

Public Participation as Mediated Negotiation: Entangled Promises and Practises*

John Forester

Recently, in my graduate city planning class, my students read Sherry Arnstein's 1969 classic, 'A Ladder of Citizen Participation'. Though some of the examples in her article might seem dated, the idea of a 'ladder' remains relevant and fresh. Not all 'participatory processes' are equal; they vary in how they might suit different problems and circumstances, in their complexity, and in their effectiveness. Indeed, some hold out false promises; some appear threatening to public officials; and only a small number actually create power-sharing partnerships.

Yet the study of public participation remains every bit as fascinating as the practise of it can be exasperating. Though often we see great promise squandered, and even as we watch conventional public hearings frustrate citizens, demoralise officials, and breed cynicism in everyone, we also witness inspiring successes—Ken Reardon's work with the East St. Louis Action Research Project, for example¹—and we keep hope alive.

This essay builds on several years of work conducting oral histories with mediators of public policy disputes.² Such mediators regularly confront the challenge of achieving diverse and empowering participation. By considering their experiences and their own understandings of those experiences, we might learn not only about practical negotiation, but about public participation as well.³

What Insightful Mediators Know

Mediators of public policy disputes have striking things to say about the challenges of working in participatory settings. Here are seven notable ones:

1. Not surprisingly, mediators warn us of the damage that the typical public hearing (and the 'Decide, Announce, Defend' approach it reflects) inflicts upon the perceived legitimacy and effectiveness of representative government. Too often, instead of fostering mutual respect, careful listening, and learning, the 'DAD' strategy encourages polarisation, exaggeration, and posturing.⁴

* This essay reflects work in progress on a book manuscript tentatively titled, *Dealing With Differences: Lessons From the Trenches*, as well as an effort to gather 'practise stories' from practicing environmental and public policy mediators.

2. More surprisingly, and counter-intuitively, mediators suggest that passionate parties to public disputes often haven't thought carefully about their own interests—perhaps because, as Don Edwards, a community development mediator from Washington D.C., put it recently, 'If you don't think something's possible, you don't go looking for it'.⁵

3. But mediators tell us that at times— somewhat bizarrely—parties might even like their problems, remaining attached to them, possibly saving or gaining face by being intimately identified with them.

4. Mediators also observe that the parties to a dispute might contend that, although they are willing to talk to their (perceived) adversaries, the latter will never do so. They express surprise, however, when they learn that their opponents exhibit just the same scepticism about their readiness to talk.

5. Mediators note that, no matter how the parties frame a problem or issue initially, there is always more going on than meets the eye. Mediators realise that all parties' claims are selective, that parties often care about even more than they say—and that it's often more productive to ask not the narrowing question, 'What's the problem?', but rather the more-revealing one, 'What's the story?'.⁶

6. When the parties to a contentious issue reach a mediated agreement, they can often be quite surprised, saying, for example, 'It's magic what happened!' Yet mediators know that behind the unexpected outcome lies not magic, not the wizardry of esoteric expertise, but skillful questioning and hard work—in particular, the hard work of focusing not on what can't be done but instead on what can and might actually be done.

7. Finally, mediators suggest also that careful process design—sometimes going slower initially to go fast later—can not only prevent the costs of long delays, prevent relationships from being further damaged, but can improve the quality of planning decisions and stakeholders' ownership of those decisions.⁷

What Insightful Mediators Do

How do mediators in public policy disputes move contentious parties toward agreement when the people involved are distrustful, defensive, and see little possibility—or even the desirability—of cooperation? How do they deal with the reality of self-interest and inequalities in bargaining power? How do they respond constructively to behaviour such as bluffing, exaggerating, and

selectively using or withholding information? How do they help the parties turn their energies to the creative task of crafting practical solutions that produce real gains for all parties (so-called ‘mutual gains’)? How do they design processes that generate opportunities for cooperation? How do they make progress in the face of strict rules imposed by governmental institutions and of rigid attitudes entrenched in the people who rely on them?

We will explore these questions in three ways: first, by noting just how limited are the available knowledge and information in participatory settings; second, by asking how we might integrate effective negotiation into public participation; and third, by reconsidering several practical insights offered by mediators of public policy disputes.

1. Imperfect Information. If we acknowledge that, unlike the idealised actors in economic theory, no participant in a public discussion or decision-making process is fully rational and ‘perfectly’ informed, we realise that all of us need to learn—about our felt vulnerabilities to social, political, and other forms of change; about our interconnectedness and interdependence (economic, ecological, etc.); and about our need to manage conflict that emerges from these conditions. Not being omniscient, at any given time we lack information—about facts, consequences, interests, intentions, options, opportunities—that bear substantially on our ability to make prudent and wise decisions.

Moreover, participants themselves frequently have interests and values that can compete as priorities, requiring them to make hard choices before ever negotiating with others. They can find themselves in relationships that dispose them to competition or conflict rather than cooperation. They may doubt—reasonably or unreasonably—the ability and willingness of others to behave sensibly and unselfishly. No one, of course, possesses a crystal ball with which to foretell the future. Everyone needs more—and more-accurate—information about and understanding of others. In short, everyone needs to learn.

This might sound like old news. For quite some time, scholars have viewed public activities in a democracy as social learning processes. This practise pre-dates the systems literature of the 1960s. Indeed, in the last century alone, to say nothing of earlier democratic theory, its roots can be traced to John Dewey’s wonderful and still-insightful treatise from 80 years ago: *The Public and Its Problems*.⁸ Yet the idea that public participation is and must be a process of collective learning seems to require repeated emphasis.

2. Public Participation as Negotiation As students of public participation we have not generally thought of practical negotiation as a learning process. Perhaps we have even resisted the suggestion that negotiation has a place in participatory governance. Here we come to an area of practise in which the insights and judgements of mediators might help us a good deal, for mediators typically have to worry not just about stakeholder representation, and not just about stakeholder learning in the abstract, but about how diverse stakeholders can speak and participate so they can then reach practical agreements together that serve their ends—agreements that they, as stakeholders, autonomously and consensually give legitimacy as elements of their own democratic self-governance.

Washington-based consultant Frank Blechman gives us a glimpse of this work when he says that, as a mediator first assessing a dispute, one of his questions to every stakeholder is, roughly, ‘Are you having fun yet?’ If the answer is ‘yes’, he says, then he has little as a mediator to offer: the stakeholder feels happy enough and may have little incentive to deal with others to try to do better: if the status quo’s fine for me, why should I change it? But when parties are not, in Blechman’s words, ‘having fun yet,’ when they’re angry that they don’t have more access or services or jobs or land, sooner, better, free-er, then the mediator can be helpful; the stakeholders have incentives to talk, to listen, to try to learn and to work to come up with options (and thus to negotiate) so that they can actually implement agreements that serve their own ends and concerns, hopes and interests.

Now, all this raises the practical task presented in Table I, which maps out the challenge of integrating processes of voice and ostensible participation with processes of practical outcome-oriented negotiations. This table arrays higher and lower voice from left to right across the top and more-effective and less-effective negotiations from top to bottom. We can pass quickly through several of the resulting combinations, but we should pay careful attention to the challenge presented by the upper left-hand combination, ‘high voice, effective negotiations’.

Integrating Negotiation into Participation

	High Voice/Participation	Low Voice/Participation
Effective Negotiation	Mediated Public Negotiation	‘Smoke-filled Rooms’
Ineffective Negotiation	Public Hearings	‘Bureaucracy-as-Usual’

Consider first the lower-left quadrant. In public hearings, for example, many people have an opportunity—albeit a narrowly circumscribed one—to inject their voice into the decision-making process. But in the typical hearing there is no ‘give and take’—no negotiation—between members of the public or between them and the government officials they address. As others have documented, public hearings often leave people more frustrated, distrustful, and even resentful of both government and their fellow citizens than they were before their opportunity to ‘participate’.⁹

Let’s look next at the upper-right quadrant. Since the progressive era in U.S. history, proponents of ‘good government’ have decried the ‘deal-making’ of ‘players’ in the political process. The stock image of the ‘smoke-filled room’ conveys popular distrust of government officials and those persons who have the ability to influence decisions through *quid pro quo* actions taken out of the view of press and public. This concern, about agreements being reached that serve the narrow interests of the parties to the deal and not the interests of the public as a whole, persists in the form of support for ‘sunshine laws’, public financing of elections, and limiting the access of lobbyists to sitting officials. Though negotiation occurs, participation suffers: the public is not party to the process.

In the lower-right quadrant we find those processes of government policy-making in which little participation and negotiation take place. We might label this condition ‘bureaucracy as usual’. Indeed, the activities of appointed government officials (such as planners), whose analyses, evaluations, and recommendations support, give effect to, or even guide the work of their elected superiors, lie at the heart of decision- and policy-making in representative forms of democratic government. Beyond the input generated by public hearings, there is scant public input, and such negotiation as occurs takes place within departments or agencies or between them.

The foregoing combinations thus neglect the importance of both substantial participation by the public in the decision-making process and meaningful negotiation between stakeholders, whether within government, between government and the public, or between members of the public.

But what of the remaining quadrant, the upper-left? Can we even conceive, let alone actually organise, a democratic policy-making process that features both a high level of participation by members of the public and genuine negotiation among diverse stakeholders that will pragmatically and efficiently generate effective public policies that enjoy widespread and lasting public support?

Mediators of public disputes routinely confront this challenge. They understand the importance of obtaining broad and diverse participation by the representatives of affected stakeholders and of employing strategies and methods that are practical, efficient, and effective in producing consensual, mutually-beneficial agreements that all parties support.

A large and expanding body of work speaks to the challenges of resolving disagreements over issues of public policy. For several decades now, practitioners and scholars such as Lawrence Susskind, John Paul Lederach, Susan Collin Marks, Jay Rothman, and Deborah Kolb, just to name a few, have amassed a body of work that explains how diverse ‘third party’ practitioners might help to resolve contentious public policy disputes.¹⁰ In the remainder of this paper, then, let us consider what the experience of practitioners of public dispute resolution suggests for the project of integrating negotiation into public participation.

Lessons from Experience in Mediating Public Disputes

Broadly speaking, mediated public dispute resolution proceeds in four phases: (1) analysing the dispute and assessing the potential for a mediated settlement; (2) convening stakeholders; (3) facilitating joint inquiry and learning; and (4) managing negotiations—all before implementing and monitoring agreements. Let’s consider each in turn.

1. Analysing and assessing multi-stakeholder disputes. Mediators know that if curiosity kills cats, presumptions about what ‘can’t be’ kills negotiators—and they know that many negotiating parties are likely to come to participatory processes with at least as much so-called ‘realism’ and narrow presumption as cats come to electric wires with curiosity. Excessive scepticism becomes self-fulfilling and pre-empts any search for consensual, mutually-beneficial outcomes. Here again we see the wisdom and challenges of Don Edwards’s observation quoted earlier: ‘If you don't think

something's possible—if you presume it isn't—you don't go looking for it'. So mediators work carefully to expand the horizons of the possible long before they turn to managing any negotiation about those options.

Mediators know very well, too, how many self-fulfilling reasons parties can find as justifications not to talk to those they see as adversaries—not to talk to those they see as repugnantly treating nature or finances or values differently from themselves. Even as mediators know, of course, that many differences can prove irreconcilable, they nevertheless teach us that far, far more disputes can be resolved than many passionately involved (but understandably distrusting and sceptical) parties believe. Our limited vision and knowledge, mediators know, mean that we have much to learn—that we have much we might do together that we can't jointly see or invent if we don't jointly meet in carefully structured processes. Yet when progressives deeply distrust fundamentalists (and vice versa), when 'greens' think developers repugnant (and vice versa), and so on, distrust, skepticism, over-confident 'realism', and posturing keep parties from productive conversation and negotiation.¹¹

So mediators know to probe possibilities rather than to presume outcomes, and they take pains as a result to be neither presumptuous cynics nor naive optimists. In cases of increasingly common interdependence, when interconnected stakeholders—recreationists and environmentalists, residents and developers—can make each other miserable by taking a toll in time, money, natural resources and opportunities lost, mediators see opportunities to bring parties together in pragmatic, forward-looking ways to ask new questions, to build new relationships, to generate new options, and to solve problems together in new ways.

2. Convening representative stakeholders. Mediators know that parties often enter participatory settings after they have hammered out a sense of priorities and concerns that have reflected discussions with their own constituencies—and these mediators know that those priorities and concerns may very well shift over time—that we shouldn't take them as definitive last words, that a great deal remains to explore.¹²

Mediators know that, although accumulated anger may threaten efforts to achieve a consensual outcome, it can also fuel such efforts. As California mediator Lisa Beutler has observed, 'Whenever there is conflict in the room, it means there's energy to work on something—conflict is always better than apathy... So, now, if [as a party] I'm angry, I'm angry about something, and

I'm angry because I don't think something is working right—and I want things to work right'. In short, she argues, anger and contentiousness can provide energy for change, she argues, if mediators do their work well.¹³

Mediators are sensitive to the power of words: the impact that names, labels, descriptions, assumptions—even simple greetings—can have on people. Thus, for example, mediators sometimes are reluctant to call what they do 'mediation', because the way the word is interpreted might constrict or skew the parties' subsequent discussions. For instance, in a multi-party discussion requested by the Hawaii legislature concerning native gathering rights, Peter Adler called the process he convened, a 'study group'. By doing so, he sought to focus attention first and foremost on studying the issues—on learning—before attempting to design policy options for resolving them.¹⁴

3. Enabling joint inquiry and learning. None of the parties in a participatory process is omniscient. That means all have something to learn. The sense of vulnerability that attends this realisation can usefully divert their attention from thrusting and parrying to asking how new knowledge might improve their chances of achieving their goals and satisfying their interests.¹⁵ So, for example, simply 'mapping' a problem or issue onto a wall where everyone can see it can at times move participants from attacking one another on 'opposite sides of the table' to facing uncertainties on the 'same side' where they sit together as interdependent partners confronted with common challenges.

Mediators know that pictures tell thousands of words—that visual materials can open up participants' commentaries and stories far more than can pages and pages of text. Thus photographs and slides, family albums and photos of neighborhood 'goods' and 'bads', assets and deficits, can all help turn participants' claims from generalities about, say, transportation conditions to quite specific instances of particular intersections, thereby enabling the parties to learn from each other rather than lecturing each other.

Mediators know that processes of dialogue differ from processes of debate. In moments of dialogue, we seek understanding of meaning and sentiment, understanding of perspective and "where they're coming from", and we need skillfully attentive and probing facilitators to help us clarify meaning rather than allow hot-button words to lead us astray. To foster debate, in contrast, we encourage parties to sharpen their arguments, and we need skillful work not so much of

facilitating but of moderating an adversarial series of claims and refutations, counter-claims and counter-refutations.¹⁶

4. Negotiating Agreements About What to Do. Mediators often note the importance of working indirectly, the importance of not just abruptly trying to sit the parties down to cut a deal. To be sure, Americans can be notorious for a vulgar pragmatism, just as others might take pre-negotiation rituals to great lengths. Still, this wisdom of indirection helps us acknowledge that any, even apparently straightforward, negotiation involves not only the ‘substance’ being negotiated by those present, but the complex relationships involved, the legacies of their histories, and a changing and uncertain environment that can subtly put ‘relationships and ‘substance’, vulnerabilities and opportunities, all in new light over time. The most commonplace strategies of such indirection, of course, include making time and space for rituals such as sharing food and story-telling, and providing the time and space that enables parties to acknowledge and learn about one another at the same time.¹⁷

Mediators know how critical can be the turn from escalating ‘blame games’ to generating proposals. Blaming quickly becomes personalistic, fueling defensiveness, self-justification, and counter-argument; proposals open up possibilities of crafting agreements. Mediators know the risks of accusatory ‘you’ language, and they try to create space for participants to ask and explore variants of the essential ‘what if?’ questions, ‘What if we do this?’ ‘What if we try to do that?’¹⁸ Accusation and blame close down the possibilities for progress—imagining and offering options can open them up.

Mediators can teach us that the popular if broad term ‘public deliberation’ actually encompasses distinct pragmatic elements of dialogue, debate, and negotiation. Crucially too, mediators’ accounts suggest not just that both dialogue and debate differ from negotiation, but more significantly still that each of these practises can make distinctive contributions to public deliberation. To facilitate a dialogue calls for different sensitivities, skills, and goals than it takes to moderate a debate. Likewise, both facilitating and moderating differ as strategies of intervention from mediating a negotiation. Dialogue can seek understanding (not necessarily agreement); debate can seek to sharpen arguments (even at the cost of further antagonizing relationships); yet negotiation, in contrast, goes further to seek agreements upon practical action—answering the question, ‘What are we going to do?’

In integrating multi-stakeholder participation with practical negotiations, mediators will be very careful to do even more than what facilitators and moderators pragmatically do. Building upon both of these related strategies, mediators will work as well to evoke practical proposals, to probe possibilities of joint action and agreement, to explore how parties might go forward together.¹⁹

Conclusion

When we need to address public problems through multi-stakeholder task forces, recovery committees, or other participatory bodies, we can apply—and perhaps extend—the insights and lessons of skillful mediators. We can work to improve governance processes by integrating inclusive voice and representative participation with efficient and well-informed, practically-oriented negotiations. And as both affected parties and students of participation, we can then redeem the promise of empowering, transformative public participation—and perhaps save it from its evil twin that we continue to see in so many public hearing processes.

*John Forester is Professor of City and Regional Planning at Cornell University. Before the appearance in 1999 of *Deliberative Practitioner* (MIT Press), his best-known work was *Planning in the Face of Power* (University of California Press, 1989). His teaching and research explores the profiles of practitioners in several fields. (See <http://instruct1.cit.cornell.edu/courses/practicestories/>).*

¹ Reardon, Ken, with John Welsh, Brian Kreiswirth, and John Forester, 'Participatory Action Research from the Inside: A Profile of Ken Reardon's Community Development Practice in East St. Louis, *The American Sociologist*, 24:1, Summer: 69-91.

² Forester, John, 'Making Participation Work When Interests Conflict: From Fostering Dialogue and Moderating Debate To Mediating Disputes', *Journal of the American Planning Association*, Spring, Vol.72: 4, Fall 2006: 447-456. See also Forester, Scott Peters, and Margo Hittleman, 2005: Practice Stories website: <http://instruct1.cit.cornell.edu/courses/practicestories>

³ Schön, Donald, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books), 1983. See also Thomas Beierle and Jerry Cayford, "Dispute Resolution as a Method of Public Participation," in Rosemary O'Leary and Lisa Bingham (eds.), *The Promise and Performance of Environmental Conflict Resolution: Resources for the Future*, Washington D.C.: 53-68.

⁴ Susskind, Lawrence and Jennifer Thomas-Larmer, Chapter 2: 'Conducting a Conflict Assessment', in L. Susskind, S. McKearnan, and J. Thomas Larmer (eds.), *The Consensus Building Handbook* (Beverly Hills, CA: Sage), 1999.

⁵ Edwards, Mencer D., classroom presentation for the course, 'City and Regional Planning 546', Cornell University, November 2, 2006. Edwards's insight, simple but profound, is so fundamental to successful public participation that it might serve as the theme for an issue of this *Journal*, or even an IAP2 conference.

-
- ⁶ Forester, *The Deliberative Practitioner* (Cambridge, MA: M.I.T. Press), 1999; and 'Making Participation Work When Interests Conflict: From Fostering Dialogue and Moderating Debate To Mediating Disputes', *Journal of the American Planning Association*, Spring. Vol. 72: 4, Fall 2006: 447-456.
- ⁷ Susskind, Lawrence and Jennifer Thomas-Larmer, Chapter 2: 'Conducting a Conflict Assessment', in L. Susskind, S. McKernan, and J. Thomas Larmer (eds.), *The Consensus Building Handbook* (Beverly Hills, CA: Sage), 1999.
- ⁸ Dewey, John, *The Public and Its Problems* (New York: Henry Holt and Co.), 1927.
- ⁹ Perhaps Lawrence Susskind and Jeffrey Cruikshank's recently published book, *Breaking Robert's Rules* (New York: Oxford University Press, 2006) will encourage officials to improve the way they structure and conduct public meetings.
- ¹⁰ See Deborah Kolb and Judith Williams, *Everyday Negotiation: Navigating the Hidden Agendas of Bargaining* (San Francisco: Jossey Bass), 2003; John Paul Lederach, *Preparing for Peace* (Syracuse, NY: Syracuse University Press) 1995; Susan Collin Marks, *Watching the Wind* (Washington, D.C.: United States Institute of Peace, 2000; Jay Rothman, *Resolving Identity Based Conflict* (San Francisco: Jossey Bass), 1997; and my *Deliberative Practitioner* (MIT Press, 1999).
- ¹¹ Umemoto, Karen, 'Walking in Another's Shoes: Epistemological Challenges in Participatory Planning', *Journal of Planning Education and Research* (2001), 21: 17-31. See also: Public Conversations Project, 2006, <http://www.publicconversations.org/pcp/index.asp>
- ¹² Yankelovich, Daniel, *The Magic of Dialogue* (New York: Touchstone), 2001.
- ¹³ Lisa Beutler, in Forester, John (ed.), *Mediation in Practice* (typescript), Department of City and Regional Planning, Cornell University, 2005. See also Forester, John, 'Making Participation Work When Interests Conflict: From Fostering Dialogue and Moderating Debate To Mediating Disputes', *Journal of the American Planning Association*, Spring, Vol.72: 4, Fall 2006: 447-456.
- ¹⁴ Peter Adler, in Forester, John (ed.), *Mediation in Practice* (typescript), Department of City and Regional Planning, Cornell University, 2005.
- ¹⁵ Sandercock, L., *Cosmopolis II: Mongrel Cities in the 21st Century* (London: Continuum), 2003.
- ¹⁶ Forester, John, 'Making Participation Work When Interests Conflict: From Fostering Dialogue and Moderating Debate To Mediating Disputes', *Journal of the American Planning Association*, Spring, Vol.72: 4, Fall 2006: 447-456.
- ¹⁷ LeBaron, Michelle, *Bridging Troubled Waters* (San Francisco: Jossey Bass), 2002. See also Scavi, Marianella, *La Signora va nel Bronx* (third edition), (Milano: Bruno Mondadori), and 'The Place of Creative Conflict Management in Intercultural Communications', Conference on Deliberative Democracy: New Directions in Public Policy Dispute Resolution, Cambridge, MA, June 28-30, 2006.
- ¹⁸ J. Forester, 'Lawrence Susskind: Activist Mediation and Public Disputes', in Kolb, Deborah et al. (eds.), *When Talk Works* (San Francisco: Jossey-Bass), 1994.
- ¹⁹ Forester, John, 'Making Participation Work When Interests Conflict: From Fostering Dialogue and Moderating Debate To Mediating Disputes', *Journal of the American Planning Association*, Spring, Vol.72: 4, Fall 2006: 447-456.