

Westview Special Studies in Peace, Conflict, and Conflict Resolution

# Roundtable Justice: Case Studies in Conflict Resolution

Reports to  
the Ford Foundation



edited by Robert B. Goldmann

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Conflict Resolution

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Westview Special Studies in  
Peace, Conflict, and Conflict Resolution

*Roundtable Justice:*  
*Case Studies in Conflict Resolution*  
REPORTS TO THE FORD FOUNDATION  
edited by Robert B. Goldman

This book describes seven cases in which third-party intervention was employed to settle complex social and economic disputes ranging from conflict among developers, farmers, environmentalists, and others over the construction of a dam in Washington State; to school integration conflicts in Atlanta, Georgia, and Dayton, Ohio; to the claims of the Mohawk Indians in the state of New York. All the disputes had been headed for litigation; however, responding to leadership from the government and other concerned sources, those involved agreed to mediation and negotiation as an alternative.

The authors provide detailed accounts of how mediation came about in each case, how it was conducted, the settlements that resulted, and the follow-up that was required. Demonstrating the potential of third-party intervention for resolving the growing number of disputes in society today, they also show how, in practical terms, conflicts can be resolved.

Robert B. Goldman is a program officer, Division of National Affairs, with the Ford Foundation. He has also served as deputy director of the Governor's Commission on Civil Disorders in New Jersey and as director of public affairs for the New York City Human Resources Administration.

## Preface

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For close to a decade, the Ford Foundation has supported a variety of efforts to advance both knowledge about and the use of alternatives to the adversary process for the settlement of disputes. The Center for Dispute Settlement of the American Arbitration Association; the Institute for Mediation and Conflict Resolution in New York City; the Center for Community Justice in Washington, D.C.; the Institute for Environmental Studies at the University of Washington in Seattle, Washington; and the Office of Environmental Mediation at the University of Wisconsin have played a major role in advancing the state of the art in the disposition of major disputes as well as in introducing mechanisms for grievance management and conflict resolution.

The foundation remains committed to this work because it foresees the need for more rather than fewer efforts to find ways to resolve disputes fairly and efficiently. Beyond third-party intervention, which will always be central in such efforts, the foundation is now exploring ways to help groups concerned with improving procedures of existing institutions, including the courts and administrative and regulatory agencies.

The documentation of the cases in this volume is not limited to work done by grantees of the foundation. The selection of cases was based on substantive criteria, in the hope of making through this volume one more contribution to knowledge about conflict resolution in our society.

The book represents a truly cooperative endeavor. The authors of the chapters participated in the development of the guidelines of the research. Each author reported and wrote on his case or cases. The editor's task was to coordinate the work of the authors. It was a

stimulating job, because each author brought special experience and insights to the work. I am grateful to Richard Kwartler, Stephen Gillers, Lee Dembart, Joel Fleishman, and Graham Finney, who have documented and illustrated a growing trend toward making this a fairer and more resilient society.

*Robert B. Goldmann*



## The Contributors

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# Introduction

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*Robert B. Goldmann*

The American society of the sixties and seventies has been called the litigious society. During that period more groups asserted rights through the courts than ever before or than judges, policymakers, or scholars had ever envisaged would do so.

After the civil rights movement, other minority groups became aware that they had been and were underrepresented in the places and processes where decisions were made about the allocation of resources and opportunities. Spanish-speaking people and Native Americans followed the lead of Blacks. The women's rights movement gained momentum. Concern for the nation's and the world's natural environment and worry about the seemingly heedless use and abuse of natural resources gave rise to a dynamic environmental movement that soon found itself at odds with business, organized labor, and minority groups who were pressing for more growth and more jobs. Consumers organized to press their claims for quality products at reasonable prices. New constituencies continued to develop at an astounding rate, and many institutions—corporations, labor unions, schools, colleges, and government agencies at all levels—were and continue to be involved in conflicts of one sort or another.

The courts are not only overburdened by an unprecedented workload, making for lengthy delays and a diminution of justice; they are also saddled with cases that do not necessarily fit the traditional adversary model. The rules of evidence and other limits on judicial fact-finding may make fair resolution of some disputes difficult, if not impossible, since the courts must depend only on litigants for the facts. There is also the question of timing. Courts generally cannot enter a dispute, even one that is justiciable, until it polarizes or becomes "ripe"

for judicial action. In many cases it may not be best for society to wait that long.

It is in this context that new and different methods for settling disputes are being sought and developed. Some of the new techniques are based on the model of mediation and arbitration that has been used by business and labor organizations for many years. Neutral third parties have entered social disputes in various stages of crisis and have sought to work out compromises that accommodate the interests of all parties. Unlike a court, an intervenor often can begin operating before the parties are polarized and positions are frozen. Thus, a settlement that satisfies all parties may be reached more quickly and more easily than if the dispute had reached the courts.

This book examines a representative group of mediated disputes and suggests some conclusions based on the successes and failures of these efforts. It is *not* designed to present a definitive theory of the mediation of social disputes. At this stage, gathering evidence may be as useful as expounding on it.

Many recently mediated social disputes involved complex networks of relationships, needs, and issues that third-party intervenors must learn to deal with. A study of significant or representative cases, such as this one, can serve the following purposes.

- It can help government and private bodies assess the merits of alternate methods of dispute resolution so they can determine which path to follow in a specific dispute or in disputes in general. Some administrators may be unaware of the possibility of third-party intervention. Others may want to know more about the mix of variables involved in social disputes and what they augur for successful mediation.
- It can provide some insight into the qualities needed by persons who attempt (through mediation, arbitration, or any other method) to intervene in an incipient or full-blown dispute.
- The growing corps of mediators may learn more about the pitfalls and failures of mediation as well as about methods and approaches that have been successful.
- The study can inform the general public about alternative institutions and approaches for dispute resolution and about what can be accomplished through these mechanisms.

Four aspects of disputes were identified as a result of reviewing and discussing a variety of disputes with individuals and members of several institutions engaged in third-party intervention. Utilizing those characteristics, we selected cases that would be most useful to policymakers, administrators, and others eager to find alternatives to mechanisms now available or known to them.

### 1. *The Nature of the Dispute*

*Intensity.* Has the dispute been polarized or inflamed? How defined is it? To what extent do neutral persons or institutions still exist within the dispute community? To what extent do the participants and potential participants see themselves as being involved in a dispute? How strongly do they feel about the issues?

*Time pressure.* Must something be done quickly to avoid other dangers? Has the dispute gained visibility as the result of some clash or conflict? Or is it a dispute that the intervenor may have "discovered" on his or her own?

*Size.* How many participants are involved in the dispute?

*History.* What came before the dispute? What are the relationships among the participants?

*The need for resolution.* How threatening is the possibility of nonresolution? Do some participants have a vested interest in the dispute not being solved? How great is the motivation to settle?

*Legitimacy.* Is the dispute sufficiently justified to require the cost of social intervention? Is it a "strike" suit? Is it frivolous? What is meant by a "frivolous" dispute?

### 2. *The Community Within Which the Dispute Exists*

*The dispute community.* Are there overlapping communities? Can the dispute be resolved without also resolving other problems radiating from the dispute? What kind of community does the dispute exist in: a neighborhood? an institution? How defined is the community?

*The community interests involved.* What are the particular interests of the parties to the dispute? Are they economic, political, ideological (e.g., having to do with the environment or civil rights), "negative" (fear of crime, fear of racial minority, fear of change)? How many adherents does each interest have? How passionate are the adherents about their point of view? How articulate and vocal? What is the

source of the authority, or the legitimacy, of those who speak for different sectors of the community?

*Local and national disputes.* Is the dispute a national one, or if local, one that will have national consequences (perhaps it is the first of its kind)? If local, has national attention been drawn to it? How has news media attention affected the community within which the dispute exists?

### 3. *The Purpose of the Intervenor*

*Retrospective or prospective function.* Is the intervenor attempting to resolve something that has already happened or to set up a structure for the resolution of future problems? Does the intervenor find the facts or suggest solutions? Are the suggestions binding? What methods are used to fulfill the tasks?

*Implementation or monitoring of the resolution.* Will the resolution be self-enforcing? Should or does the intervenor provide a means of implementation or monitoring? If not, how will a settlement be enforced and related community needs met?

### 4. *Nature and Qualities of the Intervenor*

*Relation to the community.* Does the intervenor come from inside or outside the community within which the dispute exists? Does the intervenor expect something from the community (as a politician might expect votes)? Must he or she continue to live in the community after the resolution?

*Source of intervenor's authority.* Where does the intervenor's authority come from? Is he or she appointed by a public body with power to take unilateral action if intervention is not successful?

*Personal characteristics of intervenor.* What personal qualities does the intervenor have? What qualities are called for in the particular dispute?

The Forest Hills dispute (Chapter 4) was very intense, with a potential for violence and a significance far beyond its immediate boundaries. A policy of city government was challenged; the Mayor intervened; and a mediator of high visibility (Mario Cuomo), backed by considerable power, was brought into the dispute.

In sharp contrast to Forest Hills, the Snoqualmie Dam controversy (Chapter 3) was persistent but of low intensity. The interests and the

issues did not require urgent action. No immediate crisis and certainly no violence were in the offing. Yet there was a conflict of interests that sooner or later needed to be resolved for the sake of balanced growth, environmental health, and economic equity of a large area and a sizable population. Here mediation could proceed at a less rapid pace, over a longer time span, and the mediator did not need or want the high visibility and political power that were required in Forest Hills. The mediation was successful, but problems arose in implementation, and this experience, too, holds lessons for the future.

Chapter 7 on the Dayton school problem covers merely one segment of a long and continuing dispute. The work of a federal service in creating the atmosphere for implementing a court decision is documented in this chapter. In all cases, the decision or the settlement is merely the beginning of resolution. The hard work of carrying out the terms and of getting people adjusted to what the courts have decided or what their representatives have agreed to in mediation is the less publicized but vital ingredient that gives meaning to signatures on documents.

The Atlanta case (Chapter 6) tells us much about that city—a community that was determined to resolve a seemingly intractable issue with its own leadership resources. The dispute in St. Louis (Chapter 5) was another of high intensity and urgency, and there seemed to be only one person who was acceptable to all parties to resolve it—and he did the job. In the case involving the Mohawk Indians and New York State (Chapter 1), Mario Cuomo again played a role (but a very different one from his role in the Forest Hills dispute). Chapter 2 describes dispute resolution within a California prison system. Similar approaches could be used by school systems, by colleges and universities, and by individuals dealing with governmental systems, such as social security or services for the aged and handicapped, where challenges to decisions or awards either go unanswered or wend their way through complicated, time-consuming and costly processes.



