

CRP 485/585 and PA 588

SEMINAR IN NEGOTIATION AND PUBLIC DISPUTE RESOLUTION

INSTRUCTORS: Ric Richardson - Tim Karpoff

SPRING 2016

CLASS SCHEDULE AND READING ASSIGNMENTS

Tuesday 5:30 – 8:00 P104

Welcome to Negotiation and Public Dispute Resolution!

Course Premise

This is a course in the theory and practice of negotiation, with an emphasis on negotiating public disputes and building collaborative planning strategies for plans and policies. Our intent is to challenge the conventional wisdom about negotiation in several ways. As a society, we find ourselves having to deal with increasingly complex, wickedly intricate issues relating to land use, resource management, and policy development. As planners, architects, lawyers, engineers, community advocates, we are asked to help resolve disputes and problems in ways that recognize a range of important public values and that result in fair and sustainable outcomes. How can this be accomplished? Is it, indeed, possible?

Many believe that negotiation is about “getting one’s way,” learning how to impose one’s will more effectively. Others look to negotiation as a means for eliminating conflict, or, at least, minimizing a sense of competition and maximizing the feeling of cooperation among parties in conflict. And still others see negotiation as a way of “splitting the pie,” of fairly distributing value as part of a zero-sum game. Power is crucial to consider, cooperation is a worthy objective, and distributing proceeds fairly is an important concern: however, framing negotiation principally as a function of any of these may miss opportunities to understand more deeply the background and values of each party and the underlying concerns driving the dispute. More important, the participants may miss opportunities to craft more creative, useful, valuable and sustainable ways of resolving disputes and making agreements.

Course Objectives

Our objectives for students taking the course are:

- To experience and analyze the usefulness of negotiation concepts and skills in a variety of contexts, with emphasis on their applicability in the public sphere
- To feel more confident in recognizing and applying negotiation concepts and skills
- To learn to apply meeting facilitation skills and learn practical methods in the art of facilitation
- To interact with guest panelists and practitioners
- To engage in a spirited dialogue with other class participants on these topics throughout the semester

Content & Organization

The course is in three parts, building from understanding concepts of competition and cooperation and the principles of mutual gains negotiation to more complex concepts, situations and exercises. It starts with two-party, single-issue negotiations and moves gradually to multi-party, multi-issue negotiations. Exercises focus attention on building specific concepts and skills, and readings, lectures, and class discussions will help us analyze and integrate these points, expand our understanding of their applicability in real-world situations, and develop confidence in their appropriate use.

Part One – Unassisted Negotiation We will introduce fundamental concepts of negotiation, identify selected topics in intra-group and inter-group dynamics, and explore the ethics of various negotiation tactics. Our principal conceptual framework will be the Mutual Gains approach developed by the Harvard Program on Negotiation and the Consensus Building Institute.

Part Two – Group Facilitation We believe that the capable use of facilitation processes and skills has become essential for effectively managing multi-party negotiation and collaborative planning situations, and for assisting groups to make fair and sustainable agreements. While we will use processes and tools from a variety of sources, we will especially refer to the Technology of Participation® developed by the Institute of Cultural Affairs.

Part Three – Assisted Negotiation We will engage the class in a series of complex, multi-party, multi-issue simulated negotiations, allowing students various opportunities to “get inside” various roles and to integrate concepts introduced in Parts One & Two. We will also hear from guests with experience in real-world negotiating, and with experience in facilitating and mediating such negotiations.

Instruction Methods

Exercises and Simulations— The course will primarily be taught through a series of exercises, simulations and demonstrations. It will be highly experiential. We will learn by engaging in the simulations, reflecting about the experience and discussing the negotiations afterward. A fair amount of your effort in this course will be to prepare for the simulations outside of class, especially as the semester progresses.

Lectures—Occasional lectures will provide an overview of major concepts.

Reading—Readings in electronic reserve will correspond to the major theme of each class. We expect you to complete the assigned readings before each class, although we may or may not explicitly discuss them in the upcoming class. Many of the readings are useful in helping you think about or prepare for upcoming negotiations.

Written Reflections—We will ask you to keep an electronic journal of your experience of the exercises, class discussion, and readings. The journal is intended to help you refine your understanding and develop your self-awareness of negotiation and your own role as a negotiator.

Written Products

We ask that you to turn in your journals at two points during the semester as scheduled in the syllabus. We will offer a set of reflective questions to guide your journal entries, though you may decide to offer additional remarks and insights. The entries should describe your experiences in the negotiation simulations, highlight the lessons learned from the session as well as the class discussions and offer your insights about the readings that accompany the classes.

Grades, Participation & Attendance

The heart of this course is the set of simulations and the class discussions about negotiation. Therefore, **attendance is required for every class**. Grades will be based on class participation and the brief written assignments described above. There will be no final examination, nor will there be a term paper.

Many of the simulations require the presence of a particular number of participants as well as prior reading and preparation. Unscheduled absences will cause logistical problems and undermine the experience of your classmates. If there are occasions when you cannot be in class, please contact one of us with as much advance notice as possible. If you cannot attend classes regularly, please contact us to determine whether it is appropriate for you to take the course.

Students will not be graded on their “amount” of participation or their “success” in the simulations. Just as in the real world, in the simulations there is a range of possible outcomes along with the unique opportunity to experiment with different roles and interests, as well as testing your style and approach to negotiation. We expect that students prepare for class, actively engage in the simulations, and offer ideas in class discussions thoughtfully, irrespective of how often they speak or how much they agree with other students or the instructors.

A special note about class attendance: Several of the concepts and exercises require more time than is available in a 2-hour time block once a week, so it is important that you devote time to doing the assigned reading and preparing outside of class – often in teams – for the up-coming simulations and negotiation sessions; and attend all of the in-class sessions.

Culture, Gender and Personal Style

Throughout the course, we will explore how the context surrounding disputes affects the theory, practice and analysis of negotiation. In particular, the culture, gender or personal styles of the parties may have a significant impact on the process and outcomes. In addition, the process and outcome of any dispute may be influenced by whether it is private or public, local or international, in a particular field of concern or knowledge, e.g., community planning, environmental, construction management, public policy, water law, etc., or whether its origins are recent or historic, or its parameters are general or specific.

Rather than focusing solely on these dynamics in one or two classes, we will consider them in discussions throughout the semester. Questions to ask in any dispute include, “How should the analytic framework we are developing be modified to incorporate the effects of culture, race,

class and gender?” “How would my approach differ as we move across different cultural contexts or shift the race, class or gender of the participants?”

Maintaining Honor: Cautionary Notes about Simulations

Simulations provide opportunities for you and your classmates to explore specific aspects of real-world dynamics. We are primarily interested in your faithful and creative participation in the exercises and in your active, thoughtful reflection with the class members. There are a number of ways to play them usefully, exploring approaches and comparing the range of results that other class members and teams may achieve.

That said, it is pretty easy to defeat the purpose of the simulations and exercises. You can exchange confidential instructions, or collude with your partner or “adversary” to otherwise break the rules. You can ask people who have taken similar classes in the past. You can look up published accounts of some of them. We urge you to not do any of these. You will only undermine your own learning experience and that of your classmates.

You will also have to determine how to play the roles in the exercises, that is, how to reflect the “real-life” nature of the exercises. By playing the roles in a straightforward way, most people find that they can find their own sense of style and values within assigned roles and have a sufficiently rich experience to have a number of insights. We advise that you not “overplay” or the “underplay” the role. You may want to explore alternative approaches in your own style and personal reactions as well as invent options to create solutions. This is great. However, inventing new information not included in the instructions or creating unrealistic technical or political “fixes” for the problem will likely confuse the other participants. It is best to be engaged, attentive, yet stay within the parameters of the exercise.

A word about emotions. While the exercises simplify real-world situations, they do intend to raise and isolate real-world dynamics, including conflict. (Many of them are taken from actual case studies.) As such, by preparing for them well and playing them in a straightforward manner, you may experience strong emotions, generated by your opinion of the merit of your own situation or approach, or your criticism of another’s situation or approach. Occasionally, it is tempting to infer that others in the class are honorable or dishonorable from the way they play an exercise. We urge you to resist this temptation. It is important to remember that a) everyone is exploring a range of roles and approaches (we are all learning), and b) we all have the obligation to engage thoughtfully in debriefing the exercises (we all are helping each other learn).

Contact Information

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Course Schedule and Syllabus

Jan 19

Approaches to Negotiation and Conflict Resolution

Introduction and Course Overview

Course Requirements

Writing Assignments – case analysis, reflective writing and keeping a journal

Discussion of Course Terrain:

Continuum of Control

Public Disputes and Collaborative Decision-making

- New York Times Series on Arbitration: 11/03/15 – 12/23/15

Exercise #1: Negotiation Styles Inventory

Jan 26

Single Party-Single Issue Negotiation

Negotiating and Distributive Bargaining

- Fisher, Roger and William Ury, *Getting to Yes*, Chapter 2
- McCarthy, William, “The Role of Power and Principle in Getting to YES,” in *Negotiation Theory and Practice*, ed. by J. William Breslin and Jeffrey Z. Rubin, 1995. pp 115 – 122.
- Fisher, Roger, “Beyond Yes,” *Negotiation Theory and Practice*. pp 123-126.
- Special Report, Harvard Program on Negotiation, “5 Common Negotiating Mistakes and How You Can Avoid Them,” 2009.

Exercise #2: Win as Much as You Can

Debrief and Discussion: Competition and Cooperation

Exercise #3: Appleton and Baker

Debrief and Discussion:

The Conventional Wisdom about Negotiation

Challenges and Pressures of Distributive Bargaining

Presentation/Discussion: Integrative Bargaining and the Mutual Gains Approach

Negotiation and Mutual Gains Approach: Getting to Yes; Win-Win; Principled Negotiation

Feb 2

Exercise #4: Tell Your Story

Debrief: Developing empathy; building trust and developing working relationships

- <http://on.ted.com/Cuddy>

- Raffia, Howard, “Advice for Negotiators,” *The Art and Science of Negotiation*, 1982, pp. 119-133.

Feb 9

Exercise #5: Sally Swan Song

Debrief: The role and power of integrative bargaining

PON Reports: BATNA – Boost your Power at the Bargaining Table, Harvard Program on Negotiation 2015.

Hand out Power Screen General Instructions and Assign Roles and create teams

Review Case and Form Negotiating Teams

Video: Case Introduction

Carry out negotiations outside of class

Feb 16

Single Party/Multi Issue Negotiation

Using The Logic of Principled Negotiation

The Value of Preparation in Getting to the Table

- Fisher, Roger and Danny Ertel, “Getting Ready to Negotiate,” *The Getting to Yes Workbook*, 1995. Chapters 3, 4 and 5, pp. 21 – 52. **
- Goldberg, Stephen B., Eric D. Green, and Frank E. A. Sander, “Saying You’re Sorry,” *Negotiation Theory and Practice*.
- *PON Reports: Dealing with Difficult People*, Harvard Program on Negotiation 2015.

Exercise #6: The Power Screen Problem

Report outcomes or negotiations and debrief exercise

Video and discussion – Roger Fischer, Harvard Program on Negotiation

Feb 23

Building Facilitation Skills

Dynamics of Structuring and Managing Meetings Well

- *PON Special Report: Meeting Facilitation Skills*, Harvard Program on Negotiation 2015.
- Fisher, Roger, “Negotiating Power: Getting and Using Influence,” *Negotiation Theory and Practice*.
- Nyerges, Janos, “Ten Commandments for a Negotiator,” *Negotiation Theory and Practice*.
- Bush, Robert A., and Joseph Folger, *The Promise of Mediation: the Transformative Approach to Conflict*, Jossey Bass, 2007. Introduction and Chapter 1. Pp. 1 – 39.

Collect Journals

Mar 1

Participation and Collaborative Planning Facilitation Skills and Techniques

- Resources in LEARN – Becoming a Skilled Facilitator
- Ellinor, Linda and Glenna Gerard, *Dialogue: Rediscover the Transforming Power of Conversation*, Wiley and Sons, 1998, pp.19-27, 98-127.
- Kaner, Sam, *The Facilitator's Guide to Participatory Decision-Making*, 2007.
- Susskind and Cruickshank, *Breaking the Impasse*, Chapters 6.

Exercise #8: Conversation Method: Learning methods of inquiry

Discussion: ORID and Guides for Structuring Dialogues

In-class: The Scramble Exercise

Exercise #9: Facilitation & Recording Techniques

- Schwartz, Roger, *The Skilled Facilitator* (2002, 2005)
- Bens, Ingrid, *Facilitating with Ease* (2005)
- Handouts: Facilitation – Methods and techniques

Mar 8

Facilitating and Managing in Complex Situations

Managing group dynamics and learning to frame and reframe positions, problems and issues

- PON Reports: *Leadership Skills*, Harvard Program on Negotiation, 2015.
- Mayer, Bernard S., *Beyond Neutrality: Confronting Crisis in Conflict Resolution*, Chapter 4, "Ten Beliefs That Get in Our Way," pp 115 – 148.
- Innes, Judith E., and David Booher, Reframing Public Participation Strategies for the 21st Century, *Planning Theory and Practice*, Vol. 5, No 4, 419-436, December 2004

Mar 14 – 18 SPRING BREAK

Mar 22

Exercise #10: Neighborhood Care

Facilitating and Mediating a neighborhood facility siting dispute

- PON Reports: Overcoming Cultural Barriers in Negotiation, Harvard Program on Negotiation, 2015

Mar 29

Assisted Negotiations

The Role of a third party in assisting and mediating negotiations

- Elliott, Michael L. Poirier, “The Role of Facilitators, Mediators, and Other Consensus Building Practitioners,” *The Consensus Building Handbook*, 1999.

Exercise #11: East Danburg

Introduce Inside/Outside negotiations and Mediator Responsibilities

Create Volunteer Facilitation teams – Create Small Groups

Report Outcomes - debrief

Discussion – Facilitating negotiations; identifying interests; and assessing the power of coalitions

Apr 5

Assessing the Prospect for Environmental and Regulatory Negotiations

Designing process for assisted and mediated negotiations

- Susskind, Lawrence and Jennifer Thomas-Larmer, “Conducting a Conflict Assessment,” *The Consensus Building Handbook*.
- Ehrmann, John R. and Barbara L. Stinson, “Joint Fact-Finding and the Use of Technical Experts,” *The Consensus Building Handbook*.

Exercise #12: Rocky Mountain Spotted Trout

Same roles meet to prepare negotiation strategies and approaches

Engage in Menhune Bay negotiations

Collect Journals

Apr 12

Practicing Mediation and Facilitation

Guest Panel: TBA

Handout: Menhune Bay Generals Instructions

Review Case, Assign Roles and Create Negotiating Teams

Apr 19

Managing Negotiations and Coalitions

Responsibilities and opportunities for mediators and facilitators

Exercise #13: Menhune Bay

Questions about facilitation and mediation dynamics and dilemmas

Facilitating complex negotiations; Incorporating key interests; and responding to external pressures. Reflections on responsibilities of mediators and facilitators.

- Excerpts from *Difficult Conversations, Fierce Conversations, Extreme Facilitation*.
- PON Reports: Negotiation Strategies, Harvard Program on Negotiation, 2015.

Apr 26 Managing Negotiations and Coalitions
Debrief of the Menehune Bay Exercise

May 3 The Practice of Collaborative Problem Solving and Mediating Community Disputes
Reflecting on your negotiating style and facilitation skills

- Richardson, Ric, “Creativity in the Face of Urban Design Conflict, In Forrester, John, *Planning in the Face of Conflict* APA Press, 2015.
- Susskind, Lawrence, “An Alternative to Robert’s Rules of Order for Groups, Organizations, and Ad Hoc Assemblies that Want to Operate by Consensus,” *The Consensus Building Handbook*,
- Dukes, Franklin, Integration of Theory, Research and Practice in Environmental Conflict Resolution, *Conflict Resolution Quarterly*, Vol. 19, No 1, Fall 2001, pp. 103 – 115.

Course Evaluation and Wrap-up
Reviewing the course modules and concepts
Reflecting on your experience
Discussing course outcomes