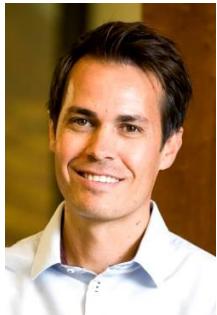


We Should Teach More About the Connection Between Theory and Practice as well as Dispute System Design

Theory-of-Change Symposium

indisputably.org/2019/09/theory-of-change-symposium-part-1

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[Ben Cook](#) encourages continued efforts to narrow the gap between theory and practice, and more opportunities for law students to learn about and practice dispute system design. He is an associate professor of law at Brigham Young University.

As a relatively young ADR professor (in experience not necessarily in age!), I am more eager to learn from the veteran colleagues in our community than to take up much space with my limited perspective on the best way forward. And I recognize that in weighing in, I risk repeating, rather than originating, ideas that might advance the cause. As one of my colleagues has complained of our often-longwinded faculty meetings, “Everything has been said, but not everyone has yet had a chance to say it.” So instead of any grand new theories of change, I’d like to offer my modest (but enthusiastic!) endorsement of two developments in preparing students for the real-world of practice that seem to be helping our field progress in the right direction.

The first is greater attention to the narrowing of the gap between theory and practice. I occasionally find myself thinking about something Roger Fisher wrote back in 1984 as a response to James White’s critique of the then-recently published *Getting to Yes*: “To some extent, I believe, White is more concerned with the way the world is, and I am more concerned with what intelligent people ought to do.” That notion has framed the teaching of negotiation for a very long time, as we’ve focused on whether to teach students in a way that prepares them to negotiate “the way the world is” or to teach them what “intelligent people ought to do,” usually focusing on the latter.

Over the past 10–15 years, we’ve observed a welcome shift from this binary way of thinking about and teaching negotiation to a more nuanced and, in my view, useful approach. Concepts such as the “negotiation as jazz” analogy that a number of people in our community have advocated, and activities like the Stone Soup initiative spearheaded by John Lande and others, seem to be moving ADR teaching in the right direction. Of course, negotiation often is neither strictly competitive nor solely cooperative, so our move toward teaching this complexity is helping better prepare students for the negotiation realities they will encounter in practice.

The second development is the teaching and practice of dispute system design. As technology takes over many legal tasks, the idea that lawyers should be problem solvers seems increasingly like a necessity in teaching future lawyers. The pioneering

creation of Harvard's Negotiation and Mediation Clinical Program, followed by other clinics and courses teaching dispute system design (including the Negotiation and Conflict Resolution Clinic that I direct at BYU Law) are important developments in anticipating future legal needs and preparing law students to play a leadership role in the way we approach conflict and serve clients.

A former student of mine who excelled in a dispute system design project in my clinic created a conflict transformation company that is utilizing DSD concepts and technology such as artificial intelligence in way that is valuable, forward-looking, and poised to significantly expand the ways we think about and practice ADR. I'd love to see more DSD clinics and opportunities for law students across the country (and around the world).

With those two modest endorsements, I want to conclude with a note of gratitude to this ADR community. I benefit immensely from your ideas and experience, and I look forward to working together as we continue grappling with the difficult and exciting issues that lie ahead.