispute Resolution. The organization of the book is clear and smart: each chapter can be read individually, covering a particular issue specifically and in depth. Or, each Part can be read in full, to give the reader a broad view of each of the editors’ four general topics.

Part One, Understanding Disputants, includes eight chapters designed to discuss different aspects of the effect of human beings on dispute resolution. According to the editors: “Part One invites readers to consider the ways in which the individual disputants shape the prospects for resolution.” The eight chapters consider several “human” aspects: personality, perspective, emotion, bias, identity, culture, and gender. While all of these aspects have been discussed previously in dispute resolution literature, each chapter brings new ideas to the table. Some of the highlights of Part One include a two-page, six-question summary about personality and dispute resolution<sup>6</sup> and an overview of seven of the cognitive biases that affect most negotiators.<sup>7</sup> Daniel Shapiro provides a realistic discussion about emotion and its benefits

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<sup>5</sup> Max H. Bazerman et al., *The Decision Perspective to Negotiation*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 52, 63.

<sup>6</sup> Sheila Heen et al., “*I See a Pattern Here and the Pattern Is You*”: Personality and Dispute Resolution, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 35, 46–48.

<sup>7</sup> Bazerman, *supra* note 5, at 53.

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in a negotiation in chapter five,<sup>8</sup> while Keith Allred's essay identifies five biases of which negotiators should be aware in order to reduce conflict escalation.<sup>9</sup> Two of the chapters thoughtfully consider positive contributions to be made through the analysis of culture and gender. The information found in Part One is significant and noteworthy—after all, without disputants, there is no dispute.

In Part Two, Understanding Disputes and Dispute Contexts, the editors devote seven chapters to discussing “the different ways disputants might understand their circumstances.”<sup>10</sup> In this Part, the essays consider how the dispute itself can affect the resolution. Moffitt writes the first chapter in Part Two, an essay that focuses on value creation in disputes, which includes Moffitt's advice in this area to disputants.<sup>11</sup> Other chapters focus on the use of agents in negotiation,<sup>12</sup> the benefit of decision analysis,<sup>13</sup> the effects of relationships and power in an organization on how individuals choose different processes,<sup>14</sup> and the role of the laws concerning settlement negotiation behavior and the adjudicatory process in dispute resolution.<sup>15</sup> In this last mentioned essay on the role of certain laws in dispute resolution, Russell Korobkin does not focus on the effect of substantive law on dispute resolution, but instead turns his attention to laws governing bargaining and litigation.<sup>16</sup> Chris Guthrie's article on option generation is unique as the article discusses not the virtues of this negotiation concept but the vices.<sup>17</sup>

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<sup>8</sup> See Daniel L. Shapiro, *Enemies, Allies, and Emotions: The Power of Positive Emotions in Negotiations*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 66, 66–82.

<sup>9</sup> Keith G. Allred, *Relationship Dynamics in Disputes: Replacing Contention with Cooperation*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 83, 84.

<sup>10</sup> Michael L. Moffitt et al., *Perspectives on Dispute Resolution: An Introduction*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 1, 9.

<sup>11</sup> See Michael L. Moffitt, *Disputes as Opportunities to Create Value*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 173, 173–187.

<sup>12</sup> See Scott R. Peppet, *Six Principles for Using Negotiation Agents to Maximize Advantage*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 189, 189–201.

<sup>13</sup> See Marjorie Corman Aaron, *Finding Settlement with Numbers, Maps, and Trees*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 202, 202–218.

<sup>14</sup> See Corinne Bendersky, *Organizational Influences on Disputants*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 233, 233–243.

<sup>15</sup> See Russell Korobkin, *The Role of Law in Settlement*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 254, 254–276.

<sup>16</sup> *Id.* at 271.

<sup>17</sup> See Chris Guthrie, *Option Generation: Be Careful What You Ask For . . .*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 219, 219–232.

Jonathan Cohen provides an interesting taxonomy to consider in thinking about dispute resolution ethics: he proposes that understanding the type of ethical issue at hand could be helpful in resolving an ethical challenge.<sup>18</sup>

Part Three of *The Handbook of Dispute Resolution*, Understanding Dispute Resolution Processes, provides seven detailed chapters discussing different dispute resolution processes. The Part begins with three chapters on the most traditional dispute resolution processes: negotiation, mediation, and arbitration. All three chapters provide information regarding the basics of these different processes, the nuances, and the current state and understanding of each process. In the latter half of Part Three, the editors provide an essay discussing litigation and when litigation is still potentially the best dispute resolution process,<sup>19</sup> as well as an essay that helps to determine how to select the best particular process for a dispute.<sup>20</sup> This essay, written by Frank Sander and Lukasz Rozdeiczer, provides a user-friendly, three-step approach to selecting the best process.<sup>21</sup> The other two chapters discuss more specific dispute resolution processes: Lawrence Susskind's essay discusses consensus building in the public dispute context,<sup>22</sup> while Howard Gadlin writes on integrated conflict management systems and the role these systems can play in organizations.<sup>23</sup>

In Part Four, Emerging Issues in Dispute Resolution, the editors provide several essays devoted to discussing the most current issues in the field and marking new directions for future considerations in dispute resolution. According to the editors, Part Four "examines the broad trends in dispute resolution, with an eye toward some of the issues that are likely to be central to disputants, practitioners, and scholars."<sup>24</sup> Part Four contains the most

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<sup>18</sup> See Jonathan R. Cohen, *A Taxonomy of Dispute Resolution Ethics*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 244, 244–253.

<sup>19</sup> See Jeffrey R. Seul, *Litigation as a Dispute Resolution Alternative*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 336, 336–357.

<sup>20</sup> See Frank E. A. Sander et al., *Selecting an Appropriate Dispute Resolution Procedure: Detailed Analysis and Simplified Solution*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 386, 386–406.

<sup>21</sup> *Id.* at 398–404.

<sup>22</sup> See Lawrence E. Susskind, *Consensus Building and ADR: Why They Are Not the Same Thing*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 358, 358–370.

<sup>23</sup> See Howard Gadlin, *Bargaining in the Shadow of Management: Integrated Conflict Management Systems*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 371, 371–385.

<sup>24</sup> Moffitt, *supra* note 10, at 11.

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distinct essays, including chapters dedicated to online dispute resolution,<sup>25</sup> international dispute resolution,<sup>26</sup> conflict resolution education for youths,<sup>27</sup> and victim offender mediation,<sup>28</sup> to name a few. The Part concludes with an essay titled “The Next Thirty Years: Directions and Challenges in Dispute Resolution,” written by Robert Bordone, Michael Moffitt, and Frank Sander.<sup>29</sup> The essay identifies four fundamental questions that the authors predict will “drive much of the agenda” in the field of dispute resolution over the next thirty years.<sup>30</sup> While the questions are broad, the authors provide inventive and constructive responses. The final chapter is a fitting conclusion to *The Handbook of Dispute Resolution*.

### III. UNIQUE CONTRIBUTION

The *Handbook* is a significant addition to the field of dispute resolution for what it is not: this volume is not another book explaining only the roots of the dispute resolution movement and the different processes considered to be a part of the dispute resolution field. The volume is also not simply a collection of new but unrelated articles, nor are the articles focused specifically around one narrow topic. Instead, *The Handbook of Dispute Resolution* is the most comprehensive reference guide available on dispute resolution, and the most current book to summarize the future of the field. The essays are practical, and the collection as a whole provides works that will be appreciated by individuals just entering the field as well as those who have been practicing dispute resolution processes for decades. At the same time, the collection includes articles and research that are of interest to those who are most attentive to the academic focus of the field of dispute resolution.

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<sup>25</sup> See Ethan Katsh, *Online Dispute Resolution*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 425, 425–437.

<sup>26</sup> See Andrea Kupfer Schneider, *Public and Private International Dispute Resolution*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 438, 438–454..

<sup>27</sup> See Donna K. Crawford et al., *Youths, Education, and Dispute Resolution*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 471, 471–486.

<sup>28</sup> See Mark S. Umbreit et al., *Victim Offender Mediation: Evidence-Based Practice Over Three Decades*, in THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 1, at 455, 455–470.

<sup>29</sup> See Bordone, *supra* 4, at 507.

<sup>30</sup> *Id.* at 508.

## IV. CONCLUSION

The editors conclude their co-written first chapter with the following: “Whatever approach one concludes is best, whatever perspective one holds about the matter in dispute, whatever role one might play in the context of a dispute, learning more about dispute resolution is useful.”<sup>31</sup> Dispute resolution may be just slightly younger than humankind, but it remains a cornerstone of our society today. For any person interested in learning more about the modern processes of ancient practices, *The Handbook of Dispute Resolution* is a valuable tool.

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<sup>31</sup> See Moffitt, *supra* note 10, 11.