The Curious Case of Mediation

Archie Zariski
Associate Professor
Centre for State and Legal Studies
The “Prehistory” of Mediation

• Imperial mediation
• Commercial intermediaries
• Peacemaking by elders
• Matriarchal/patriarchal intervention
• Peer pressure
• Labour relations (early 1900s)
Modern History – First Decade

1970s

- Emergence of “disputing” and ADR
- The “Pound Conference”
- Rescuing the courts
- Community and informal justice
  - The big hope - humane dispute resolution
Modern History – Second Decade

1980s

- *Getting to Yes* by Fisher and Ury
- The multi-door courthouse
  - 40 hour training
  - Volunteer mediators
- The big disappointment-popularity
Modern History – Third Decade

1990s

• *Getting to Yes* - Fisher, Ury and Patton
  • 40 hour training
  • Volunteer mediators
• Evaluation research (satisfaction studies)
• The big gamble – institutionalization
Modern History – Fourth Decade

2000s

- *Getting to Yes*
- 40 hour training
- Professional mediators
- Mandatory mediation and JDR
- Unauthorized practice of law
  - The big question – alternative? humane?
Processes at Work?

- Professionalization
- Institutionalization
- Governmentality
- Responsibilization
  - Co-optation
  - ?
Competing Influences?

- Polemics
- Ideology
- Rhetoric
- Reification
- Theory
The Future

- *Emergent professions* - mediator, facilitator, peacemaker, conflict coach?
- *Global awareness* – dialogue not debate?
- *Digital relationships* – networks not contracts?
- *Popular culture* – mediator as authority?
Thank you!

Questions?