

# Mastering Negotiation

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# Mastering Negotiation

Michael Ross Fowler



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*Dedicated to the Memory of Roger Fisher (1922–2012),  
Samuel Williston Professor of Law Emeritus, Harvard Law School  
Director, Harvard Negotiation Project*





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# Series Editor's Foreword

The Carolina Academic Press Mastering Series is designed to provide you with a tool that will enable you to easily and efficiently “master” the substance and content of law school courses. Throughout the series, the focus is on quality writing that makes legal concepts understandable. As a result, the series is designed to be easy to read and is not unduly cluttered with footnotes or cites to secondary sources.

In order to facilitate student mastery of topics, the Mastering Series includes a number of pedagogical features designed to improve learning and retention. At the beginning of each chapter, you will find a “Roadmap” that tells you about the chapter and provides you with a sense of the material that you will cover. A “Checkpoint” at the end of each chapter encourages you to stop and review the key concepts, reiterating what you have learned. Throughout the book, key terms are explained and emphasized. Finally, a “Master Checklist” at the end of each book reinforces what you have learned and helps you identify any areas that need review or further study.

We hope that you will enjoy studying with, and learning from, the Mastering Series.

Russell L. Weaver  
Professor of Law & Distinguished University Scholar  
University of Louisville, Louis D. Brandeis School of Law





# Preface

*Mastering Negotiation* addresses those who are being taught or already know something about the subject of negotiation, whether through course work, via the counsel of professors or mentors, or through past personal or professional negotiation experiences. It aims to provide these negotiators with keener analysis, better organized approaches, additional insights and ideas, and more sophisticated strategies.

The book looks to synthesize the best current thinking about how to negotiate adeptly. It particularly aims to bring together the most useful ideas advanced by the array of scholars whose writing in one way or another has built on the foundational work, *Getting to Yes*. *Mastering Negotiation* aims to accomplish this in a practical approach that provides the reader with a toolbox of effective concepts—some basic, others intermediate, and still others quite advanced.

In trying to go beyond cataloguing bits and pieces of advice and setting out useful principles, *Mastering Negotiation* proceeds through phases of a typical set of talks from pre-negotiation to the closing of a deal. Thinking about negotiation via stages is a useful organizing concept, but its limitations should also be noted. Communication in an advanced negotiation is often free-flowing. The beginning of one phase and the end of another may not be clear-cut. The sequence of the stages may well be shuffled, and negotiators will sometimes double-back or jump ahead or even skip over something.

*Mastering Negotiation* also provides counsel on how to overcome various difficulties that commonly arise in negotiation. Particular chapters explore how best to overcome impasses, interpersonal problems, and ethical issues. The book features a chapter on cross-cultural complications and opportunities that speaks to some of the important needs of legal and other professionals operating abroad. Chapter by chapter, *Mastering Negotiation* is designed to help negotiators to plan a strategy that will provide the best chance for them to reach a positive resolution.

“Ours is an age of negotiation,” it has been said, with rules, roles, and relations constantly being talked over and talked out.<sup>1</sup> In recent decades indi-

viduals, groups, and organizations have shifted the way that they make many decisions. Rather than a society characterized by hierarchy and top-down orders flowing from an authority to subordinates, decision-making in business, politics, and personal life has tended to become more horizontal, a development that has brought negotiation skills to the forefront of many careers.<sup>2</sup>

People in all walks of life negotiate constantly, though often without carefully analyzing just what they are doing. A relative few think critically about how exactly to negotiate effectively. And, while lawyers, executives, diplomats, and various other professionals spend much time negotiating, the negotiation skill set differs in important regards from that of the other daily activities of a litigator, business manager, or foreign policymaker.

Furthermore, while negotiation is regularly done by virtually everyone, it is not easily done, particularly in the advanced negotiations that are our special focus. French statesman François de Callières declared that negotiation “demands all the penetration, all the dexterity, all the suppleness which a man can well possess. It requires widespread understanding and knowledge, and above all a correct and piercing discernment.”<sup>3</sup> The chapters that follow aim to help the reader along toward mastering the elements of highly effective negotiation.

## Notes

1. I. William Zartman, *Introduction*, in *THE 50% SOLUTION 2* (I. William Zartman ed., 1976).
2. William Ury, *An Interview with Roger Fisher and William Ury*, 18 *ACAD. OF MGMT. EXEC.* 104.
3. FRANÇOIS DE CALLIÈRES, *ON THE MANNER OF NEGOTIATING WITH PRINCES*, trans. A.F. Whyte 9 (1919).

# About the Author

A graduate of Harvard Law School, the University of Virginia, and Dartmouth College and a former practicing attorney at Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C., in Boston, Michael Fowler is now Professor of Political Science at the University of Louisville. Twice a Fulbright Scholar to Japan and twice a visiting professor for Semester at Sea, Professor Fowler was the founding director of University of Louisville's Muhammad Ali Institute for Peace and Justice and has been awarded the University's Exemplary Multicultural Teaching Award and its Distinguished International Service Award.

A negotiation consultant for clients in the public and private sectors, Michael Fowler has conducted negotiation training courses, seminars, or workshops for lawyers, diplomats, professors, military officers, business executives, and human resources professionals as well as for high school, undergraduate, and graduate students. He has lectured in Argentina, Australia, China, Costa Rica, Ecuador, Italy, Japan, Laos, Mexico, Northern Ireland, Panama, Venezuela, and Vietnam. Among the groups he has worked with are the Louisville Human Relations Commission, the National Forum for Black Public Administrators, and the Guatemalan Electoral Office, as well as the Diplomatic Academy of Vietnam and the Institute of Foreign Affairs in Laos, the training wings of those countries' ministries of foreign affairs.

With *Mastering Negotiation*, Professor Fowler has published seven books as well as articles in such scholarly journals as the *Harvard Negotiation Law Review*, the *Ohio State Journal on Dispute Resolution*, and *Review of International Studies*. Fowler's written work has been assigned in courses at various universities, including Stanford, Columbia, and the Fletcher School of Law and Diplomacy at Tufts.

Michael Fowler's best known works are *Bribes, Bullets, and Intimidation: Drug Trafficking and the Law in Central America* (Pennsylvania State University Press, 2012), *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty* (Penn State Press, 1995), both co-authored with Julie M. Bunck, *Envisioning Reform: Enhancing UN Accountability in the 21st*

*Century* (United Nations University Press, 2009), co-edited with former U.N. Assistant Secretary-General Sumihiro Kuyama, *With Justice For All?: The Nature of the American Legal System* (Prentice Hall, 1998), and *Thinking About Human Rights: Contending Approaches to Human Rights in U.S. Foreign Policy* (University Press of America, 1987).

William Walker of the University of Toronto termed *Bribes, Bullets, and Intimidation* “an exceptional study,” and Peter Andreas of Brown University predicted that it “will instantly become the reference book for understanding the role of Central America in the international drug trade and the profound impact of the trade on the region’s countries.” Richard Falk of Princeton called *Law, Power, and the Sovereign State* an “invaluable study of sovereignty [that] explores anew one of the most enduring ideas in political theory and illuminates with lucidity the changing nature of the sovereign state.” Nobel Peace Prize Laureate Martti Ahtisaari termed *Envisioning Reform* a “timely and valuable contribution” toward the objective of providing “much more serious attention ... [to] global governance wherein the organizations in the UN system are to play a pivotal role.” Historian William Manchester of Wesleyan University wrote of *Thinking About Human Rights* that Michael Fowler “provides us with the first lucid, comprehensive analysis of the varied approaches to human rights and achieves the highest goal of a profound writer: he makes us make up our own minds.” Kenneth W. Thompson of the University of Virginia observed of this work: “[O]ne of the nation’s emerging intellectual leaders... provides a full and illuminating account of recent American thought on human rights and a penetrating analysis of the major issues.” Henry Abraham of the University of Virginia called *With Justice For All?* “A welcome, objective, no-nonsense account of the American legal system—where it is and where it ought to be.”