

PETER A. ALLARD SCHOOL OF LAW

Syllabus

LAW 481D.001

Topics in Litigation, Dispute Resolution & Administration of Justice:
Intercultural Dispute Resolution

Winter 2021

Professor Michelle LeBaron

Office Hours: by appointment

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Course summary: This seminar-style course provides an interdisciplinary foundation in the intercultural dynamics of conflict resolution theory and practice. We will explore diverse systems of thought and worldview differences as they relate to conflict analysis and resolution. Drawing from a range of case study examples, participants will examine how conflicts are constructed and engaged across cultural contexts. The roles of memory and truth-telling will be considered as they relate to reconciliation of complex issues. Creativity as a core competency in intercultural conflict resolution will be explored, and fairness in conflict engagement will be examined through a range of process choices.

The course will be taught with a spirit of inquiry, engaging these paradoxes outlined by Parker Palmer:

We invite diversity into our community not because it is politically correct but because diverse viewpoints are demanded by the manifold mysteries of great things.

We embrace ambiguity not because we are confused or indecisive but because we understand the inadequacy of our concepts to embrace the vastness of great things.

We welcome creative conflict not because we are angry or hostile but because conflict is required to correct our biases and prejudices about the nature of great things.

When Parker refers to “great things” he means, among other things, “the archetypes of betrayal and forgiveness...that are the stuff of literature....and the elusive idea of justice under law.”*

Course schedule: The course will be held on Wednesday afternoons from 2-5pm via Zoom.

Join Zoom Meeting

<https://ubc.zoom.us/j/65921537190?pwd=ZkNsaUplcU5aaXZ2VmxmbU5Kd05OZz09>

Meeting ID: 659 2153 7190

Passcode: 325870

* Palmer, Parker. 1998. *The Courage to Teach*. San Francisco: Jossey Bass, pp. 107-108.

Course learning objectives:

Drawing on current interdisciplinary literature and case examples from scholarly and personal/professional sources, participants will:

- explore intrapersonal, interpersonal and intergroup dynamics of intercultural disputes;
- learn about a range of processes to address deep-rooted intercultural conflict;
- examine and critique cultural dimensions of conventional dispute resolution processes including in-person and online mediation;
- analyze implicit meanings and cultural values of diverse dispute resolution processes across a range of sectors and settings, including private and public sector organizations and communities;
- identify ways that cognitive neuroscience and systems theory inform conflict analysis and implications for dispute process design;
- experience imaginative and creative tools for engaging and transforming cultural disputes;
- experiment with somatic, arts-based methodologies including applications and limitations in intercultural dispute intervention; and
- apply cultural fluency in a range of case types and practice settings through small-group discussion and practice inside and outside the classroom.

Successful completion of the course will expand participants' abilities for culturally-fluent analysis, intervention and follow-up as third parties, participants or advocates in negotiation and dispute resolution processes. Participants will learn valuable skills of integrative thinking and creativity through experiential exercises and the final paper. Participants will also learn about neuroscientific and systemic principles in relation to conflict intervention.

****This seminar fulfills the experiential learning requirement.**

CLASS ATTENDANCE AND PARTICIPATION

Regular class attendance and advance reading of materials is expected of all students. The course will be taught through a combination of lectures, experiential activities and discussions that will be meaningful in direct proportion to your degree of preparation and engagement. Absence from more than three classes without excuse will disqualify you from submitting the final assignment.

Notes on class process: This seminar requires and depends on participation from every one. Attending class prepared means completing readings, composing questions arising from the readings and engaging with others in activities and discussions. As in the practice of law or other law-related careers, participants have responsibility as members

of this learning community to do advance work, show leadership and engage with others in constructive and collaborative ways.

This course combines intercultural theory, law, and skills. Experiential exercises and simulations will give you opportunities to identify and respond to cultural differences both manifest and implicit. I encourage you to experiment with strategies and techniques, and to practice self-observation as you learn more about your cognitive, analytic and relational habits in disputes. You and your classmates will derive the most benefit from experiential exercises and simulations if you prepare for them and inhabit your role genuinely, but without overplaying it. This class is an opportunity to ask questions of faculty and each other, and to take risks and try new approaches, remembering that cultural fluency is deepened over time. Please bring a spirit of curiosity and caring to feedback you receive or give to others; learning is not a linear process, and each of us have areas where our sensitivity is well-honed and other areas that are learning edges.

An essential aspect of effective intercultural dispute resolution is preparation, but, surprisingly, many lawyer-negotiators devote little or no time to this crucial aspect. When preparing for a simulation or experiential exercise, interrupt any stereotypes or assumptions that could lead you in unproductive directions. Consider your and others' interests, values, communication starting points and ideas of what is public and what should be kept private. Plan your strategy and approach before class when possible, yet be open to shifting plans in the light of new information.

Unless instructed otherwise, your simulation preparations should be completed individually. All confidential information is to be kept confidential. To preserve the quality and confidentiality of simulations from year to year, please do not discuss your simulations or experiential exercises with students outside of this course. Your honesty, integrity, and ethical conduct in this regard will affect your reputation with your peers and faculty. If you have any questions about the confidentiality of any facts, please ask us.

We will engage in a mid-term evaluation to check in on our progress as a learning community. Participants are encouraged to give feedback or make suggestions about the course process at any time.

Policies: Course assignments must be completed and handed in by the specified time on the date due unless otherwise specified. Students are referred to university rules governing [honesty and academic conduct](#). This course will be graded according to standard Faculty of Law [grading rules and practices](#). Academic honesty is governed by the policy found [here](#).

Netequite guidelines for communication and participation:

- Please remember to practice respect and inclusivity, both in large or small

group discussions and in chat.

- Please do not post or share (even privately) inappropriate material
- Once our Zoom session starts, please use the chat function for material related to the class only.
- Please login to the session on time. Because the class will be taught primarily in a synchronous mode, you are expected to arrive on time. Being on time not only contributes to functionality of our class; it communicates respect to your fellow students and to me, and enhances our learning experiences.

Please mute your microphone when you are not speaking, and have your camera on by default unless you have an accommodation relating to these norms. Being present visibly encourages interaction and will enhance our cohort experience.

EVALUATION

Evaluation is based on:

Site visit reflection paper (4-6 pages) 15%

Short paper on a Giller-nominated novel (4-6 pages) 15% and class presentation 10%

Research paper (21-24 pages) 60%

A **site visit reflection** paper is required, and involves going to a site related to conflict, culture and memory. Spend some time at the site, gather information, sit in or near it and consider what the site is meant to communicate. What does it convey about power, relationships, change? Whose stories does it tell? Whose stories are missing? How does the site relate to memory? How does visiting the site affect you? How does the site relate to reconciliation or conflict transformation? What are the aesthetics of the site, and how do these speak to commemoration? How much meaning does the commemoration in the site have across generations? How does it relate to identity, in particular in-groups or out-groups? How does the site relate to the identity of groups you are a part of? Include reflections on these and other pertinent questions in your reflection. Possible sites include: war memorials, museums (including the UBC Museum of Anthropology), the Dr. Sun Yat Sen Classical Chinese Garden, the Japanese Canadian National Museum (Burnaby), or other sites related to the intersecting themes.

Approximate length: 4-6 pages

Site visit reflection due date: 24 February 2021, 2:00pm

A **short written reflection** (4-6 pages) **on a novel** is required. This reflection will relate to your reading of one of the 2020 Giller prize-nominated books, and may address some or all of the following:

- How does the author, in the personas of their characters, view conflict?
- What messages does the book convey about intercultural negotiation – is it easy, hard, impossible, necessary, arduous?
- Which aspects of our class readings or activities might have been helpful to characters in the book? Why?
- Would you recommend this book as a teaching tool for learning about intercultural conflict? Why or why not?

Short written reflection on a novel due date: 3 March 2021

Short presentations on these papers will take place in class during March 2021.

A **research paper** in a scholarly style should be done on a topic related to one of the course themes. Class participants are welcome to discuss potential topics with me, but need not get my approval of paper topics.

Research paper due date: 26 March 2021, 5pm

Criteria for grading research paper:

communication including clear writing, good organization, appropriate structure and consistent, appropriate use of a scholarly citation style; **description** including perceiving manifest and implicit negotiation and disputing dynamics; **analysis** including demonstrating a good grasp of depth, complexity and nuances of negotiations and disputes and their cultural aspects; **originality** including thoughtfulness in synthesizing course materials and applying them in creative ways to specific contexts or disputes; **negotiation and dispute intervention** including demonstrated awareness of a variety of dispute-engagement approaches and strategies. Feel free to write in the first person, and do embed practical examples or experiences in your writing.

COURSE MATERIALS

REQUIRED READING:

The following texts are required and are available from online booksellers:

Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 1 and 2*. NOTE: This text is available via a web edition for US\$30.00 at www.ndrweb.com<<http://www.ndrweb.com>>

Napoleon, Val and Jim Henshaw. *Mikomosis and Wetiko*. University of Victoria Indigenous Law Research Clinic 2013.

One of the 2020 Giller prize nominated books. See list at <https://scotiabankgillerprize.ca/2020-finalists/>

Other articles as assigned.

Recommended reading:

<http://www.beyondintractability.org/> This database has a wide range of articles and is an excellent free resource for additional reading on a wide range of topics relevant to disputing and culture.

Borrows, John. 2010. *Drawing out Law*. Toronto: University of Toronto Press.

Chase, Oscar. G. 2005. *Law, Culture and Ritual. Disputing Systems in Cross-Cultural Contexts*. New York: New York University Press.

Clark, Mary E. 2002. *In Search of Human Nature*. London, UK: Routledge.

Davidheiser, Mark. "Mediation and Multiculturalism: Domestic and International Challenges." *Beyond Intractability*. <http://www.beyondintractability.org/essay/conflicts-disputes>

Folberg, Jay, Dwight Golann, Thomas J. Stipanowich, Lisa A. Kloppenberg. 2016. *Resolving Disputes: Theory, Practice and Law*, 3rd ed. New York: Wolters Kluwer.

Francis, Diana. 2002. *People, Peace and Power: Conflict Transformation in Action*. London: Pluto Press.

Hopkins, Margaret M. and Robert D. Yonker. 2015. "Managing Conflict with Emotional Intelligence: Abilities that Make a Difference", *Journal of Management Development*, 34(2), pp 226-244.
<https://doi.org/10.1108/JMD-04-2013-0051>

Honeyman, Chris and Andrea Kupfer Schneider. 2018. *The Negotiator's Desk Reference*. St. Paul: DRI Press.

LeBaron, Michelle and Venashri Pillay 2006. *Conflict Across Cultures Boston*: Nicolas Brealey.

Lederach, John Paul. 2005. *The Moral Imagination*. London: Oxford University Press.

Mayer, Bernard. 2015. *The Conflict Paradox: Seven Dilemmas at the Core of Disputes*. San Francisco: Jossey Bass.

Moore, Christopher and Peter Woodrow. 2010. *Handbook of Global and Multicultural Negotiation*. San Francisco, CA: Jossey Bass.

O'Faircheallaigh, Ciaran. 2015. *Negotiations in the Indigenous World. Aboriginal Peoples and the Abstractive Industries*. New York: Routledge.

Regan, Paulette. 2010. *Unsettling the Settler Within: Residential Schools, Truth Telling and Reconciliation*. Vancouver, BC: University of British Columbia Press.

CLASS SCHEDULE

[Note: Materials in Canvas marked with *]

January 6

Themes Introduction to course, readings, participants, expectations
Dynamics of negotiating and disputing
A three-part framework for analyzing disputes and negotiation

Reading From Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 1* St. Paul: DRI Press:

- Honeyman, C. and Andrea Schneider *Introduction* pp. 1-12
- Peppet, Scott and Michael Moffitt *Learning How to Learn to Negotiate* pp. 13-32

Activities Examining metaphors for conflict; Defining and designing dispute and negotiation processes.
Negotiating worldviews

January 13

Themes Negotiation theories and styles
Integrative and distributive bargaining

Reading From Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 1* St. Paul: DRI Press:

- Adler, Peter *The Protean Negotiator* pp. 103–113
- Batra, Rishi *Integrative and Distributive Bargaining* pp. 33–42
- Craver, Charles *Distributive Negotiation Techniques* pp. 75-91

Activities Exploring variations in style and related strategies; Prisoner's dilemmas and other games; Simulations; Choosing a novel.
Pasta Wars negotiation*

January 20

Themes Negotiating strategies and techniques
Nonverbal aspects of negotiation; The Social Brain

Reading From Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 1* St. Paul: DRI Press:

- Thompson, Jeff, Noam Ebner and Jeff Giddings *Non-Verbal Communication in Negotiation* pp. 449-69
- Schneider, Andrea K. and Noam Ebner *Social Intuition* pp 127-142
- Deutsch, Morton. *Internal Conflict and its Consequences* pp 173-186

One article from www.beyondintractability.org, participant's choice. Please bring a copy of your chosen article to class or be prepared to access an electronic link.

Activities Exploring nonverbal aspects of negotiation in practice; Novel progress. **Sally Soprano II negotiation** – report on results on Jan 27*

January 27

Themes **Conflict Analysis: Deep-rooted conflict and intractability: Understanding multi-layered conflicts; Memory and conflict**

Reading Regan, Paulette. 2018. "Reconciliation and Resurgence: Reflections on the TRC Final Report". In *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings*. Michael Asch, John Borrows, and James Tully, eds. (Toronto: University of Toronto Press, 2018), 209-227.*

Hamber, Brandon and Richard A. Wilson. 2002. *Symbolic Closure Through Memory: Reparation and Revenge in Post-Conflict Societies*. https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1004&context=hri_papers

Lundy, Patricia and Mark McGovern. "Community-Based Approaches to Post-Conflict 'Truth-telling': Strengths and Limitations". In *Shared Space: A Research Journal on Peace, Conflict and Community: Relations in Northern Ireland*. Document available online at: <https://www.community-relations.org.uk/sites/crc/files/media-files/community%20based%20conflict%20to%20approaches%20to%20post%20conflict%20truth%20telling.pdf>

Activities Understanding deep-rooted conflict; in worldview conflicts; How memory and commemoration function in intractable conflicts. Assigning presentation weeks for novel reflections. Summarizing research paper assignment and assessment criteria.

Sally Soprano II debrief

February 3

Themes **Conflict Analysis (continued)**

Reading From C. Honeyman, J. Coben and G. de Palo (eds.) *Rethinking Negotiation Teaching: Innovations for Context and Culture*:

- Fox, Kenneth H. 2009. "Negotiation as a Post-Modern Process".
Link at http://digitalcommons.hamline.edu/dri_press/2/

From Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 1* St. Paul: DRI Press:

- Zartman, William *Processes and Stages* pp 645-652

Menkel-Meadow, Carrie. 2013. "Toward a Jurisprudence of Law, Peace, Justice, and a Tilt Toward Non-Violent and Empathic Means of Human Problem Solving." Georgetown University Law Center. Electronic copy available at <http://scholarship.law.georgetown.edu/facpub/1286/>

Activities Exploring and applying frameworks for analyzing disputes; How negotiating fits into legal and policy problem-solving; Reflections on novels.

February 10

Themes **Power dynamics in negotiation and dispute engagement**

Reading From Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 1* St. Paul: DRI Press:

- Guthrie, Chris. *Getting Your Way* pp. 331-338
- Schneider, Andrea *Productive Ambition* pp. 321-330
- Tinsley, Catherine, Jack J. Cambria & Andrea Schneider *Reputation in Negotiation*, pp. 249-64

Brigg, Morgan. 2003. "Mediation, Power and Cultural Difference" In *Conflict Resolution Quarterly*, vol. 20, no. 3.*

Activities Exploring power dynamics in negotiation; Simulations and experiential explorations; Reflections on novels.

AuraCall preparation, negotiation*

February 24

Themes Trust in negotiation and dispute engagement; Apology

Reading From Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 1* St. Paul: DRI Press:

- Lewicki, Roy *Trust and Distrust*, pp. 201-16
- Kolb, Deborah and Jessica Porter *Power at Play in Negotiation: Moves and Turns*, pp. 365-378
- Abramowitz, Ava J. *What Negotiators Can learn from Modern Sales Theory* pp. 421-34
- Brown, Jennifer & Jennifer Robbennolt *Apology in Negotiation*, pp. 265-278.

Activities When trust is absent or diminished, what happens? How to craft an effective apology; Reflections on novels.

AuraCall debrief*

March 3

Themes Cultural fluency in negotiation and dispute engagement

Reading Ting Toomey, Stella. 2014. "Managing Identity Issues in Intercultural Conflict Communication: Developing a Multicultural Identity Attunement Lens." In V. Benet-Martinez & Y.-Y. Hong (Eds.), *The Oxford Handbook of Multicultural Identity: Basic and Applied Psychological Perspectives* (pp. 485-506). New York: Oxford University Press.

https://www.researchgate.net/profile/Stella_Ting-Toomey/publication/303839844_Multicultural_Identity_Attunement_Lens/links/575773fb08ae05c1ec16d3e3.pdf

Gelfand, Michelle. 2006. *Culture and Negotiation* White Paper.*

Nudler, Oscar. "From Controversies to Conflicts between Worlds" In A. Jiménez (ed), *Normativity and Praxis. Remarks on Controversies*, Mimesis International, 2015. *

Relational Conflict Management PowerPoint*

Racism and Discrimination PowerPoint*

Cultural matrices*:

- Hofstede, Geert. 1980. *Consequences of Cultures*;
- Hampden-Turner, Charles and Fons Trompenaars. 2000. From *Building Cross Cultural Competence*;
- LeBaron, Michelle. 2021. *Cultural Fluency in Conflict Resolution Processes*.

Activities Cultural autobiography; Applying cultural matrices; Cultural simulations; Experiential explorations and case studies; Reflections on novels.

Alphaville simulation and debrief

March 10

Themes Creativity in Dispute Engagement

Reading Arai, Tatsushi. *Art, Creativity and Conflict Transformation: A Practitioners' Field Note*. <https://www.juniata.edu/offices/juniata-voices/past-version/media/arai-art-creativity.pdf>

Gruber, Howard E., "Creativity and Conflict Resolution: The Role of Point of View" In M. Deutsch & P. T. Coleman (Eds.), *The Handbook of Conflict Resolution: Theory and Practice* (pp. 345-354). San Francisco, CA, US: Jossey-Bass. Available at [UBC Library](#) online.

Activities Examining creativity in law, policy and negotiation: What fosters unconventional viability? What are the relationships between resilience and creativity? Reflections on novels.

Abraham Path preparation and negotiation*

March 17

Themes Cultural fluency in Indigenous-Settler Relations; Gender and Negotiation

Reading Napoleon, Val and Jim Henshaw. *Mikomosis and Wetiko*. University of Victoria: Indigenous Law Research Clinic, 2013.

Gender PowerPoint*

Activities Applying cultural fluency to contemporary contexts. Reflections on novels.

***Abraham Path* negotiation continued**

March 24

Themes **Multi-party and representative negotiation**

Reading From Honeyman, C. and Andrea Schneider, eds. 2017. *The Negotiator's Desk Reference, Vol. 2* St. Paul: DRI Press:

- Kaufman, Sanda, Connie Ozawa and Deborah Shmueli *Multiparty Negotiations in the Public Sphere* pp 413-430.

Farrow, Trevor. *Representative Negotiation*. Osgoode Digital Commons, 2008.

http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1084&context=scholarly_works

Activities Multiparty and representative simulations; Reflections on novels.
***Abraham Path* negotiation and debrief**

March 31

Themes **Systems Thinking in Conflict and Negotiation**

Reading Diamond, Louise. 2009. *Twelve Simple Rules of Thinking for Complex Global Issues*. *

LeBaron, Michelle and Mario Patera. 2009. "Reflective Practice in the New Millennium". In C. Honeyman, J. Coben and G. de Palo (eds.) *Rethinking Negotiation Teaching: Innovations for Context and Culture*.

[Link at http://digitalcommons.hamline.edu/dri_press/2/](http://digitalcommons.hamline.edu/dri_press/2/)

Watch *The Virtual Abraham Path*

<https://www.youtube.com/watch?v=33teouizmDc>

Activities Applying systems thinking to conflict and negotiation examples;
Reflections on novels.

April 7

Themes **Reflective Practice and Systems Thinking**

Activities Synthesis and reflections on learning.