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25 Negotiation J. 569-586 (2009)

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On Teaching

The Next Generation: Creating New Peace Processes in the Middle East

Carrie Menkel-Meadow and Irena Nutenko

This essay describes how Israeli students in a course on mediation and consensus building taught in an Israeli university law department by an American law professor and an Israeli instructor analyzed and studied the conflict in the Middle East. It describes the suggestions they made for process design for the next stages of whatever peace process might emerge for the region. In light of the students' suggestions, the authors present some ideas as to how different approaches to reconciliation and peace might be used, managed, and coordinated.

Key words: negotiation, conflict resolution, Middle East peace processes, pedagogy, mediation, consensus building, multilayered dispute resolution processes.

Introduction: Our Process

Those who are familiar with the details of the conflict in the Middle East often claim that, in comparison to many other intractable disputes,

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1 possible “solutions” to the Israeli-Palestinian conflict seem comparatively
2 obvious.¹ The process for achieving these solutions, however, remains
3 elusive (Friedman 1989; Rabinovich 2004; Ross 2004; Korobkin and
4 Zasloff 2005; Carter 2006; Matz 2006, 2008; Kurtzer and Larensky 2008; [2]
5 Miller 2008). Nonetheless, many negotiators, diplomats, politicians, non- [3]
6 governmental organizations (NGOs), and ordinary and extraordinary
7 people continue to commit much of their lives and work efforts to
8 seeking a lasting peace for the region and its diverse and long-suffering
9 population. Perhaps listening to the ideas of those who live in the conflict
10 everyday can bring us a step further in this long search for a durable
11 solution.²

12 This essay tells three stories. In the first, we describe modern experi-
13 ential methods for teaching new ways to negotiate and mediate to a new
14 generation of actors, Israelis and Arabs who live in close proximity, and, in
15 some situations, learn together. In the second, we describe how this new
16 generation sees the issues underlying the conflict and what their sugges-
17 tions for reconciliation and process design might be after some education
18 in the field of conflict resolution and dispute system design (Bordone
19 2008). In the concluding section, we describe how different forms of
20 reconciliation and peace efforts (formal, diplomatic, strategic, instrumental,
21 and *transactional* as well as *transformative*, individual, and interpersonal) [4]
22 might be used, managed, and coordinated. We suggest in this section that
23 formal transactional and diplomatic negotiations must be linked to more
24 on-the-ground grassroots efforts at conflict resolution and peace process
25 design.

26 We believe that leadership is, of course, necessary to generate the
27 ideas, formal agreements, and implementable structures for peace and
28 reconciliation, but that without the participation of the people who are
29 affected by those leadership decisions, the commitment to eliminate
30 conflict will prove insufficient and ultimately, unenforceable.

31 As Jurgen Habermas (1996) argued, without the full deliberative par-
32 ticipation of those who are affected by decisions made in their name for
33 social control and governance, norms and decisions made “from above” will
34 lack legitimacy and adherence. Unlike Habermas, however, we do not
35 believe that the deliberations needed to effectuate peace are purely rational
36 and “principled” or reason based. Peaceful coexistence in the Middle East,
37 we argue, will require not only reason and principle, but also instrumental
38 bargaining and trading as well as transformative understanding and
39 empathy (Menkel-Meadow 2005).

40 In this essay, we address a form of *transformative process*, one that
41 occurred in a classroom, and describe what we learned from this experi-
42 ence that these different kinds of transformative processes should be
43 engaged in at all levels, with room for coordination and communication
44 with the more formal transactional processes.

1 **Experiential Education in Conflict Resolution in Israel**

2 Every semester, the Haifa law faculty of the University of Haifa invites
3 specialists in various fields to teach condensed courses in their field of
4 expertise, to expose students to new practices, theories, and learning experi-
5 ences (see Edrey 2002). These courses are typically taught to a relatively
6 small group of students that includes both Israeli (including Jewish and
7 Arab)³ students and sometimes, foreign students as well.

8 We taught an intensive mediation and consensus building processes
9 course there in spring 2008 in meetings over a three-week period in
10 sessions of three and a half hours per day. Twenty-five students enrolled in
11 the class, although fewer (twenty-two) completed all the course require-
12 ments because several were full-time auditors. All students spoke English
13 with varying degrees of proficiency and all participated in role plays,
14 simulations, and class discussions. Sixteen of the students were men and six
15 were women. Approximately twelve of the students were native born
16 Israelis, four were immigrants from the former Soviet Union (as is the
17 coauthor of this article), and two were foreign students from Brazil. All the
18 Israeli Jews had served in the army; two of the women had scientific Ph.D.s.⁴

19 We constructed the course according to principles of active learning
20 and integration of theory and practice, dedicating a substantial portion of
21 class time to open discussion with questions evenly referred from the
22 instructors to the students, and from students to instructors. We presented
23 critical review of the doctrines, theories, and practice protocols of negotia-
24 tion, mediation, consensus building, facilitation, and conflict resolution. The
25 students engaged in several exercises and simulations, acting both as parties
26 and as mediators, and watched films and demonstrations of mediation
27 processes in a variety of contexts. In addition, we reviewed several impor-
28 tant case studies of actual mediations and consensus building events, includ-
29 ing one which had taken place not far from the University of Haifa (Levine
30 2005).

31 We hoped to facilitate a process of “transformative learning” in the
32 class (Elkins 2003). We designed the course to expose students to new
33 perspectives and theories of conflict resolution, including many different
34 models of mediation, including facilitative, evaluative, transformational, and
35 narrative. We encouraged open and critical discussion of their reactions and
36 reflections on these new perspectives in light of their previous assumptions
37 and perceptions. We also gave the students a genuine problem, requiring
38 them to create action plans to implement or challenge the new insights
39 they had acquired.⁵ This approach is now commonly used in legal educa-
40 tion in the United States in a variety of “clinical” settings, as well as in
41 dispute resolution courses in a variety of different professional training
42 programs (e.g., business, planning, international relations, and public
43 policy).

1 We administered an anonymously graded take-home exam that
2 required students to answer questions on mediation and conflict resolution
3 theories, laws⁶ and rules, ethics, policies, and practices. We also asked them
4 to answer an additional bonus question that required them to suggest a
5 possible process for handling the Israel–Palestine conflict, specifying par-
6 ticipating parties, forms of process, structures of meetings, location, and
7 timing. (At the time of the course there was no existing ongoing formal
8 peace process, although Israeli Prime Minister Ehud Olmert and Palestinian
9 leader Mahmoud Abbas were meeting privately.) This kind of question
10 followed the course’s tutorial methods by involving the students in the
11 learning process and encouraging them to creatively apply their new skills
12 and insights to solve a genuine problem relevant to their own lives. Because
13 the course dealt with mediation and consensus building, as *processes* for
14 managing conflicts (the “how” of conflict resolution versus the “what” of
15 conflict resolution⁷), the students were asked to focus on suggesting and
16 designing processes, not substantive solutions.

17 All but one of the students who submitted an exam chose to answer
18 the bonus question, and to give it serious attention while completing the
19 rest of the exam in a limited period of time. This gives us hope that
20 experiential legal education with engagement and feedback can encourage
21 greater student involvement in the learning process, and that real involve-
22 ment on this level might encourage wider political participation by actively
23 educated and engaged students. We have since learned that several of the
24 students who took this course have become actively engaged in peace
25 meetings and discussions.

26 We conducted the course in the manner described above because we
27 believe that reflective practice can help bridge the gap between the per-
28 sonal and the political, and that attitudes toward conflict, which are socially
29 created and embedded (Taylor and Pettit 2007), can be affected by a
30 structured educational experience, somewhat apart from national, political,
31 social, and family influences. Hence, we assumed that a change in attitudes
32 and beliefs, can, in itself, bring people closer to seeing possible solutions, if
33 not resolution. Similarly, structured social learning exercises and problem-
34 solving workshops have been used in more formal settings to take political
35 elites and opinion framers outside of their usual “comfort zones” (see, e.g.,
36 Kelman 1993, 1995), and have been applied in actual formal dispute reso-
37 lution exercises in the Israel–Palestine conflict at more micro-levels of
38 conflict (see, e.g., Levine 2005; Babbitt et al. 2009). 5

39 In this essay, we explore the attitudes our students demonstrated after
40 formal instruction in conflict resolution and ask whether we have cause for
41 feeling optimistic that attitudes among younger Israeli citizens may be
42 changing. We acknowledge the limitations of drawing empirical conclu-
43 sions from such a small and specialized sample, but nonetheless, we believe
44 our experience with these students indicates anecdotally a possible

1 reduction of some of the confrontational tendencies that have often domi-
2 nated the public debate in Israel.

3 In analyzing the students' ideas, we have been guided by the underly-
4 ing ideas of action research. We observed how people can reflect on and
5 change their views of their own situations and how they can use their new
6 insights to communicate to other interested people (see Whitehead 2009).
7 We treat the process design suggested by the students as a proposed course
8 of action, which might lead the parties to reflect differently on their behav-
9 ior in the future. Among conflict educators and practitioners, evaluation of
10 such efforts to teach, promote, and measure attitude change has remained
11 elusive (Matz 1991; Kelman 2008).

12 By focusing on the students' suggestions for possible process design
13 options — following their critical engagement with new concepts — we
14 further suggest that analogies may be drawn from “bottom up” class par-
15 ticipation to “bottom up” engaged political participation among a new
16 generation of conflict resolution-educated citizens and potential leaders
17 (Menkel-Meadow 2005).⁸

18 **Process Design for a New Generation**

19
20 During the course, we primarily focused on using mediation and consensus
21 building in conventional legal, business, family, and community disputes, but
22 during class discussions and breaks, the discussion often turned to Israeli-
23 Palestinian peace processes, and the relevance the course principles had to
24 this conflict began to emerge.⁹

25 Experts on the conflict have long argued that reasonable, plausible
26 resolutions of the conflict are both within reach, but still, their achievement
27 eludes us (Mnookin 2005). Although we cannot fully explain all the
28 obstacles to peace, we believe that some blames lie in the attitudes of the
29 parties who cling to their own versions of historical truth, narratives of
30 victimization that both parties have developed over long years of war and
31 negotiation failure.

32 In long and intractable conflicts, such as in the Middle East conflict, an
33 “ethos of conflict” tends to evolve. An ethos of conflict describes a structure
34 of social beliefs regarding the just nature of one's own goals and the
35 delegitimization of the other side's concerns. Many Israelis, for example,
36 justify their position based on the Jews' ancient biblical ties to the land,
37 their near destruction during the Holocaust, the aggression of neighboring
38 Arab countries, and as a necessary response to continuing acts of Palestin-
39 ian terrorism (Kelman 2001; Oren, Bar-Tal, and David 2004). Palestinians
40 counter with their own stories of victimization: the dispossession of their
41 homes and lands in 1948, their mistreatment in refugee camps and Israeli
42 prisons, and human rights violations in the Israeli-occupied territories
43 (Makdisi 2008; Ronen 2008; Shany 2008; Symposium Hebrew University
44 Faculty of Law, International Law Forum 2008). 6

1 Thus, two historical narratives of victimization — with their accompa-
2 nyng narratives of the other side’s demonization — underlie the present
3 struggles over such concrete issues as land, including the sovereignty of
4 the “capital” city of Jerusalem, self-determination, human rights, economic
5 development, and peace and security with seemingly little hope of recon-
6 ciliation or integration (Rotberg 2006).

7 Recently, attitudes have begun to shift among some Israelis, as shown
8 by the removal of negative images of Arabs from the school textbooks, the
9 arrival of a wave of “new historians” who present a more balanced picture of
10 the founding Zionist ethos, and changes in the academic discourse about the
11 establishment of the state of Israel and its impact on the Palestinians. More
12 recently, it seems that some Israeli settlers in the occupied West Bank now
13 think that it might be time to abandon their settlements and return to
14 pre-1967 borders (Bronner 2008). Surveys of public opinion have shown a
15 decline in negative perceptions of Palestinians and higher rates of accep-
16 tance of the idea of giving up territories in exchange for peace. (This essay
17 was substantially completed before the end of the December 2008 cease-fire
18 and subsequent military action in Gaza, which, although now concluded, has
19 probably changed both Israeli and Palestinian attitudes once again.) We
20 believe that these shifts in attitude provide opportunities to conduct new
21 peace processes with a greater emphasis on achieving understanding, accep-
22 tance, coexistence, and a greater likelihood of generating better outcomes.

23 We asked our students to design the “next stages” of the Israeli-
24 Palestinian peace process. We have analyzed their answers to see:

- 25 • what attitudinal changes they revealed;
- 26 • what, in the students’ opinions, prevents Israelis and Palestinians from
27 achieving workable and lasting solutions; and
- 28 • what processes the students found most promising.

29 We looked for patterns, as well as for unique, idiosyncratic, and
30 “outlier” suggestions.

31 This was an optional exercise and bore no relation at all to grades
32 received in the course. All proposals for a peace process design were
33 submitted anonymously and students could and did express skepticism
34 about whether there should, in fact, be further negotiations and engage-
35 ments with the other side at all. (At least, one student expressed strong
36 commitment to this view; several others expressed skepticism that any
37 process design would be ultimately successful but still chose to propose a
38 road map for such a process.)

8

39 ***Student Responses***

40 We start with what our students perceived to be the main problems of the
41 current peace process:
42
43
44
45
46

-
- 1 • the use of what they called “inappropriate third parties,” which includes,
2 in their opinions, both particular individuals and more significant high-
3 level intervenors, such as the United States (see Miller 2008);
4
5 • *lack of effective leadership*; and
6
7 • *lack of trust* between the parties.
8

9 First, many of the students suggested that an American mediator or
10 representative would not be the appropriate third party to be involved in
11 the process. Some students expressed concerns that American involvement
12 puts too much pressure on the parties and prevents truly voluntary partici-
13 pation. Americans are perceived as biased toward the Israeli side, a percep-
14 tion that hinders their attempts at building trust among Palestinians. We
15 find this to be an interesting finding when considered in light of the recent
16 spate of books and articles suggesting that the United States needs to be
17 “tougher” on both sides to “force” more agreements and concessions (see
18 Matz 2008). (We believe that if we asked the question today, the change of
19 leadership in the United States from President George W. Bush to President
20 Barack Obama might have affected the students’ answers. As of this writing,
21 Senator George Mitchell (1999), one of the successful mediators of the ⁹
22 Northern Ireland Easter Peace Accord, has been appointed special envoy
23 for Middle East relations and has begun meetings in the region with repre-
24 sentatives of many sides of the conflict.)

25 The students also responded that they see leadership on both sides as
26 ineffective because the leaders are not perceived to be representing the
27 genuine needs and interests of the diversity of the populations. Many
28 students thought that current leaders do not enjoy the legitimacy and trust
29 necessary to enable them to make painful sacrifices and to enforce the
30 promises they need to make to the other side (e.g., land exchanges, removal
31 of settlements, and unified and effective security). Professional commenta-
32 tors have called this a “leadership deficit.”

33 The third and perhaps most acute problem the students identified is
34 the lack of trust between the parties that has developed over a long period
35 of conflict and which was exacerbated by the failure of the Oslo Accords
36 and of the Camp David II negotiations, which were followed by the imme-
37 diate eruption of violence and the Second Intifada, an uprising of Palestin-
38 ians in the occupied territories that began in 2000. (This lack of trust has
39 only intensified since the December 2008 actions in Gaza and the recent
40 Israeli election in which the hard-line Likud party currently dominates the
41 governing coalition produced by a complex and inconclusive election.)

42 The last two problems are clearly interconnected. A lack of trust in
43 leadership generates a lack of trust in the ability of leaders to enforce
44 sustainable solutions and also inhibits efforts to establish trust throughout
45 society. Our students considered how peace processes work at multiple

1 levels — at the formal, transactional (Miller 2008), instrumental, government-
2 tal, and diplomatic level and at the informal “on the ground,” person-to-
3 person level.

4 Interestingly, our students’ presentation of the barriers to negotiated
5 solutions were balanced, with no laying of excessive blame on one or the
6 other side. Apparently, our students did not suffer from reactive devaluation
7 or optimistic overconfidence (Arrow et al. 1995), which were two concepts
8 they studied in the course.

9 Most of the students proposed a *consensus building* process that
10 would

- 11 • identify all stakeholders;
- 12
- 13
- 14 • map their needs and interests relevant to the process; and
- 15
- 16 • be managed by skilled third party facilitators/mediators working to
- 17 resolve *concrete issues and problems*, and to facilitate *dialogue*
- 18 between individuals and particular interest groups.
- 19

20 Thus, the process envisioned was more open, participatory, and
21 complex than current official (and unofficial) peace efforts have been. As in
22 many conflict resolution settings, the question of transparency and public-
23 ity as opposed to confidential, more secret, and private negotiations was
24 controversial (see, e.g., Susskind and Field 1996; Kelman 2008; Babbitt et al.
25 2009).

26 As to the *identity* of the third party, the suggestions varied from a
27 professional mediator to a representative of a country not identified with
28 either of the parties similar to the process at Oslo, which was facilitated by
29 a Norwegian delegation, to co-mediation by Israeli and Palestinian medi-
30 ators. Another often mentioned proposal was to match particular third
31 parties to a particular specific issue, suggesting “fractionating” issues to
32 achieve success on some issues separately and incrementally to build trust
33 and avoid the dangers of finding one omnibus solution. Many students
34 suggested that it was important to include authoritative representatives
35 from the Arab world when dealing with sensitive issues, both for credibility
36 and legitimacy, and the ability to promise and enforce agreements. The
37 students recognized this as a difficult *representational issue* at the moment
38 because of leadership deficits and factional strife among the widely diver-
39 gent parties in Israel; the two major Palestinian parties, Fatah and Hamas;
40 and within many of the neighboring Arab countries.

41 Regarding the problem of ineffective leadership, the most frequently
42 suggested proposal was to expand and diversify the scope of participants to
43 include representatives of political opposition groups, local leaders, profes-
44 sionals in different fields, and youth groups. These proposals assumed,
45 sometimes explicitly, that most “ordinary” people on both sides want to live
46 in peace and security; and that even if leaders cannot reach agreements at

1 the national level, those lay people could reach agreements on some practical
2 issues concerning everyday life. The students proposed that ordinary ¹⁰
3 people from all sides be encouraged to meet because informal contact and
4 structured conversation can promote “transformative” processes of understanding
5 and knowledge of commonalities that disappear from the official
6 political discourse. These small spaces of “cooperations” would create, in
7 the words of one of our students, “islands of sanity” for building places of
8 “normality” that could eventually lead to some form of reconciliation.

9 Many of the students described this as the best way to build trust;
10 engage in joint activities; learn to work together; and promote stability,
11 well-being, financial collaboration, and prosperity on both sides. Eventually,
12 they argued, peace would come from *increased social and informal interaction*.
13 Their responses indicate their awareness of the many groups, both
14 in Israel and supported by other countries, who seek to pursue such
15 interchanges, including groups promoting cross-cultural sports and arts
16 events, educational and cultural exchanges, and economic enterprise (e.g.,
17 the Search for Common Ground, the Jerusalem Project, and Seeds of
18 Peace), with varying degrees of success. Such informal interactions have
19 become considerably more difficult in recent years, however, because the
20 Second Intifada has heightened security at checkpoints and has diminished
21 cooperation between Israelis and Palestinians in the West Bank, Gaza and
22 Israel.

23 The students who addressed the problem of *competing historical*
24 *narratives* suggested that both sides should recognize the legitimacy of the
25 other side’s narrative and suffering, and then move on to find new ways to
26 live together in the future, without necessarily achieving full “agreement”
27 about past events (i.e., teach both narratives in schools without resolving or
28 choosing one as definitive). This could be accompanied by some recognition
29 of historical rights, *creation of new “joint” historical narratives*, while
30 recognizing that the ability to implement all claims and rights fully would
31 be limited for practical and logistical, as well as ideological, reasons. (Such
32 a “realistic” approach can be seen in South Africa’s use of a peace and
33 reconciliation process in the wake of the end of apartheid as well as in the
34 Canadian and Australian governments’ recent “apologies” to indigenous
35 communities. In South Africa, Canada, and Australia, some compensation
36 was provided to victims, but there was little land reform. These are
37 examples of coming to terms with the past to achieve peace without full
38 justice.)

39 Students chose *recognition of mutual “rights to exist”* at the rhetorical
40 level as the optimal solution for both parties. The deferral of the practical
41 details of coexistence pending this mutual recognition is, unfortunately,
42 what derailed the Oslo process (Miller 2008). But our students were
43 more hopeful that practical solutions could be found to these issues
44 once a mutual “right to exist” framework could be agreed upon. Rhetoric

1 acknowledging of mutual rights to exist and recognition of a “two-state
2 solution” have increased in both formal and informal discourse recently.

3 The students expressed concern that any process would be long and
4 could not be rushed (as many believe the 2000 Camp David peace talks
5 were, with false, not organic deadlines set by two public officials who were
6 leaving office). They wrote that a long mutual education process to gener-
7 ate long-term changes of attitudes toward those on the other side is a key
8 to a lasting peace. We found cause for optimism because we could detect ^[11]
9 in the students’ answers changes in attitude that have been widely reported
10 in recent public opinion polls from the general populations on both sides.
11 Our students suggested, for example, that young Israelis learn Arabic, as
12 well as Hebrew and English (currently the preferred second language), so
13 that negotiations, as well as everyday life, would be truly bilingual (see
14 Pittinsky, Ratcliff, and Maruskin 2008).¹⁰ Most students indicated that they
15 believed more interaction with their Palestinian counterparts would change
16 attitudes positively on both sides, which is consistent with sociological and
17 psychological research indicating that familiarity can breed tolerance (the
18 “contact hypothesis” of human relations, see, e.g., Rose et al. 1953; cf. Amir ^[12]
19 1969). Some expressed the belief that already existing indigenous conflict
20 resolution processes could be harnessed to larger conflict resolution pro-
21 cesses for both smaller and larger conflicts on the borders and in internal
22 conflicts among Israeli Arabs and Jews (see, e.g., Blum 2007; Gellman and
23 Vuinovich 2008; Babbitt et al. 2009).

24 We have sorted the various suggestions made by students into six
25 categories. (These categories indicate that the students learned that conflict
26 resolution processes are best planned for and conducted in stages.)
27

28 *Before the Process.* Suggestions of actions to be taken before the
29 beginning of the process mostly involved identifying all stakeholders and
30 mapping their needs and goals; initiating goodwill acts (e.g., gradually
31 transferring security to Palestinian security authorities or even dramatic
32 pre-process gestures, such as Egyptian President Anwar Sadat’s visit to
33 Israel before the first Camp David accords); convening jointly on eco-
34 nomic interdependence issues; jointly designing the peace process; and,
35 finally, setting realistic targets and goals before any formal meeting.
36

37 *Process and Techniques.* The suggestions in this category involved
38 the settings for the process and the techniques to be used to promote
39 trust and understanding. Students suggested a neutral and nurturing
40 setting in which the parties would feel at ease and generous, and sug-
41 gested mixed seating arrangements to facilitate interaction and relation-
42 ship building. To set the emotional tone, the suggestions ranged from
43 beginning with a film demonstrating the sadness and pain of loss on both

1 sides (see, e.g., Avni and Bacha 2006; Riklis 2008) to mutual study of 13
2 case analyses of other peace or postconflict processes (such as
3 Northern Ireland or South Africa). Other suggestions included giving the
4 parties separate activities to work on to reduce tension and build
5 cooperation.

6 Regarding techniques, the students suggested using shuttle diplo-
7 macy and caucusing to make sure each party recognizes the cost of
8 failure; reaching small agreements and putting as many issues on the table
9 as possible for value creation purposes; and finally, one student suggested
10 using the “toothbrush method,” which means not allowing the parties to
11 leave before an agreement is reached.¹¹

12
13 *Parties.* Students suggested that all stakeholders be identified and
14 that lay people with common interests (students, feminists, youth, musi-
15 cians, artists, workers, mothers, activists, and other interest groups) be
16 involved. Other suggestions were to summon different stakeholders
17 according to the particular issue at hand (e.g., water, security, right of
18 return, cultural and educational exchanges, economic development, and
19 governance of Jerusalem) and to break down into smaller groups to
20 conduct mini-mediations on particular issues, with appropriate represen-
21 tation from all interested parties (as in managed negotiated rulemaking 14
22 settings in the United States, see Susskind, McKernan, and Thomas-
23 Larmer 1999).

24
25 *Mediators.* Several students wrote that the appropriate mediator
26 should be neither a celebrity nor the leader of a powerful country who
27 could be perceived as biased. Students highlighted the need for having a
28 truly “neutral” mediator, and some suggested using co-mediation or even a
29 team of mediators. Others suggested that Arab leaders from countries
30 such as Saudi Arabia should participate either in mediation itself or in the
31 choice of mediators, to give greater legitimacy to the process, as in the
32 current “Arab peace proposal” suggested by Saudi Arabia.

33
34 *Brainstorming New Solutions for Old Problems.* The issue of *con-*
35 *flicting historical narratives* proved to be the most sensitive one. Stu-
36 dents recommended the brainstorming process; topics included
37 acknowledging each others’ historical truths, ideological acknowledge-
38 ment (recognition of Israel’s right to exist); setting objective criteria to be
39 used to resolve particular problems; and establishing an unbiased third
40 party to interpret and monitor the measurement of those criteria (such as
41 treaties, international laws, specialized courts or tribunals, see Blum
42 2007). Some students suggested resolving some of the historical property
43 issues by paying compensation to both Palestinians and to Israeli settlers

1 who leave the occupied territories (Mnookin and Eiran 2005) and also to
2 neighboring countries that have absorbed refugees.¹²
3

4 *Concurrent Peace and Reconciliation Processes.* These suggestions
5 focused mostly on education, beginning with the recommendation that
6 students be required to learn both Hebrew and Arabic, and that Arab
7 culture and history be taught in Israeli schools (sewing “seeds of sanity,”
8 in the words of one of our students). Student responses also considered
9 education more broadly, suggesting processes that include developing
10 mutual projects and trying to make Israel a truly “bicultural” country.

11 We note that the students did not always agree on similar processes.
12 Some focused on reorienting the work of conventional leaders in peace
13 negotiations, while others wanted to banish official or governmental
14 leaders, and focus their attentions on processes for on-the-ground, person-
15 to-person-oriented peace processes. One conclusion that emerges from
16 their suggestions (and from current conditions in Israel and Palestine) is
17 that both kinds of processes — conventional diplomatic and informal
18 contact efforts — will be necessary. How to implement simultaneous
19 multiple peace processes at multiple levels, whether coordinated or not,
20 remains an open question for peace process design.

21 Because of the students’ exposure to participatory legal education
22 and because personal acquaintance was mentioned over and over as a key
23 ingredient in the process of trust building, we feel no doubt that efforts to
24 integrate more informal meetings and participatory classes of this kind
25 with formal peace processes is a necessary step on the road toward
26 achieving a sustainable peace. In the final section of this article, we
27 discuss how these more “humanistic” processes could be connected to
28 the hard work of formal peace negotiations.
29

30 **Connecting the Transformational and the Instrumental**

31 Soon after Carrie Menkel-Meadow returned to the United States, she was
32 consulted by a variety of different groups, about how different kinds of
33 peace and reconciliation processes might be brought together. In meetings
34 with officials in the U.S. State Department and the Israeli government,
35 Washington, DC-based peace groups, and the Parents’ Circle-Families
36 Forum, an organization comprising five hundred Israeli and Palestinian
37 families working together to achieve peace and reconciliation through their
38 shared experience of bereavement and the use of narrative to educate both
39 young and old Israelis and Palestinians (Avni and Bacha 2006), the process
40 question of “what to do next” in the stalled peace process was raised at
41 every level. The higher the level of official power the person held, the
42 greater was the pessimism that he or she expressed. But our students gave
43 us hope that existing stories can be transformed into “bridging narratives”

1 so that people living in the conflict would be more willing to at least
2 approach those on the other side for the common purpose of promoting
3 understanding and ending violence.

4 The challenge for those of us interested in promoting peace in this
5 seemingly intractable situation is how to pursue peace process design at
6 realistic, but nonetheless transformative, levels at the same time that formal,
7 diplomatic, and transactional negotiations continue. Efforts to bring Israeli
8 and Palestinian children together in recent decades, such as the Seeds of
9 Peace camp program and the film project called *Promises* (Goldberg,
10 Bolado, and Shapiro 2001), suffered setbacks following the Second Intifada ¹⁵
11 and, more recently, the Gaza war as contacts across borders became more
12 challenging.

13 We do not, in this essay, analyze in great depth the difficult subjects of
14 substantive solutions. While a two-state solution seems obvious to so many
15 people, many on all sides — there are more than two sides if one considers
16 the many factions among both Israelis and Palestinians as well as interested
17 third parties — cling to a one-state view. Others believe that solutions will
18 come only after unbearable pain or a “hurting stalemate” (Zartman 2003)
19 forces negotiation and cease-fire, if not peace, agreements. Our own view is
20 that there is no optimal level of conflict for producing negotiation. If there
21 is too little conflict and violence, there may be little incentive to negotiate
22 and change the *status quo*; but when there is too much conflict (think
23 about recent civil wars and genocides in Eastern Europe and Africa), parties
24 feel they have “nothing left to lose,” reducing any motivation to engage in
25 peace talks and power sharing.

26 We do not know whether new political regimes will change the official
27 structure of peace talks and dialogue. But we do think that perhaps more
28 quiet, person-to-person, task-based, on-the-ground efforts at human under-
29 standing and the sharing of narratives can be more effectively implemented
30 at all levels to demonstrate the human cost of continued conflict. As Robi
31 Damelin, an Israeli member of the Parents Circle, has eloquently described
32 the origins of her organization, “when they came to tell me that David (her
33 son) had been killed,” she said to them, “You shall not take another life in my
34 son’s name.”¹⁵ And when her Palestinian partner in the organization, Ali
35 Abu Awwad, who lost his brother, says, “We cannot end the pain, but we can
36 end the hate,” there is not a dry eye in the room.

37 Our own experience was more modest but moving and instructive. At
38 the end of a rigorous and difficult critique of the “softness” and mushiness
39 of mediation and consensus building processes in our class, two of the
40 toughest Israeli students (Russian immigrants and army veterans)
41 approached us. One had focused mostly on the economic efficiency of
42 peaceful conflict resolution and saw its instrumental possibilities. The other
43 had a big tear running down his cheek. “This course taught me to listen,”
44 he said. “Last year I fought every day with one of my Arab friends (at the

1 university) about the war in Lebanon [2006]. Now I know I need to stop
2 and listen to his side of the story. We have all been told for so long we are
3 right that we do not stop to hear the other side. I will try better to listen and
4 to use what I have learned here.” For a teacher, it does not get much better
5 than that — proof of how a human transformative experience can change
6 how people approach each other.

7 The problems in Israel and Palestine are tough and ugly. Solutions will
8 not come easily. Formal “transactional diplomacy” (Miller 2008) will be
9 absolutely necessary, and some sort of pressure may have to be applied, but
10 even Track Two diplomacy has lost some of its appeal following the failure
11 of permanent agreements after the Oslo accords. We think and hope that it
12 is also true that a younger generation, perhaps less burdened by the weight
13 of history or perhaps better educated to live with the existence of more
14 than one historical “truth,” may develop new processes for dialogue, human
15 understanding, and, if not full reconciliation, at least peaceful coexistence.

16 We have both found parallels in our experiences as educators listening
17 to our students from the “ground up,” with what leaders engaged in formal
18 diplomatic processes might have to hear from their “ground up” constitu-
19 encies (Liebman 2000). As clinical and experiential education in law and
20 dispute resolution seeks to encourage learning from actual experience,
21 from students, that is not dominated by didactic lectures, efforts at peace
22 process design must integrate the experiences of the people who have
23 suffered and who live with the conflict every day with the more formal
24 processes that so far have been so unsuccessful. We fully recognize that
25 some Palestinians and Israelis perceive that they have a stake in continuing
26 the conflict, that they do not want peaceful coexistence or even postcon-
27 flict existence. We also know that many NGOs and grassroots peace groups
28 are themselves demeaned and minimized in formal political action and
29 rhetoric. But we also know, as Margaret Mead once said so eloquently,
30 “[n]ever doubt that a small group of thoughtful committed citizens can
31 change the world; indeed, it’s the only thing that ever does.”

32 The next challenge of any peace process, we believe, is to connect
33 those committed few who can promote the kind of dialogue our students
34 advocated with those who have the “power” to make a sustainable peace.
35 We are certain of only one thing: Instrumental and formal negotiations must
36 be accompanied by transformative human experiences at the individual
37 and group levels. We hope these processes will be designed by a new
38 generation, schooled in conflict resolution, and with a desire to progress in
39 more productive and participatory ways.

40 NOTES

41 We thank our students in the Mediation and Consensus Building Processes course at the University
42 of Haifa Law Faculty for their learning and teaching; Dean Eli Salzberger, Orna Rabinovich, Moti
43 Mironi, and Dassi Fisher for putting us and this learning together, and the University of Haifa Law
44
45

1 Faculty for its hospitable and nurturing environment. We also thank Amira Dotan, Ali Abu Awwad,
2 Robi Damelin, Jack Himmelstein, and Aaron David Miller for ongoing conversations and insights
3 into the peace process at both “transactional” and “transformative” levels. And we wish to extend a
4 special thank you to Donna Morrissey at Wiley/Blackwell publishing for bibliographic assistance and
5 support. May there be peace for us all.

6 1. The many issues dividing the Israeli state and its Palestinian members and neighbors
7 include competing historical narratives, land claims, right of return, the status of Jerusalem, and
8 occupation. Possible solutions include the shared sovereignty of Jerusalem, land exchanges, money
9 payments for land, the “two-state” solution, self-determination, and shared security, see, for example,
10 Kelman (2007).

11 2. This essay reports on the experiences of those in Israel. For at least one description (there
12 are many) of the lived experience of the conflict “on the other side,” see, for example, Makdisi
13 (2008) and Riklis (2008).

14 3. The University of Haifa is probably the most integrated campus in Israel. It has Arab,
15 Christian, Druze, and Jewish students, as well as Arab faculty. Our class, because it required
16 English language proficiency, was not fully representative of the possible diversity in other
17 classes.

18 4. Most of the students were in their twenties, but the two women with Ph.D.s were older,
19 in their thirties, studying to change careers, and use law and science together — one of them
20 planned to work in environmental projects. One professional mediator-lawyer attended the entire
21 course as an active auditor and participant, and knew about how mediation was practiced in Israel.
22 In addition, this mediator also personally experienced losses associated with the 2006 Lebanon-
23 Israel war in which several locations in Haifa were bombed.

24 5. From this perspective, it is important to note that the class was given by an American law
25 professor with a wide background in promoting experiential and participatory legal education —
26 including both clinical education in process and dispute resolution in substance — in the U.S. and
27 elsewhere to Israeli students assisted by an Israeli teaching assistant.

28 6. Israel has a mediation law that actually makes a mediation agreement enforceable in court
29 similar to an arbitration award in the United States (Mironi 2008). In this legal development, Israel ¹⁶
30 is arguably more advanced than the United States. In the United States, a mediation agreement is a
31 contract not automatically enforceable with the equivalence of a judgment — a status reserved in
32 American alternate dispute resolution to arbitration awards, see 9 U.S.C. § 9–11. ¹⁷

33 7. I am indebted to Jack Himmelstein of the Center for Understanding in Conflict and Amira
34 Dotan of the Israeli Knesset for some of the conceptualization and process design for peace
35 processes in the Middle East as we work together to reorient the goals and language of the peace
36 process.

37 8. Israeli students were quite feisty and critical in their learning of conflict resolution
38 theories and practices, often cynically observing that none of this “touchy-feely” approach to
39 conflict resolution could work with such intractable conflicts as Israeli and Palestinian land, history,
40 security, and identity issues. This was not a passively accepted or didactic teaching and learning
41 exercise.

42 9. The senior author is indebted to a now deceased mentor, Janet Lederman (1969), a gestalt
43 psychologist and educator who taught that to teach effectively, one should “keep the focus off the
44 focus.” In other words, a skilled teacher allows his/her students to draw their own conclusions and
45 learning from analogical settings that do not explicitly deal with what is problematic and difficult
46 to confront directly. The “a-has” that come from recognizing an insight from a different, but similar,
47 situation can be profound. This is the principle that informs the use of other conflicts (e.g.,
48 Northern Ireland) in conflict resolution study and practice. In my view, looking at other conflicts,
49 such as Northern Ireland, in the Israeli-Palestinian conflict is both useful and sometimes unpro-
50 ductive (“we are not them”). Here, ordinary legal, business, family, and community disputes were,
51 for some, removed from the larger existential and geopolitical issues in the larger conflict, but
52 students began to see uses and analogies from simple dispute resolution settings to the larger
53 conflicts they were living with. ¹⁸

54 10. On a recent trip to Israel, author Menkel-Meadow attended several bilingual elementary
55 schools that are being supported by the government, private fund-raising, and parents’ groups.

56 11. This was the term the students assigned to a practice used in American courts to order
57 parties to major litigation to come to a mediation with “their toothbrushes” to stay until an
58 agreement has been reached, as was controversially employed in the Agent Orange litigation
59 mediation (Schuck 1986).

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