Mediated Negotiation in the Public Sector: The Planner as Mediator

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Abstract

Resource allocation decisions in the public sector are typically made by legislative and administrative bodies. All too often, these methods of decision making fail to produce wise and efficient responses to conflicting needs and interests and courts are asked to review or to overturn these decisions. Recent experiments with mediated negotiation — face-to-face negotiation involving teams representing key stakeholding interests and an impartial mediator — indicate that it might be possible to supplement traditional resource allocation processes in a manner likely to yield an informed consensus. Three cases have been selected to illustrate the procedures and opportunities involved.

The role of the mediator in each of these cases is then compared to the roles played by the technician-planner and advocate-planner. The quintessential skills of the mediator are described and it is suggested that these are not so different from the process-management skills that planners have been taught for years.

Important distinctions among the four modes of mediation are identified and discussed as a prelude to discussing appropriate models for planners. The final part of the paper presents some observations about the problems of educating planners to be effective mediators and a response to some of the criticisms likely to be raised by opponents of the idea that planners ought to play mediating roles.

Introduction

While most public resource allocation decisions are made by legislative and administrative agencies, individuals and groups affected by such decisions continue to demand a greater voice than the electoral process allows. While referendums, initiatives, formal participation in administrative hearings, and lobbying offer opportunities for more direct involvement, they fall short of providing the "stakeholding interests" with the control they seek. Referenda oversimplify the range of alternatives, failing to reflect the diversity of positions held by the electorate. Public hearings rarely guarantee full or fair consideration of minority viewpoints. Almost all of the traditional participatory supplements fail to reconcile the conflicting claims of contending parties.

In many instances, discontented parties can seek redress through the courts. Unfortunately, judicial decision making is deficient in several important respects. Litigation is costly and time consuming. It often precludes access by the poorest groups and is obviously inappropriate in situations that demand immediate attention. The adversarial nature of litigation undermines relationships, pitting parties against one another and inevitably erodes whatever goodwill existed. Court rulings are limited by procedural and substantive constraints. Indeed, the essence of many allocation conflicts may be left unexamined because of the constraints imposed by adjudicatory rules and procedures. The legal process tends to give greater consideration to conformance with procedural ground rules and legal precedent than to fairness and efficiency. Recently, experiments with mediated negotiation — face-to-face negotiations involving teams representing key stakeholding interests and an impartial mediator — indicate that traditional resource allocation decision-making processes may be supplemented in a manner likely to yield informed and durable agreements. In Connecticut, mediated negotiation was used to reach consensus on the allocation of federal block grant funds to public and private social service providers (Watts 1983). Federal agencies, including the Environmental Protection Agency, have experimented with mediation in the rule-making process (Baldwin 1983). Mediation was used to resolve a crisis in the funding of the state unemployment compensation fund in Wisconsin (Bellman 1983), to settle a number of water policy disputes in the western United States (Kennedy and Lansford 1983; Folk-Williams 1982), and to resolve dozens of land use and facility-siting disputes across the country (Susskind et al. 1983; Talbot 1983). These and other instances of mediated negotiation indicate that the parties with recognized stakes in the outcome of disputes can be involved in decision making without infringing on the authority and responsibility of elected officials.

The skills that successful mediators use appear strikingly similar to many of the process-management skills that planners have been taught for decades. The art of persuasion and the creative accommodation of competing interests, coupled with the technical skills of design — the identification of options, the generation of alternative plans or policies, and the assessment of various alternatives — as well as a concern for the implementation of agreements or recommendations are common to the mediator and the planner. Our analysis of recent cases of mediated negotiation in the public sector underscores these similarities and suggests that it might be instructive for planners to think of themselves as playing mediating roles.

In this paper, we want to demonstrate the advantages of thinking about the planner's role in this way. We begin by describing three instances in which mediated negotiation was used to resolve resource allocation disputes in the public sector: a Negotiated Investment Strategy (NIS) experiment in Columbus, Ohio; the conversion of an oil-fired power plant to coal in Massachusetts; and a water development "battle" in the Denver area. These examples illustrate the procedures involved in mediated negotiation, particularly the roles played by mediators.

We then review the changing conceptualization of the planner's role over the past three decades, identifying the weaknesses of prevailing models of practice, and indicating why the model of planner as mediator is more satisfying especially given the now generally shared presumption that planners have a major role to play in the process of implementation. The third section of our paper presents a brief overview of the four realms in which mediated negotiation has been used with some success: (1) labor relations (i.e., collective bargaining), (2) international relations, (3) community dispute resolution, and (4) environmental dispute resolution. We highlight variations in the roles played by mediators in each of these four realms to underscore those aspects of mediation practice that might be most helpful to planners. We conclude with some observations about the problems of educating planners to be effective mediators and by responding to three challenges likely to be directed at our call for planners to think of
themselves as mediators: (1) What authority and credibility will planners have if they claim to be able to mediate?, (2) What are the employment opportunities for mediator-planners?, and (3) Can the model of the planner as a mediator be reconciled with the planner’s traditional commitment to social change?

Some Illustrative Cases

The Columbus Negotiated Investment Strategy (NIS)

The Columbus NIS experiment was one of several efforts by the Charles F. Kettering Foundation to develop a more effective approach to coordinating intergovernmental policies. The experiment, begun in 1979, focused on complex development issues ranging from site-specific land use matters to metropolitan-wide social service policies.

Three teams representing the city, state, and federal governments participated in the negotiations. The Mayor of Columbus (Tom Moody), Governor James Rhodes, and Federal Regional Commission Chairperson Douglas Kelm (assisted by White House Intergovernmental Affairs Advisor Jack Watson) appointed the leaders of the three teams, who, in turn, selected additional team members. The only guidelines for the selection of the team members were that the teams be kept to a workable size and that individuals with appropriate expertise and authority be included.

The mediators, Lawrence Susskind and Frank Keefe, were recommended by the Kettering Foundation and the Ford Foundation and approved by team leaders Tom Moody, Lt. Governor George Voinovich, and Federal Regional Council representative Fran Ryan. Susskind, a professor of Urban Studies and Planning at the Massachusetts Institute of Technology, had been active in public participation experiments for several years. Keefe, a city planner by training, had been Director of the Office of State Planning (a cabinet-level position) in Massachusetts.

The negotiating teams met prior to the first formal negotiating session to jointly establish ground rules for the NIS process. They made a number of decisions concerning team membership, media involvement, recordkeeping, inter-team communication, the relationship of the NIS effort to other ongoing intergovernmental negotiations, and the process for ratifying agreements. They also delineated the roles which the mediators would play.

The agenda for the negotiations was formulated through a multi-step process. First, the teams met separately to prepare written statements summarizing their primary concerns about growth and development in the Columbus area and identifying obstacles to effective intergovernmental planning and policy coordination. These statements formed the basis of a joint meeting held in October 1979. Based on this discussion, the mediators drafted a list of presumably shared concerns. The mediators’ draft was circulated to the three teams, commented upon, and revised. The final version of the agenda included eight topics: transportation, human services, fair housing, community development, local water quality management, minority business development, employment and job training, and the needs of special populations. Each team then prepared position papers on each agenda item. Prior to the first negotiation session, the mediators combined these position papers into a “consolidated briefing paper” summarizing the issues at stake, the perspectives of each team on each issue, and specific items to be negotiated at scheduled bargaining sessions.

Face-to-face negotiations continued over three, two-day sessions held in mid-December, 1979, late January and early March, 1980. Each session was followed by a meeting of various tripartite committees (i.e., comprised of one appointee designated by each team leader). These committees hammered out detailed language elaborating points of agreement reached at the full negotiating sessions and suggested ways of handling points of disagreement. A rush of tripartite committee meetings followed the March negotiating session and final reports from each of the eight tripartite committees were sent to the mediators by mid-April.

The mediators consolidated these reports and distributed to all team members a “draft agreement.” After a final revision, an agreement was signed at a final NIS session held on April 30, 1980. According to the mediators, the participants “expressed both pride and relief” (Susskind and Keefe 1980, p. 12). The Columbus agreement not only itemized projects (potentially totalling more than $500 million in public and private investments) and policy changes relevant to each of the eight items on the agenda, but also outlined procedures for implementing the terms of the agreement, assigned responsibility for monitoring specific items to particular team members, and included provisions for resolving subsequent conflicting interpretations of the document.

By 1982, sixty percent of the more than eighty points outlined in the ninety-one page final agreement had been implemented (Bersch 1982). Some items had become impossible to complete when the Reagan Administration dismantled relevant federal programs. All in all, the mediated agreement appears to have withstood both the test of time and the transition in federal leadership.

Mediators Susskind and Keefe played central roles in the negotiations. The structure of the NIS process depended largely on the ability of the mediators to identify shared concerns and common interests among the negotiating teams from the agenda setting stage through the ratification of a final written agreement. They also met separately with each team and each tripartite committee to unsnarl intra- and inter-team differences that threatened to block agreement. Perhaps, most importantly, the ability of the mediators to generate a “single text” from the various proposals submitted by the teams and tripartite committees served to bridge differences among divergent interests.

The team leaders played important behind-the-scenes “mediating” roles. They facilitated intra-team negotiations necessary to the development of bargaining positions (N.B. This was especially important for the federal team which included personnel from seventeen different agencies) and took responsibility for making sure that constituent groups or agency heads were kept informed as the process unfolded.
When the final document was signed, the key steps for implementation had been spelled out and all appropriate decision-makers were “on-board.”

Brayton Point Coal Conversion

Authorized by the Energy Supply and Environmental Coordination Act (ESECA) of 1974, the Department of Energy (DOE) notified the New England Power Company (NEPCO) that it would be required to burn coal instead of oil at three units of its Brayton Point electric generating facility (Smith 1983). Anticipating a reduction in efficiency levels, NEPCO contested the DOE’s estimates of the cost of conversion and the steps necessary to meet state air quality standards, and announced that it would challenge the DOE order in court. A legal contest would have brought in the Environmental Protection Agency which would have argued against coal conversion of Brayton Point because of the adverse air quality impacts. Prospects for a smooth and timely conversion appeared poor. The ESECA program divided regulatory responsibility among a number of state and federal agencies and made no provision for settling conflicts among them.

In April 1977, the Center for Energy Policy, a non-profit organization in Boston interested in promoting creative processes for developing energy policies in the northeastern U.S., persuaded the principal parties to enlist the assistance of a mediator. They arranged a meeting attended by officials of NEPCO, DOE, EPA, and the Massachusetts Department of Environmental Quality (DEQE). Although the DOE agreed to participate, it also continued to pursue its objectives through formal regulatory channels.

The negotiations proceeded in three phases. First, the parties agreed on an agenda which set the order of issues to be considered and named the parties to discuss each issue. Second, several months of technical and quantitative analyses were undertaken to establish a shared factual basis for the conversion decision. Finally, bilateral discussions between NEPCO and DEQE produced new standards for particulate and sulfur emissions for the Brayton Point plant.

Eleven months after the negotiations formally began, an agreement was reached. Since the key parties had agreed to include only the regulatory agencies and NEPCO in the negotiations, public hearings were held to allow excluded groups to express their concerns. The final agreement specified a phased conversion plan for Brayton Point, set maximum levels for the sulfur content of coal used at the facility, and prescribed particulate emission standards.

The negotiated agreement appeared to satisfy all the participating parties, especially the DOE which recognized the distinct advantage of achieving the conversion without litigation. An attempt to include the concerns and opinions of other interested parties was made through collateral procedures (i.e., public hearings) required under formal regulatory rules. Nonetheless, the negotiated agreement could be criticized for apparently neglecting to consider the interests of populations in other parts of the northeast susceptible to increased sulfate levels and acid rain. Some observers have suggested that the federal officials involved in the negotiations were “standing in” for the interests of the broader public. This was not obvious, however, from the way they handled themselves in the Brayton Point negotiations.

The mediator in the Brayton Point case was David O’Connor, a staff member at the Center for Energy Policy. He acted in several capacities during the course of the negotiations: taking, overall, a rather active part in the process. Foremost, O’Connor functioned as a manager of the negotiating sessions. He guided the participants through the process of establishing ground rules (for setting agenda, introducing issues, making proposals, handling the press, documenting discussions, and formulating agreements), scheduled and convened the meetings, and moderated discussions to ensure that all parties had an adequate opportunity to present their positions. O’Connor also served as an information resource. He attempted to explain and review technical and legal matters to ensure that the parties shared a common understanding of the issues and their implications. O’Connor regularly provided encouragement to the group, identifying points of agreement and stressing the progress of the negotiations as they unfolded. This psychological support was crucial to sustaining the momentum of the negotiations. O’Connor also acted as a confidant, meeting with each of the parties in private sessions and helping them articulate their interests and experiment with new positions and proposals without jeopardy. Finally, through these private meetings O’Connor was able to gain a more comprehensive understanding of the interests of the parties and the basic conflicts underlying their dispute. He used this privileged vantage point to develop what were often pivotal suggestions.

Foothills Water Treatment Project

The Foothills Water Treatment Project was designed initially to treat 125 million gallons of water a day, with an ultimate capacity of 500 million gallons per day. A proposal to construct this facility and a dam and reservoir on the South Platte River twenty-five miles southwest of Denver, Colorado, sparked a fierce dispute among federal and local agencies and environmental groups (Burgess 1983). The groups debated the merits of the proposal, projected impacts on air quality and ground patterns, and sought to estimate future raw water needs for the Denver area.

The parties were embroiled in the dispute when Congressional Representative Pat Schroeder suggested, in May 1977, the use of mediation to help settle the conflict. Her overtures were repeatedly rebuffed by one of the key project proponents, the Denver Water Board. Prospects for mediation improved when Congresswoman Tim Wirth, a well-known environmental advocate who publicly supported the proposed facility, volunteered to mediate.
Wirth began preparations for the negotiations by consulting privately with officials from the principal agencies. Formal negotiations began with a series of meetings arranged by Wirth, involving the Army Corps of Engineers, the Environmental Protection Agency (EPA), and the Denver Water Board. Eventually the Denver Water Board and the EPA agreed to continue discussions following a thorough study of the proposed project and possible alternatives by the Corps.

The Corps' report went beyond a simple examination of the proposal and alternatives. It ultimately addressed all the major issues in the controversy and provided the basis for a tentative settlement among the three agencies. This proposal was then circulated to a coalition of environmentalists. Although a few objections were raised by members of this group, a final agreement was reached with only minor alterations.

The final settlement was viewed by the parties involved as containing victories and concessions for all. On the whole, the parties expressed satisfaction with the outcome, believing that the agreement provided greater gains than those likely to be achieved through court action or a federally imposed decision.

Nonetheless, the settlement can be criticized on several grounds. First, as a consequence of the failure to ensure the participation of all interested parties in the negotiations, a discontented faction within the environmental coalition contested the settlement in court. Implementation of the negotiated settlement, therefore, was not assured. Also, the reduced capacity of the water facility that was finally agreed upon may cause severe water shortages in the Denver area in the future. Ratepayers and homeowners may find that they have to pay a premium to expand the facility at a later time. This suggests that, perhaps, other interest groups (i.e., homeowners) with a stake in the outcome were not adequately represented in the negotiations. Finally, at least one decision-maker, the judge presiding over the case, before the court, strongly objected to the informal negotiations. He was angered by what he perceived to be a preemption of his powers and responsibilities. (The negotiated settlement was ratified, albeit indirectly, through various formal regulatory processes.)

Throughout the negotiations, which were never referred to as "mediation," Wirth performed a number of functions. He initiated the dialogue among the key parties which ultimately led to the settlement, orchestrated meetings and manipulated media coverage to create and maintain momentum, and occasionally pressured the parties to accept compromise. Wirth's reported behavior at the evening meetings which produced the tentative settlement among the Army Corps, EPA, and the Denver Water Board was quite assertive. He insisted that the parties continue negotiating long into the night until an agreement was reached.

The acceptance of Congressman Wirth as a mediator merits special attention because of his public stand on the issues in dispute and his official status. Despite his pro-environmental image, Wirth had written to the Bureau of Land Management in 1977 supporting one version of the Foothills Project. While local organizations and actors believed that he represented their interests, officially, Wirth was accountable only to his congressional constituents. In any case, his status as a Congressman allowed him to bring both subtle and direct pressure to bear on the negotiating parties, especially the federal agencies. Wirth's biases were, perhaps, not easy to decipher, but he could hardly be considered a "neutral" mediator.

At the core of the earliest (and most enduring) conception of the planner's role is the notion of technical expertise. The technician-planner was conceived as an apolitical designer of plans and alternative futures who worked within a framework of goals, objectives, and resource limitations established by elected decision-makers. This conception of the planner's role assumes that analytic skills (the planner's "expertise") can be used to discover the "best" solution to a particular problem. Over time the presumed responsibilities of the planner-technician have broadened to include an examination of the consequences of alternative plans (impacts), but such evaluations still are presumed to be objective statements developed through the planner's use of specialized analytic tools.

Benveniste has helped to deepen our conception of the planner-technician's role (in The Politics of Expertise) by describing the political dimensions of even the most self-consciously objective expert's practice. He points out that the technical expertise of the planner is the source of his or her power, and that the planner's overt role remains one of advisor to decision-makers. But astute planners, aware of the power of the relationship between themselves and the decision-maker, understand that their own values infuse the formulation and analysis of plans and policy recommendations.

The role of the technician-planner presupposes a centralized and stable political environment and assumes the planner's loyalty to the individual or organization seeking his or her advice. Neither condition is always true. As a consequence, the technician's role has been the cause of much frustration experienced by many practicing planners. Planners propose courses of action, but the acceptance and implementation of their recommendations are almost always beyond the scope of their influence.

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A New Conception of the Planner's Role

Before moving to our proposal for a new conception of the planner's role, we will first review some of the changing conceptions of the role of the planner in the United States over the past three decades. Substantial shifts have occurred as a result of changing socioeconomic and political conditions, changes in the make-up of the planning profession, as well as adaptations resulting from careful reflection on past experiences (Susskind 1974).

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values openly. He wrote: "Appropriate planning action cannot be prescribed from a position of value neutrality, for prescriptions are based on desired objectives" (Davidoff 1965, p. 331).

The advocacy model asserts that the development of plans and policies ought not to be the exclusive responsibility of government agencies. On the contrary, special interest groups, especially disadvantaged segments of society, should be represented by trained planners committed to integrating the needs and desires of their clients into proposed alternatives to official policy. Proponents of the advocacy model believe that there is no unitary public interest and that the role of the planner is to give voice to the many "publics" whose welfare is at stake in any public resource allocation decision. Planning would then be transformed into a competitive marketplace of alternatives. Under the terms of the advocacy model, the planner is responsible for pointing out the biases inherent in the plans offered by opposing groups, informing the public about the concerns and views of his or her client group, and helping the client clarify and transform ideas into technically feasible alternatives.

Usually, the advocate planner is seen as challenging the system from outside, opposing the plans put forward by government agencies as well as proposing alternatives. But in such a model, the influence of the advocate planner ends as soon as a particular plan has been proposed. Advocate planners have not claimed a role in the ultimate implementation of plans, presuming that implementation is the responsibility of government agencies with appropriate jurisdictions (and that any failure to implement them can be challenged politically or through litigation).

Advocacy planning has been challenged by Peattie and others who, while concurring with the basic premises of the advocacy model and its advantages, criticize it for its practical limitations. Which segment of the community should the planner represent? How can the planner effectively identify his or her client's interest when even small subcommunities are rarely ethnically or economically homogeneous? Peattie offers this evaluation of the advocacy approach:

"In effect, advocacy planning for the local community miniaturizes, but does not eliminate, the problems of conflicting interest which inher in the planning activities of citywide agencies" (Peattie 1968, p. 84).

The advocacy model has also been criticized for downplaying the importance of scientific analysis. Klosterman recently noted that the denial of a factual basis for planning (rooted in the scientific methods of analysis that many planners employ) leaves decision making entirely in the hands of contending political actors. "This gives planners no basis for criticizing the outcomes of political processes which selectively promote the interests of the few over those of the many" (Klosterman 1983, p. 217). Decisions become merely a contest among power blocks to determine whose preferences should prevail.

In addition to the technician-planner and the advocate planner, other conceptualizations of the planner's role have been suggested. In 1969, Rabinovitz described two additional roles for planners operating in "competitive" or "fragmented" political environments. The mobilizer-planner, she suggested, is a technician who develops plans and policy recommendations and then works within the system to generate support for them. Rabinovitz' broker/negotiator acts as a liaison between contending power blocks in a community, attempting to engineer palatable compromises. Finally, planners can serve as communicators, facilitating interaction among contending groups and within agencies (Forester 1980), or as educators (Alexander 1979).

Most of these conceptions share the presumption that the planner's responsibilities end once a plan, policy, or program has been accepted by the decision-makers or key power blocks. The planner presumably abandons the process at this point and returns to earlier steps in the process. Although planners expect to be summoned at some later point to evaluate the results of programs or projects with an eye toward formulating improvements, they rarely play a continuing role in implementation. It is unfortunate since most public policies and projects flounder after a direction has been set—partly because it is difficult to orchestrate all the necessary actors and partly because dissatisfied segments of the community create obstacles to implementation.

In our view, implementation failures are a consequence of the planning profession's hesitancy to stress the important role that planners can play during implementation, especially in building and maintaining a durable consensus and in resolving disagreements. These tasks are central to our view of the planner as mediator. The mediator-planner performs some of the same roles as Rabinovitz' broker/negotiator. However, the mediator-planner does more than bring contending parties together around a common plan. The mediator-planner commits to a continuing role, seeking to ensure that the interests of all parties affected by a policy or a plan are taken into account from beginning to end.

Moreover, mediation is a method of involving disputing parties in developing mutually satisfactory responses to their differences. The mediator-planner encourages contending stakeholders to explore their differences—seeking zones of overlapping interest or possible items to trade, striving to maximize "joint gains" (Raiffa 1982). As Raiffa points out, most disputes involve multiple issues. Because disputing parties seldom value all issues equally, trade-offs are possible. By emphasizing the possibility of "joint gains" and mutually satisfying arrangements, the mediator planner enhances the chances of implementing a particular course of action.

Of the three mediation efforts described above, only one (the Columbus case) involved trained planners. Yet the situations faced by the mediators in all these cases were similar to those that planners confront all the time. In our view, planners would do well to equip themselves as mediators and to become more familiar with the techniques of consensus-building and dispute resolution.
Finding an Appropriate Model

Approaches to mediation are as varied as the personalities of the mediators involved. Labor mediators tend to be highly dispassionate about the negotiation process. They assume that the parties have an equal understanding of the rules of collective bargaining and equal experience in piecing together a mutually satisfactory package of concessions under the pressure of a deadline. International mediators, in contrast, tend to be more flamboyant. Henry Kissinger, controversial as he is, illustrates the considerable activism typical of international mediators. The process of mediating international disputes is usually ad hoc—there are few rules.

We have compiled a list of the functions that most mediators perform, some, if not all, of the time. At a minimum, mediators are catalysts for action. Intervention by an outsider (at the request of the contending parties) creates a certain amount of pressure for interaction. Mediators are also facilitators. They usually schedule meetings, moderate discussions, and encourage participants to continue talking.

In addition, as illustrated in the three cases described earlier, mediators often assume very active roles. In the Columbus NIS case, the mediators controlled much of the communication among the parties, coordinating the exchange of concessions and, at times, served to mask the bargaining strengths and weaknesses of one side from the other. From the outset, Congressman Wirth was aggressive in shaping a role for himself in the Foothills negotiation. He persuaded the parties to come to the bargaining table and, later, encouraged them (sometimes using rather heavy-handed tactics) to make concessions. Wirth's manipulation of the media also helped to sustain momentum. O'Connor functioned as an educator, attempting to ensure that the participants understood the technical and legal aspects of the Brayton Point controversy. He held private sessions, allowing the participants to try out new proposals without jeopardizing their bargaining stand vis-a-vis the other parties. As a proposer of alternatives, he integrated his knowledge of the issues and the interests of the parties to devise new courses of action.

<table>
<thead>
<tr>
<th>Table 1: Elements</th>
<th>Labor Disputes</th>
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<tr>
<td>Source of Conflict</td>
<td>Contract expires</td>
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<tr>
<td>Process is Triggered by:</td>
<td>A deadlock in negotiations: the NLRB steps in.</td>
</tr>
<tr>
<td>Identification of Stakeholders</td>
<td>Institutionalized through: (1) Unions or employee reps, and (2) Management.</td>
</tr>
<tr>
<td>Representation</td>
<td>Union reps formally authorized by union membership. Management reps appointed by management.</td>
</tr>
<tr>
<td>Familiarity of Parties with Negotiation</td>
<td>High for both parties.</td>
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<tr>
<td>Number of Stakeholding Parties</td>
<td>Usually bi-lateral</td>
</tr>
<tr>
<td>Mediator Selection</td>
<td>Appointed by NLRB, AAA, or FMCS with the approval of the parties.</td>
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<tr>
<td>Agenda Setting</td>
<td>Generally circumscribed by federal legislation.</td>
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<tr>
<td>Approval of Draft Agreement Required by:</td>
<td>Union membership.</td>
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The roles that mediators play in bringing parties to an agreement vary, in part, according to the arenas in which mediation is used. We will analyze mediation in four realms: labor relations, international relations, community dispute resolution, and environmental dispute resolution. Since the role of any mediator is shaped by both the context in which negotiations take place as well as by the particular issues at stake, our examinations of mediator roles highlight both. Table 1 offers a comparison. Our goal is to provide a basis for characterizing strategies for mediator-planners.

Labor Relations

Mediation in collective bargaining is highly institutionalized. Federal legislation sets a legal framework. Labor unions are well-established and have adopted organizational structures that make it easy to represent the interests of labor in dealing with management. A nationwide mediator referral system has been established. The Federal Mediation and Conciliation Service (FMCS), an independent federal governmental agency, and the American Arbitration Association (AAA), a private, non-profit organization, provide mediation and arbitration services in both public and private labor disputes.
Mediation in collective bargaining situations takes place in a well-structured environment. The issues are generally clear until recently, wages and benefits, working conditions and union recognition were the primary agenda items, the stakeholding parties are easily identifiable, representatives are readily selected, and the relationships among the parties are ongoing and long-term. Power relationships are well-defined by past experience and the interests of disputing parties (in reaching agreement) are usually symmetrical – that is, the costs of nonsettlement increase with time for both labor and management. Negotiations regularly make reference to various conventions such as the inflation rate, the consumer price index and other economic indicators by which both sides can assess the reasonableness of demands and offers. Further, the outcome of negotiations in labor disputes is fairly predictable, ending with either the signing of a contract or a strike. The highly structured context of labor mediation has important implications for the role of the mediator. Traditionally, the mediator in labor disputes is preoccupied with concerns about the mediation process, ensuring that legal deadlines are met and that procedures for filing grievances conform to established standards. Labor mediators cherish their public image of neutrality, believing, probably correctly, that neutrality is the key to their success. Labor mediators generally leave responsibility for the quality of agreements completely up to the negotiating parties.

### International Disputes

- A "crisis" arises involving two or more nations.
- The leadership of one country announcing a position or stating a concern.
- Self-identification (usually requiring some "proof" of stake) and identification by other involved nations.
- Appointment of a negotiating delegation.
- High for all parties.
- Usually bilateral; could be multilateral.
- Suggested by one of distributing parties; agreed upon by all.
- Open to negotiation.
- Official governmental bodies (i.e., Congress, Parliament, etc.).

### Community Disputes

- A civil case is referred by the court; neighbors or family members seek action on a complaint.
- One or more parties seek assistance from a community dispute resolution center.
- Party who initiates mediation process identifies other responsible parties. These parties in turn may identify still others.
- Parties usually represent themselves. Sometimes represented by legal counsel.
- Usually low for all parties.
- Mostly bilateral.
- Appointed by community dispute resolution center.
- Set by complaint subject to revision by other parties.
- Usually none.

### Environmental Disputes

- A regulatory permit is requested or an alleged violation of existing rules or a "dangerous situation" is detected.
- One or more parties involved in a dispute or an "observer" suggests mediation.
- Parties already involved identify additional parties; public notice and active search for additional stakeholders may be necessary.
- Ad hoc groups may be formed and asked to select negotiating representatives. If many groups are involved, it may be necessary to devise a system of "pyramiding" representation.
- Variable. Some parties may be relatively experienced. Most will have low familiarity with negotiating techniques.
- Usually multilateral.
- Suggested by one or more disputing parties or by an "outsider," subject to approval by all parties.
- Open negotiation.
- Public officials or public agencies whose support is necessary for implementation.

In international disputes, the context of mediation tends to be rather loosely defined. Although disputing parties are usually identifiable, the issues may be highly complex, involving spillover effects on countries not directly involved in the negotiations. International mediation, especially regarding trade agreements, often involves large delegations. Delegation members are usually quite conversant
with the dynamics of mediated negotiation. International mediation also frequently occurs at times of crisis during which a further deterioration of relationships can lead to disastrous results affecting the entire world. In the United States, international mediation is the terrain of the State Department and, in most cases, the appointment of a mediator is an overtly political decision.

International mediators generally tend to play a much more dynamic role than their counterparts, asserting more control over the proceedings and exhibiting more concern about the terms of settlement (i.e., the quality of agreements). In international disputes, the neutrality of the mediator is less of an issue. Zartman and Berman point out that “nothing requires the third party . . . to be subtle and indirect, except for the general requirements of effectiveness” (Zartman and Berman 1982, p. 78). It is acceptable, according to Zartman and Berman, for the mediator to assume an active posture during negotiations, pointing out benefits that will flow from a particular solution or new possibilities for resolving the problem at hand, or even offering inducements for a negotiated settlement.

Discussing the intervention by Henry Kissinger in the Middle East, Dean Pruitt asserts that a number of mediation strategies were employed that appear to exceed the conventional roles of “catalyst” or “facilitator” (Rubin 1981). Kissinger directly controlled all communications between the disputing parties, actively persuaded parties to make concessions, allowed the parties to direct their anger toward him rather than against their opponents, coordinated the exchange of concessions, made his own proposals for settlement, and created and maintained the momentum for talks. Moreover, Kissinger was conspicuously linked to the United States whose interests in settling the Israeli-Arab conflict were only thinly disguised (Rubin 1981, p. 274).

Community Dispute Resolution

The use of mediation in community disputes has gained popularity over the past two decades. The National Center for Dispute Settlement of the American Arbitration Association and a network of Neighborhood Justice Centers, sponsored by the U.S. Department of Justice, as well as a number of smaller private, non-profit organizations, offer alternatives to the courts for dealing with disputes among family members and between landlords and tenants, administrators and students, merchants and consumers, clients and agencies, and racial groups.

Proponents contend that mediation is preferable to court settlements from both the perspective of the parties involved and the community at large (Alper 1981). They point out that voluntary mediation has advantages in terms of access, timeliness of resolution, and efficiency (measured in terms of the proportion of cases settled) (McGillis and Mullen 1977). Mediation demonstrates respect for the disputants by allowing them direct participation in the resolution of their differences, unencumbered by legal rules of evidence and technical burdens of proof. Assigning guilt or blame is less important than resolving the underlying conflicts which gave rise to the dispute. The community suffers less valorization or 아마 on residents feel a greater sense of control (because problems can be solved within the community).

The issues in community disputes tend to be unambiguous. Disputants are well-defined (although weaker groups—such as tenants in areas lacking active tenant organizations—may require organizational and educational assistance) and, if parties do not participate directly, representatives who can reasonably ensure the implementation of agreements can be readily selected.

In the context of community disputes, mediators fulfill the roles of “listener, suggester, and the formulator of the final agreement to which both sides have contributed” (Alper et al. 1981, p. 131). The relative immaturity of the community dispute resolution field translates into flexible rules for mediation, varying with the needs of the particular conflicts and personalities involved. Mediators bring to the process as much substantive information as they can to help the parties achieve a resolution of their underlying differences. Nonpartisanship is clearly a critical factor in determining the effectiveness of a mediator, although familiarity with the community and even the parties involved can help enhance the mediator’s credibility.

Environmental Dispute Resolution

Mediation was introduced into the environmental field in 1973, when two mediators attempted to settle a lengthy controversy involving construction of a dam on the Snoqualmie River in Washington state (Dembart and Kwartler 1980). A number of private, non-profit organizations have since sprung up across the United States with an interest in developing the theory and expanding the practice of environmental mediation. Among these are the New England Environmental Mediation Center in Boston, Massachusetts; the Institute for Environmental Negotiation at the University of Virginia, Charlottesville, Virginia; ACCORD, (formerly the Rocky Mountain Center on the Environment), the Center for Environmental Problem Solving in Boulder, Colorado; and the Institute for Environmental Mediation in Seattle, Washington. Although the growth of environmental mediation has been rapid, it has not occurred without considerable debate concerning its theory and practice (Cormick and Paton 1977; McCrory 1980; Stulberg 1980; and Susskind 1980).

Environmental disputes are characterized by substantial complexity, often heavy reliance on technical data and analysis, diffuse and unrepresentable interests (such as the interests of future generations), and substantial “externalities.” Power relationships among interested parties tend to vary considerably, especially in terms of access to information, ability to manipulate the media and public opinion, and availability of resources to garner public...
support. The outcomes of environmental disputes can also have substantial implications for parties not represented in the negotiations, especially since such disputes involve what are, for all practical purposes, “irreversible” effects. The implementation of agreements often presents formidable obstacles when the cooperation of elected or appointed officials not involved in the negotiations is necessary. Finally, for the most part, environmental mediation is ad hoc, unlinked to formal processes of decision making. Thus, mediated settlements require the stamp of approval of formal decision makers. Environmental mediators operate under no standard code of ethics and without the benefit of a higher authority that can order the participation of key parties.

Consequently, environmental mediators serve a broad and variable range of functions. Like labor mediators, they help by scheduling, chairing, and recessing meetings; arranging joint and separate sessions; setting the location of meetings; proposing a sequence for the discussion of agenda items; keeping records; and imposing deadlines (Susskind and Weinstein 1980, p. 348). They facilitate communication between meetings, identifying points of agreement among disputants through confidential talks, advising participants about positions they might take, and helping to prompt concessions and compromise.

More controversial aspects of the environmental mediator’s role include helping to identify appropriate stakeholding interests in a dispute, ensuring adequate representation throughout a negotiation, helping to generate alternatives and options for resolving differences, helping to establish agreement on technical points (i.e., by proposing and arranging joint fact-finding), and concern about the outcome of the negotiation process. Some have argued that the preponderance of unrepresentable and unorganized stakeholders in environmental disputes place special demands on the mediator (Susskind 1981). The environmental mediator’s concern with the quality of negotiated agreements also stems from his or her obligation to assist the parties in developing a stable and implementable agreement (Susskind and Ozawa 1983). Although it has been suggested that a credo be developed to better define the environmental mediator’s responsibilities (Susskind 1981; Center for Environmental Problem Solving 1982), the mediator’s role in environmental disputes is still a subject of experimentation and debate.

Among these four models, the labor mediation model appears perhaps the least appropriate to the planner’s situation. The context of mediation in collective bargaining is more highly structured and institutionalized than the context in which most planning occurs. The international model might be considered inspirational. Not unlike the milieu of international relations, planning usually takes place among many actors brought together on an ad hoc basis. In most cases, however, international mediators probably have less direct influence in shaping the settlement and generating a consensus than do planners.

The planner’s role in developing alternatives, identifying the implications of particular actions, and building an informed consensus appears closest to the role of the mediator in community and environmental disputes. Community and environmental mediation stress the quality of the negotiated agreements and their implementability. Because of the relative unfamiliarity of the parties with the negotiation process and, especially in environmental disputes, when technical analyses are essential, mediators in community and environmental disputes often serve as important sources of information. The role of the mediator in these arenas thus more nearly parallels the role of the planner.

Moreover, just as the mediator must remain available to help untangle problems that arise during implementation so, too, the planner ought to remain involved. Indeed, the professional planner’s claim to a unique competence is a specialized capacity to overcome the obstacles to implementing a community-wide consensus.

Concluding Observations

We anticipate several objections to our conception of the mediator-planner. In closing, we will attempt to respond to some of the more obvious concerns and put forth a few ideas about training mediator-planners.

First, it might be argued that planners do not have the credibility (or the authority) to mediate public resource allocation disputes since they are typically government employees and, as such, their impartiality is likely to be suspect in the eyes of various stakeholders. This, of course, would apply as well to consultants paid by government.

Although conventional models of mediation stress mediator neutrality, this conception may be less of a problem in practice than in theory. In the Foothills case, Congressman Wirth was by no means neutral since his position favoring the construction of the facility was well-known. Yet, his credibility was unchallenged by the participants. He established his nonpartisanship by the way he handled himself throughout the negotiations. If Wirth were perceived as partial, it can be argued, discontented parties would have withdrawn.

With regard to authority, it is often argued that the mediation process itself confers authority on the mediator. Cormick describes the process in this way: “Mediation is a voluntary process. The mediator has no authority to impose a settlement. The mediated dispute is settled when the parties themselves reach what they consider to be a workable solution’’ (Susskind and Weinstein 1980, p. 314). The willingness of key parties to participate and their mutual approval of the mediator is the mediator’s primary source of credibility. Conversely, the mediator’s authority is constrained by the ability of participants to enter and abandon negotiations at will, and usually by an explicit definition of his or her role predetermined by
the negotiators. Further, experience has shown that the authority to mediate public disputes need not derive from a legislative or electoral mandate. The mediators in the Columbus NIS and the Bratyon Point cases were appointed—they only credentials were their interest in assisting the parties and the willingness of the parties to accept their aid. Planners should not worry about their credibility or authority as mediators; rather, they should focus on how best to present themselves, handle confidences, and apply the skills of a mediator.

A second criticism of the mediator-planner that might be raised is that the demand for mediation in public sector disputes is not sufficient to support a full-time career for professional planners interested in mediation. Although the use of mediated negotiation in the public sector is growing steadily, the instances in which parties seek mediation are likely to remain few until the merits of mediated negotiation are more widely appreciated. Meanwhile, however, planners can help to publicize the mediation option until demand creates full-time employment opportunities. Moreover, while state and local planning agencies hit by cutbacks are not in the position to hire mediation specialists, planners with mediation skills may be more attractive in times of austerity. Finally, planners need not think of themselves solely as mediators. They can specialize in a variety of techniques while reserving their mediation skills for appropriate moments.

Finally, skeptics may view the mediator-planner concept as failing to incorporate a critical element of traditional planning: a concern for the redistribution of power and wealth. While mediation per se may do little to correct existing injustices, we believe that mediation can be an important tool for social reform. In some instances, groups out of power or at the bottom of the income scale have achieved more through mediated negotiation than by direct action or litigation.

Mediated negotiation can improve the position of disadvantaged groups in certain important ways. In contrast to litigation and other adversarial methods of dispute resolution, mediated negotiation emphasizes joint fact-finding and information sharing. Since a lack of information is often a major weakness of less powerful groups, especially in technologically sophisticated disputes, increased access to information may represent a significant gain. The extent to which information is actually shared may depend on the ability of the mediator to encourage cooperation. Nonetheless, mediated negotiation at least offers an opportunity for information sharing not available in adversarial proceedings. Mediated negotiation is also less costly (most of the time) than sustained political action or litigation. Groups that lack the financial resources to engage in other forms of dispute resolution can suggest mediated negotiation, and perhaps thereby gain a greater chance to influence public resource allocation decisions.

We also believe that consensual approaches to dispute resolution leave less advanced groups in a better position to influence policy-making in the future. Face-to-face negotiation is less belligerent and more conducive to constructive communication (through which contending groups may learn to understand, and not simply attempt to discredit, the positions and interests of opponents). Armed with an improved understanding of the interests and concerns of various groups, tactical alliances can be formed and future positions can be framed in ways less threatening to parties with potentially conflicting interests—thereby improving the likelihood of such proposals gaining acceptance.

We do not presume that all disputes arising over public resource allocation can (or should) be mediated. Dispute resolution can only occur if contending parties are willing to explore possible joint gains or to make concessions. A dispute over the construction of a nuclear power plant, for example, may not be negotiable if the utility company cannot guarantee absolute safety and if opponents are unwilling to accept any degree of risk. Siting plants elsewhere but within the radius of industry's "preferred locations" (in terms of markets for electric power) will probably not appease protestors whose homes would still lie within potentially higher risk zones. Nor would compensation be satisfactory to those whose ideological commitments are nonnegotiable. Further research is necessary to determine exactly which disputes can (and ought to) be resolved through mediated negotiation. In any case, the parties involved retain veto power over the mediation process, since participation is voluntary.

If planners are to add the skills of mediation and consensus building to their repertoire, how should their professional training be augmented? Presently, few people are educated to function as effective negotiators, much less as effective mediators. Indeed, not all persons are temperamentally suited to serve as mediators.

With this in mind, we urge that planning students be made more aware of the procedures and opportunities for employing mediation. Students interested in mediation techniques ought to have access to skill training. Law schools have already begun to add such courses to their curricula. Planning departments should do likewise. The training of planners as mediators can also be accomplished through mid-career training. Short courses are currently available in many parts of the country.

Given the current political and economic climate in the United States, planning ought to be on the lookout for new roles for their graduates. They also ought to concentrate on new roles that build on the skills and commitments of existing members of the profession. The mediator-planner embodies some of the functions of traditional planners, emphasizing the planner's role in ensuring successful implementation of plans and policies. Most importantly, the concept of the planner as mediator provides a compelling metaphor—one likely to attract the very best minds to planning at a time when the field has lost much of its luster.
References


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