



1-1-1994

Books Received

Santa Clara Law Review

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Santa Clara Law Review, Other, *Books Received*, 34 SANTA CLARA L. REV. 1099 (1994).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol34/iss3/8>

This Other is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

BOOKS RECEIVED

Beyond Machiavelli: Tools for Coping With Conflict. By Roger Fisher, Elizabeth Kopelman and Andrea Kupfer Schneider. Cambridge, Massachusetts: Harvard University Press. 1994. Pp. 151. Hardcover. \$16.95.

The area of negotiation is a popular subject for "how-to" books. There are a wide range of materials available to the interested reader, ranging from self-help manuals to motivational videos that aim at teaching people how to get what they want out of any confrontational situation. The proclaimed leader of this field is Roger Fisher, whose international bestseller, *Getting to Yes: Negotiating Agreement Without Giving In*, was widely acclaimed for its practical advice on handling disputes. Fisher's latest venture into the negotiating area is titled *Beyond Machiavelli: Tools for Coping With Conflict*. Together with co-authors Elizabeth Kopelman and Andrea Kupfer Schneider, Fisher this time applies his negotiating skills to the international phenomenon of conflict resolution. While the book has a wider focus than Fisher's past work, it is still a source of ideas from which anyone can draw—whether the person is a diplomat or a private citizen.

Beyond Machiavelli arises from the authors' concerns over the current state of the world. In their opinion, many of the conflicts flooding the daily headlines are the result of poor decision-making. The authors use their book to address how these conflicts ought to be handled, and what practical skills are needed to bring those theories to the real world. The book stresses a systematic approach toward handling conflicts, and it is meant to act as a manual that can be consulted each time the reader addresses a dispute involving negotiation. The advice and tactics that the authors offer are illustrated through application to real international situations, both past and present. Such events as the Bay of Pigs and the Persian Gulf War are used to demonstrate how the authors' systematic approach, if it had been implemented in those events, would have reached positive results.

Inherent in *Beyond Machiavelli* is a philosophy of negotiation that stresses the "big picture" of conflict resolution. The authors state that in approaching a conflict, a positive philosophy is needed, one where the negotiator "looks forward with a purpose." Essential to this philosophy is the need to approach a conflict concentrating on a process for handling a flow of particular problems, rather than inflexibly focusing on solving the conflict once and for all. The authors are interested in the "power of process," realizing that truly complicated conflicts rarely are completely solved. While this process must be systematic, the authors also stress that some level of creativity is needed in generating fresh ideas for conflicts that are deadlocked.

The bulk of the approach the authors present focuses on what occurs before the negotiators reach the table. The book makes it clear that preparation is the key to making progress in complicated conflicts. One of the first steps anyone should take is to succinctly formulate the exact nature of the problem and the objectives one wishes to reach through resolution of the problem. Framing a problem in a skillful way is often the key to managing it. Further, the negotiator must clarify from the start what she wishes to achieve. What is the purpose of this process? It is unlikely that people will end up where they want to be, the authors warn, unless they think about where that is and direct their actions toward that goal.

An essential preparation tactic for the authors is a type of role-playing where the negotiator steps into the shoes of the other party. The negotiator should understand how the other players see things, because therein lies both the problem and any possible solutions. Through coming to know what interests, goals, and fears the other party possesses, one obtains a better appreciation and view of a mind one hopes to persuade. To consider the other side's choices, the authors suggest creating charts that list the perceptions of the problems that both parties have. Through such charts, the differing priorities of each side can be contrasted, while simultaneously pointing out the areas of agreement that may exist. Such preparation allows the negotiator to identify the areas of the conflict that can move forward, and the areas that demand more attention.

An especially helpful facet of the book is the inclusion of charts that the authors feel are helpful in preparing for any

negotiation or conflict-resolution session. Based mostly on common sense, the charts are extremely practical for any problematic situation facing an attorney. The charts, like the book itself, are not aimed at producing concrete solutions to a given conflict, but rather at framing better questions. The authors are quick to point out that *Beyond Machiavelli* is not a book of solutions, but a book directed toward formulating questions that will result in coping more skillfully with a flow of conflicting interests.

Although the book concentrates on international relations, the authors stress that the analytical approach it advances is applicable to any situation involving parties with conflicting interests. While much of the book is common sense, it fulfills a need because it succinctly lays out thoughts that most of us consider, yet often fail to implement, when negotiating or facing a conflict. *Beyond Machiavelli: Tools for Coping With Conflict* is especially valuable for use in the legal field, which by its nature involves addressing conflicts on a regular basis. Attorneys will find the strategies advanced by Fisher and his co-authors to be a helpful guide for preparing for negotiations, whether they are on an international level or not.

The Wrongs of Tort. By Joanne Conaghan and Wade Mansell. London: Pluto Press. 1993. Pp. 180. Hardcover.

As an area of study, tort law presents itself as a basically apolitical and ageless body of principles. The study of tort law involves the use of conventional texts that focus on black-letter law and how that law is implemented in case analysis, without any focus being given to where those principles come from and the ideology they seek to advance. *The Wrongs of Tort*, by Joanne Conaghan and Wade Mansell, offers a critical perspective of how tort law is presented to both the student and the practicing attorney, with the goal of demonstrating that tort law, although it appears to be coherent and apolitical, is not. Comprised of eight chapters, the book essentially examines the traditional way in which students approach tort law, focusing mainly on the area of negligence.

The most interesting issue that the authors address is the approach students employ in learning tort law. The authors indicate that students do not sufficiently question the

principles they learn, but rather ingest them as the truth without hesitation. The common conventional text presents tort law as rule-based and free from ideology. Deprived of any information as to where these fundamental rules came from and what policies they were created to advance, students view torts as largely common sense. This tendency to take the common sense of tort law for granted, the authors state, impedes the development of a reflective and critical approach to the subject.

Inherent in a critical and reflective approach to learning tort law is a consideration of the history behind the field. The authors point out that leading textbooks make little or no reference to the historical origins of the legal doctrines. This absence of historical perspective tends to reinforce the view that law consists of a series of universally accepted and uncontroversial principles of common sense. Law and its principles are presented as timeless and ageless. Students are therefore deprived of any concept that the principles may actually be finite ones that are either outdated or modifiable to suit present policies or concerns. The authors point out that lack of historical perspective leads the student to view law as static, rather than dynamic. The authors point out that the approach to case law subsequently becomes mechanical, and in the end technicians, rather than advocates, are bred.

The authors also discuss the "politics of tort law," refuting the approach of conventional texts that proceed on the basis that tort law consists of an apolitical body of principles. The authors argue that since the conventional texts do not address the politics, students are led to believe that no politics exist behind tort law. The authors stress, however, that even though the texts do not address them, the politics are there. The foundation of tort law reflects a particular ideological and philosophical perspective that the authors view as highly controversial. The authors stress that the critical student must arm herself with a skepticism of what passes as true knowledge in the conventional texts she reads and in the lectures she hears. A critical student, the authors state, realizes that law is intimately connected with politics and history and refuses to allow the text to invalidate her understanding of the ideological and political issues she feels are important.

The authors are quick to point out that their book has an agenda, part of which is to promote a different ideological

foundation than the one that exists now. The authors state that the ideology that underlies tort law, which is essentially the principle of individual, as opposed to societal, responsibility for the misfortune of others, is reprehensible. For the authors, tort law should be based on the premise that society should assume considerable responsibility for the misfortune of its citizens. In seeking this ideal, the authors stress that political and legal energy should be redirected toward the consideration and possible construction of alternative loss distribution mechanisms based on the acceptance of social responsibility for individual misfortune.

The Wrongs of Tort takes a radical approach to tort law. The ideologies and changes Conaghan and Mansell advocate seek to reformulate much of what tort law presently is. The reader will either agree or disagree completely with the agenda the book advances. However, the value of *The Wrongs of Tort* lies beyond ideological and political agendas. The book's value lies in its insight into how students approach tort law and in the guidance it offers those who wish to gain a more critical and reflective perspective of tort law and law in general.

