

CURRENT LITERATURE IN ADR

By Sherman D. Fogel

In 1981 Roger Fisher and William Ury, of the Harvard Negotiation Project, wrote *Getting to YES: Negotiating Agreement Without Giving In*, a book which many consider to be the seminal work in modern dispute resolution. In *Getting to YES*, Fisher and Ury advocated an approach they called “principled negotiation,” in which the negotiators would focus on their real interests rather than their stated positions, and seek multiple options for mutual gain based on objective criteria. While this new method of interest based negotiation was highly rational and directed toward finding reasoned solutions to problems based upon merits, Fisher and Ury recognized the strong emotional component of human conflict and the necessity for untangling those emotions from the objective merits.

Getting to YES devoted one chapter to the emotional aspect of conflict resolution, which Fisher and Ury entitled “Separating the People from the Problem.” Twenty-five years later Fisher, this time in collaboration with Daniel L. Shapiro, also of the Harvard Negotiation Project, has given us *Beyond Reason*, a book devoted entirely to the role of emotion in dispute resolution.

People often underestimate the role emotions play in conflict resolution. For lawyers it almost seems to be an occupational hazard. Having been rigorously trained in the art of legal reasoning, we tend to ignore entirely, or dismiss as unimportant, not only the emotions of our clients, the adverse parties and our counterparts sitting across the bargaining table, but even our own. Fisher and Shapiro begin *Beyond Reason* by acknowledging that we all have emotions all of the time. Those emotions can be positive or negative, each having its own particular impact on the dispute resolution process. They can be distracting and diverting, affecting the quality of a resolution reached, or even the ability to obtain an agreement at all. But, as Fisher and Shapiro observe, one thing is certain, no matter how hard you might try to ignore them, the emotions won't go away.

In *Beyond Reason* Fisher and Shapiro offer what they call “a strategy to generate positive emotions and to deal with negative ones.” At the outset, they recognize that for a negotiator in the heat of the moment to observe, correctly identify, ascertain the real cause of, and develop an appropriate response to any one or more of the literally hundreds of human emotions that might be present would be a virtually insurmountable task. Instead, Fisher and Shapiro propose a manageable method for dealing with this broad range of specific emotions by focusing on five core concerns that arguably are responsible for many of the individual emotions.

Fisher and Shapiro define core concerns as basic human desires that are important to virtually everyone, and therefore will almost certainly be important to all of the participants in any negotiation - the parties as well as the lawyers and other players. As a result, by addressing these core concerns, a negotiator, whether a party, a lawyer or a third party mediator, should be able to generate the kind of positive emotions that foster better personal relationships and encourage mutually beneficial agreements among the negotiators. *Beyond Reason* is a natural extension of *Getting to YES*, and provides a workable methodology for “separating the people from the problem,” one of the primary elements of principled negotiation as Fisher and Ury described it twenty-five years ago.

The five core concerns identified in *Beyond Reason* are appreciation, affiliation, autonomy, status and role. Fisher and Shapiro explain that everyone wants to be appreciated, and in the context of negotiation that means everyone at least wants their ideas acknowledged as having merit, even if one does not entirely agree with or accept them. Affiliation means that people want to be treated as colleagues, not adversaries. By autonomy, Fisher and Shapiro suggest that everyone wants their freedom to decide respected. People want their standing to be given recognition. And finally, they all want to have a role that feels fulfilling.

Beyond Reason presents an in depth discussion of these five core concerns, explaining how to express appreciation, build affiliation, respect autonomy, acknowledge status and choose a fulfilling role. It is full of real life experiences of Roger Fisher and Daniel Shapiro, who are not just academics, but engage in conflict resolution in the real world, as well as other examples of the successful use of these core concerns (even if not explicitly identified as such) by others in various complex dispute resolution scenarios in the private sector and even on the world stage.

For anyone who is serious about alternative dispute resolution, *Beyond Reason* should be required reading. And for those who have not read *Getting to YES* in the last ten or fifteen years, re-reading it now, in light of your additional experiences in dispute resolution since you first read it, is well worth the effort.

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