

# Can Public Policy Dispute Resolution Meet the Challenges Set by Deliberative Democracy?

BY LAWRENCE SUSSKIND

**P**ublic policy dispute resolution (PPDR) practitioners are a special lot.

Unlike alternative dispute resolution specialists who get involved in disputes between private parties, PPDR practitioners work on the most politically charged issues of the day—how to rebuild a flood-ravaged city, where to store nuclear waste, even on subjects like abortion—and they do so in a fishbowl of public and media scrutiny. PPDR practitioners approach their work with a sense of calling and obligation. Scholars who have been studying democracy for the last decade are now helping to explain why this might be justified.

Many political philosophers see democracy primarily as a process of dialogue, deliberation and ultimately decision-making about how best to meet the shared interests of society—the public interest. They advocate something called deliberative democracy that gives new meaning to the work of PPDR practitioners, for it suggests that what they are doing is nothing less than deepening and broadening our commitment to the fundamental tenets of democracy itself.

The implications are profound for public policy dispute resolution, and, for that matter for the whole ADR field.

## How does PPDR work?

The logic of representative de-



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mocracy is clear. We elect officials who appoint agency personnel who manage the machinery of government. Anyone who thinks that government is treating them unfairly can go to court. In theory, we can try to influence our

increasing numbers of stakeholders have demanded a place at the public policy-making table, mediation (or consensus building) has provided a way to harmonize conflicting claims. The availability of nonpartisan profes-

***Deliberative democracy and public policy dispute resolution have been developing separately for some time. Now it is time for them to begin learning from each other.***

elected representatives by lobbying, writing letters to the editor, demonstrating in the street or even running for office ourselves. When all is said and done, however, our elected officials—who have won an electoral majority—are supposed to make the hard choices in a way that is responsive to our concerns.

Time and again, however, representative democracy falls short. Our elected officials seem more worried about getting re-elected than they do about solving the difficult problems we face. They seem more responsive to those who finance their re-election campaigns than to those with the greatest needs. While representative democracy puts a premium on majority rule, it doesn't guarantee that the wisest agreement (or any agreement) will emerge. And, it certainly doesn't guarantee that the interests of the least powerful will be taken into account.

Given the broadening of the rules of standing in our court system over the past four decades, it is easy enough for an unhappy party to throw a spanner into the works. Thus, we often get no decision even when there are important societal needs at stake. There is no constituency for "good science," so expertise is either ignored or contested. Finally, the "horse trading" that goes on behind the scenes continues to erode the legitimacy of our governmental institutions.

The rise of PPDR has helped. As

sionals—with dispute resolution skills and specialized knowledge about the problems under discussion—has produced positive results at every level. Indeed, PPDR is now often prescribed as an explicit option in federal, state and local legislation.

Even in the face of seemingly intractable value-based disputes, PPDR has produced workable agreements. It has emerged as a more effective way of responding to the most vexing aspects of public policy-making—moving quickly when controversial decisions have to be made, ensuring that scientific and technical considerations are given their due, guaranteeing that all groups (not just those with the money to control the airwaves or go to court) are given a fair hearing, and restoring the legitimacy of government in the face of widespread cynicism about government's capacity to solve problems.<sup>1</sup> Indeed, there is now ample documentation to show that mediated negotiation in the public arena can produce better outcomes than traditional legislative, administrative or judicial processes. In short, we can show that PPDR produces fairer, more efficient, more stable and wiser results—strengthening our evolving commitment to democracy.<sup>2</sup>

Too many people, however, including some PPDR practitioners, have yet to grasp the link between the practice of PPDR and the ideals of deliberative democracy.

## Deliberative democracy

Deliberative democracy poses an ideal. It imagines a context in which opinions are shaped through respectful dialogue. It postulates a governmental process that gives as much attention to the concerns of the average citizen as it does to the most aggressive (and well organized) interest groups.<sup>3</sup> And, it seeks to restore face-to-face deliberation—in which the quality of reasoning carries weight—as a public educational strategy. In addition to the academics seeking to spell out a theory of deliberative democracy for our time, there are practitioners helping to enable this kind of dialogue.<sup>4</sup>

In June of 2005, under the auspices of the MIT-Harvard Public Disputes Program at Harvard Law School, some of the leading PPDR practitioners in the United States and some of the best known proponents of deliberative democracy from around the world assembled to share ideas and experiences. The exchange was eye-opening. (A DVD with a summary of the highpoints of the conversation is now available through the Clearinghouse of the Program on Negotiation at Harvard Law School.)

### Three important gaps

While the two “communities” had a lot to say to each other, and found a great deal of common ground, there were three points on which they held surprisingly different views. The first concerned the question of representativeness: Who ought to be involved in ad hoc efforts to supplement the formal mechanisms of government? The second dealt with the management of ad hoc problem-solving efforts or deliberations. The third revolved around the very different ways in which the two groups go about benchmarking success.

PPDR professionals have developed conflict assessment and related techniques to identify appropriate stakeholders in each public policy dispute, but these focus on identifying, selecting and equipping the representatives of groups (both organized and diffused) to participate in problem-solving efforts. They do not focus

on the problem of finding a voice that speaks for the general public-at-large.

Deliberative democracy demands that more effort go into ensuring that the average citizen’s view is taken into account. Along these lines, they have developed deliberative polling and other techniques to get at “raw opinion” (not yet shaped by the media or

generating written agreements that stakeholder representatives and convening officials promise to implement. Short of some way of holding parties to their commitments, most dispute resolution professionals would view a dialogue as having fallen short. The article by David Kahane and Carolyn Lukensmeyer in this issue suggests

## *Deliberative democracy raises the bar for public policy dispute resolution, and deepens its significance.*

managed efforts to spin the news) in ways that PPDR has not yet adopted. Jim Fishkin’s article in this magazine explains how deliberative polling, for example, can be used to document the concerns of the average citizen.

PPDR professionals are very attentive to how multi-stakeholder dialogues ought to be managed. They see government officials (whether elected or appointed) as interested parties, not as credible managers of collaborative efforts. Thus, PPDR is focused on the important role that professional mediators can play in ensuring the right parties are at the table, ground rules for engagement are developed and every effort is made to maximize value (i.e. do what has to be done to ensure that the interests of all parties are met).

Deliberative democrats have not, at least to date, seen a need for mediators or nonpartisan facilitators to manage the dialogues they prescribe. They presume that deliberations will either be self-starting and self-sustaining, or that government officials will coordinate them. An article in this issue by Susan Podziba speaks to this question.

Deliberative democrats measure their success in terms of the quality of the discourse they stimulate. If ideas are well debated, dialogue is open (not unfairly manipulated) and social learning occurs, they are content. PPDR professionals, on the other hand, are much more focused on achieving implementable agreements.

While they applaud the larger goals of deliberative democracy, PPDR professionals are focused on

ways of bridging this divide.

Finally, the link between dispute resolution and deliberation is intuitive but sometimes difficult to articulate. This issue offers a pair of articles to address this question. Carrie Menkel-Meadow discusses how dialogic models of dispute resolution foster deliberative democracy, while Richard Reuben offers an approach for assessing the democratic legitimacy of dispute resolution methods—that is, whether a dispute resolution method or system stands to enhance or diminish the larger goals of democratic governance.

Only through further close study of what deliberative democrats have to say will the PPDR community be able to chart its future effectively. The overarching goal of PPDR ought not be just to resolve public policy disputes as they present themselves, but in addition to push toward the ideals of deliberative democracy.

### Endnotes

<sup>1</sup> See generally LAWRENCE SUSSKIND ET. AL, *THE CONSENSUS BUILDING HANDBOOK* (1999).

<sup>2</sup> See generally LAWRENCE SUSSKIND & JEFFREY CRUIKSHANK, *BREAKING THE IMPASSE* (Free Press, 1987).

<sup>3</sup> See generally JAMES S. FISHKIN & PETER LASLETT, *DEBATING DELIBERATIVE DEMOCRACY* (Blackwell, 2003).

<sup>4</sup> See generally DANIEL YANKOLOVICH, *THE MAGIC OF DIALOGUE* (1999).