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Abstract and Keywords

Deliberative democracy and public dispute resolution (PDR) have the same goal—to inform and determine the public interest—but they involve different skills and practices. This article considers the ways in which deliberative democratic approaches to policy-related decision-making can be supplemented with tools used in public dispute resolution—specifically, the use of an independent mediator, the well-developed technique of stakeholder assessment, and a new strategy called joint fact-finding, where stakeholders with different interests work together with outside experts to identify common assumptions, gather information together, and formulate and clarify opinions. All are designed to achieve fairer, wiser, more stable and more efficient outcomes.

Keywords: deliberative democracy, public dispute resolution, consensus building, stakeholder assessment, joint fact-finding, mediation

Although deliberative democracy and alternative dispute resolution (ADR), especially public dispute resolution (PDR), share many normative goals, they developed along separate tracks. Deliberative democracy emerged from a tradition of political philosophy, while alternative dispute resolution grew out of a separate legal tradition (Muhlberger 2011). Public dispute resolution is part of ADR, but draws extensively on international relations, communicative planning theory, and other applied social science ideas about problem-solving in the public policy field (Susskind and McKearnan 1999; Menkel-Meadow 2006; Healey 1997; Innes and Booher 2010; Forester 1999).

ADR gained traction in the 1970s as a less costly approach to settling legal disputes. The presumption was that if the litigants and their lawyers could settle with the help of a mediator or an arbitrator, both money and time could be saved (Menkel-Meadow 2006). The primary objective was to reduce the burden on court dockets. Many studies have

shown that ADR did just that (Sander and Goldberg 1994; Ury, Brett, and Goldberg 1988; Muhlberger 2011).

PDR proponents recognized the potential of applying this same structured but informal problem-solving approach to public resource allocation disputes, particularly those involving issues of land use and environmental protection (Mayer et al. 2012; Bacow and Wheeler 1984; Susskind and Weinstein 1980; O'Leary and Bingham 2003). Since then, PDR practitioners have worked on the most politically charged issues of their day—where to site industrial facilities, how to rebuild cities post-disaster, even issues like abortion (Susskind 2008; 2009). While ADR was developed for resolving legal disagreements, often with the help of a professional mediator, PDR involves more complex and extended conversations among numerous ad hoc stakeholder representatives. (p. 711) Given that public policy is being formulated and public resources are being used, the implementation of PDR agreements needs to be approved and enforced by elected or appointed officials. This often involves embedding informally negotiated agreements inside government-issued permits or transforming the language of such agreements into binding contracts (Bacow and Wheeler 1984).

Deliberative democracy and public dispute resolution have the same overarching goal—to inform and determine the public interest. But they begin with very different assumptions about what the public interest is and how it should be determined. They also involve different skills and practices.[1] Our objective in this chapter is to show that PDR, or mediated problem-solving in the public arena, can enhance the theory and practice of deliberative democracy.

Deliberative Democracy and Public Dispute Resolution

Some scholars suggest that deliberative democracy and PDR can learn from each other (Menkel-Meadow 2006). Both have similar theoretical foundations and emphasize the importance of dialogue in democratic processes. Muhlberger (2011) argues that deliberative democracy and alternative dispute resolution (and, by definition, PDR) are distinct from traditional democratic theory since both view democracy as a potentially cooperative enterprise rather than simply a battle over fixed goods or opposing values. One source of their legitimacy is related to decision-making by an informed public (Muhlberger 2011). More recently, Hampshire (2000) has emphasized the need to commit to a process of determining just outcomes and fairness to maintain political legitimacy. He argues that only the formality of the rule of law can provide such results, and that conflict can never be eliminated. He urges a focus on procedural means to address political conflict. In our view, PDR offers a practical way of bridging the gap between the

philosophical aims of deliberative democracy and Hampshire's assertions about political conflict resolution.

Deliberative democracy is a theory of politics and civil engagement in which discourse among representatives and among citizens is structured to lead to recommendations, and ultimately decisions, that are either in the "public interest" or structure conflict in a way that illuminates the issues more clearly to facilitate a fair solution (Cohen 1989; Chambers 2003; Mansbridge et al. 2010). Fung (2007) argues that the success of democratic decision-making should be measured in terms of meeting the desires of every citizen through deliberation. Early deliberative democracy advocates measure success in terms of the quality of the discourse they can achieve. If ideas are well debated, dialogue is open (not unfairly manipulated), and social learning occurs, they are content (Gutmann and Thompson 2004; Ackerman and Fishkin 2002).

(p. 712) PDR professionals, on the other hand, measure success in terms of implementable agreements that maximize joint gains.[2] They seek to produce proposals (or packages of ideas) that stakeholder representatives and convening officials agree to implement. Unless these commitments are spelled out in writing, and stakeholder representatives can show that they have allowed their "constituents" a chance to review the penultimate version of whatever agreement is signed, most dispute resolution professionals would view the dialogue as having fallen short (Cruikshank and Susskind 1987). In summary, PDR facilitates public engagement that generates a consensus agreement.[3] This does not refer to a lowest-common-denominator compromise; rather, it aims to satisfy (as much as possible) the most important interests of all sides by packaging multiple commitments on a range of issues that the parties value differently. Well-documented PDR case studies in a great many contexts bear out the success of this approach.[4]

In the following section, we describe two approaches to decision-making in the public arena: an aggregative democratic approach (that relies on voting) and a deliberative democratic approach (that requires public discourse). We follow this with a brief discussion of a third approach, deliberative democracy supplemented with elements of PDR. We then describe three key elements of PDR—reliance on an independent mediator, stakeholder assessment as a means of ensuring fair representation, and joint fact-finding —before discussing how these elements can contribute to more robust democratic decision-making.

Two Approaches to Public Decision-Making

Imagine the following: a small city of about 30,000 must decide whether to allow construction of a controversial industrial facility. The plant will generate jobs and tax revenue, but it may pose serious environmental and public health risks. A decision must be made about whether or not to allow construction and what conditions, if any, will be

imposed if permission to build is granted. Various administrative agencies and elected boards will be involved. There is a possibility that a court will end up as the final arbiter. The question for our purposes is to what extent the final decision will reflect the interests of the citizens in and around the city (i.e. the public interest).

Aggregative Democratic Approach

Under normal circumstances in the US, the developer is required to undertake a set of technical studies that multiple city departments must review before a permit can be granted. Along the way, the city government—on the assumption that it has every intention of representing the public's interest—might try to gauge public opinion using (p. 713) online polling, town hall meetings, or focus groups. The city council might call for a non-binding referendum and vote on its own, going beyond normal zoning, planning and city development requirements. At some point, either proponents or opponents of the project might go to court to contest a decision made by one of the municipal agencies involved or even a vote of the council. The presumption behind all of these maneuvers is that the council should act in the "public interest" by voting, using an aggregation of the concerns of average citizens.

A Deliberative Approach

A deliberative democratic approach may also involve polling and town hall meetings, but the goal extends beyond informing the public and aggregating the views of average citizens. A technique called Deliberative Polling, devised by political scientist James Fishkin, involves drawing a random sample of citizens, polling them on their initial views, and giving them "balanced" information packages, access to experts, and a chance to deliberate. Ultimately, these "informed" citizens are polled a second time and both the final poll results and the differences between pre- and post-deliberation results are passed along to all the elected and appointed officials involved prior to official voting (Fishkin and Luskin 2005). In the end, the final decision remains in the hands of elected and appointed officials who, in some cases have given a prior commitment to implementing the outcome but in most cases simply take account of the Deliberative Polling results before making a decision.

While this approach is arguably more representative of the public interest than merely aggregating votes, and moves beyond "adversary" democracy (Mansbridge 1983), some key questions remain unanswered: *How can officials ensure that all of the relevant stakeholder groups are consulted? How can they ensure a timely process that leads to an actionable agreement? How can they move beyond the inevitable data gaps and scientific uncertainty that often undermine "rational" discourse?*

We believe that a third approach—deliberation using elements of PDR—can answer these questions.

A Third Approach to Public Decision-Making

This third approach starts with the city council hiring an independent mediator to meet privately and confidentially with increasingly wider circles of relevant stakeholder groups, both in and outside of the city, to learn about their concerns regarding the proposed project (Susskind and Thomas-Larmer 1999). Along with the developer of the proposed facility and appointees from a range of city and regional departments, ad hoc (p. 714) representatives selected by the stakeholder groups (identified by the independent mediator) would be invited to participate in a problem-solving process that the groups themselves would design and approve (Susskind and Cruikshank 2006). The parties would then engage in a time-limited joint fact-finding process to ensure that all stakeholders are informed by a mutually-agreed upon set of experts or body of knowledge (Susskind, McKearnan, and Thomas-Larmer 1999). After a period of publicly transparent and mediator-facilitated negotiations, the fairly large group of stakeholder representatives would seek to reach a consensus that meets the underlying interests of almost all the parties involved (Cruikshank and Susskind 1987).

If a written agreement is produced, and signed, it would commit everyone involved to fulfilling a series of voluntary commitments (which could include compensatory payments or other contingent promises from the developer, the city, and perhaps even the state and federal government, that go well beyond what the city has a statutory right to require).[5] The agreement, assuming one is reached within the time frame that everyone agreed to at the outset, would then be presented by the mediator to the city council or other appointed bodies for final ratification. Details of the agreement would probably be incorporated, as conditions, in the formal permits ultimately granted to the developer. Such agreements usually call for the creation of a joint monitoring group to ensure that everyone who participated has a chance to oversee implementation. There is rarely litigation when a process like this is followed.

Key Elements of Public Dispute Resolution

The previous descriptions of the three processes highlight several elements of public dispute resolution that go well beyond what deliberative democracy usually entails and can help overcome some of the practical challenges raised in implementing the ideals of deliberative democracy.[6] PDR is based on the assumption that dialogue, on its own, is insufficient. For it to succeed, it is important to ensure that (1) all the relevant stakeholders are represented in the conversation; (2) the parties engage in joint fact-finding rather than merely exchanging partisan or unsubstantiated claims; (3) a neutral, independent mediator (acceptable to all the key stakeholders) manages the conversation; (4) everyone involved in the dialogue accepts responsibility for working toward a consensus; and (5) elected and appointed officials, while retaining their statutory right to make final decisions, agree to explain why they have not accepted consensus proposals presented to them, if that happens (Susskind and Cruikshank 2006; Cruikshank and Susskind 1987; Carlson 1999). In addition, we argue that the advantages of PDR can be fully realized only when the relevant stakeholders engage in face-to-face problem-solving to produce an actionable consensus-based proposal.

(p. 715) In this chapter, we focus primarily on three essential elements of PDR—the independent mediator, stakeholder assessment, and joint fact-finding—which we believe could address some of the challenges inherent in deliberative democratic efforts.

Independent Mediation

The role of a neutral, independent mediator, with dispute resolution skills and specialized knowledge about the problems under discussion, is essential to collaborative problem-solving in the public arena. It is the mediator's responsibility to manage the process from the pre-negotiation phase to ratification by officials of any agreement reached (Podziba 2012; Cruikshank and Susskind 1987; Susskind, McKearnan, and Thomas-Larmer 1999; Susskind and Ozawa 1983). The mediator plays a central role in (i) identifying the stakeholders; (ii) facilitating agenda-setting; (iii) clarifying and enforcing ground rules; (iv) facilitating conversation informed by shared information and joint fact-finding; (v) helping stakeholders prepare for negotiations so that they can adequately represent the interests of their groups throughout the process; (vi) reminding participants of their commitments; (vii) facilitating understanding and discussion even outside of the formal consensus building process; (viii) keeping track of stated positions and summarizing them accurately; and, in rare cases, (ix) suggesting possible mutual gains options if the stakeholders are unable to think of trades or packages that allow them to reach a consensus.[7]

Mediators are not expected to take the place of public officials. Indeed, none of what we have described is meant to suggest that the "ad-hocracy" suggested here is better than representative democracy. Rather, PDR advocates suggest that prior to decision-making by elected or appointed officials, self-selected stakeholder representatives be given a chance to engage in an effort to produce proposals that meet the most important

interests of all the groups involved. The proposals that emerge from this kind of "ad-hocracy" still must be acted upon by elected and appointed officials.

Mediation has been a particularly effective means of resolving environmental disputes.[8] Under the 1998 Environmental Policy and Conflict Resolution Act, Congress created the US Institute for Environmental Conflict Resolution. This organization keeps a roster of trained and experienced mediators to assist federal agencies and other affected stakeholders in addressing public environmental disputes (Alexander and O'Leary 2013). There is no reason why this model cannot be extended to other public policy domains.

Stakeholder Assessment

Stakeholder assessment is a second critical component of PDR and could be used to overcome the practical difficulty of ensuring that affected stakeholders are represented during a decision-making process. A stakeholder assessment starts with the mediator (p. 716) (having been invited by a convening agency, like a city council) meeting privately with each of the "known" stakeholder groups to learn about their interests, priorities, and concerns. This helps all the groups understand each other's concerns, saving time if the parties decide to engage in a joint problem-solving effort.

This first "known" circle includes individuals and groups who are easily identifiable because they have already been vocal on the issue. Those in the first circle are usually asked to suggest a second circle of possible stakeholders who may be less visible to outsiders. The fact that this process is underway should also be noted publicly so that any interested party (i.e. a "third" circle of stakeholders) can contact the mediator and asked to be included (Susskind and Thomas-Larmer 1999; Susskind 2008).

This process results in an assessment report, drafted by the mediator, that includes (without attribution) a list of the issues that will need to be discussed, a possible work plan and timetable, including joint fact-finding, if required (Podziba 2012). It also includes a suggestion for the smallest number of relevant categories of stakeholders that will need to be involved, as well as ways in which certain diffused categories of stakeholders might be asked to caucus with the help of the mediator to identify a spokesperson. Everyone interviewed is usually given a chance to provide comments or corrections on the draft assessment before it is submitted to the convening agency. Even in a highly contentious dispute, it is possible to identify a relatively small number of stakeholder representatives to participate in a carefully planned and managed problem-solving effort.[9]

The independent mediator can provide the key elected body (or some other convening entity) with a clear analysis of whether or not it is desirable to move ahead with a consensus-building process and, if so, who should be involved and how the problem-solving effort ought to be structured. When invitations are then sent by the convener to all the groups that are being asked to designate spokespeople, everyone has already played a part in setting the agenda, framing the work plan (timetable), approving the list

of parties being invited and acknowledging the ground rules. They will also have met (and have reason to trust) the person likely to serve as the mediator if the consensus building process proceeds.

Joint Fact-Finding

One of the most formidable challenges in political decision-making concerns the many "unknowns" that result from either complexity or scientific uncertainty (Karl, Susskind, and Wallace 2007). As a result, group representatives have to rely on facts, predictions, or analyses that are often in dispute. Joint fact-finding, a third key element of PDR, can be used to address this issue. Stakeholders with different interests can work together with outside experts (of their choosing) to identify common assumptions, gather information together and formulate and clarify opinions (Ehrmann and Stinson 1999; Matsuura and Schenk 2017).

(p. 717) Joint fact-finding involves delineating issues of concern that require technical analysis, agreeing on an expert (or group of experts) to conduct whatever technical assessments are required, identifying the limitations of any analytical methods that will be used, and agreeing on how to proceed once the technical analysis is completed. The benefits extend beyond avoiding a battle between hired guns working for various sides, and can include agreeing on ways to integrate "local" and "expert" knowledge (Ehrmann and Stinson 1999; McCreary, Gamman, and Brooks 2001). Joint fact-finding fosters trust, enhances communication, and builds understanding, which in turn can lead to improved relationships and, presumably, better agreements.[10]

Advantages of Supplementing Deliberative Democracy with PDR

We believe that deliberative democracy supplemented with, not supplanted by, elements of public dispute resolution can lead to fairer, wiser, more stable, and more efficient outcomes (Cruikshank and Susskind 1987) by providing the conditions for better representation, a more manageable deliberative process, pressure to create more "value," and effective conflict resolution.

Better Representation

Early deliberative democratic theory assumes that in many cases the "common good" can be discovered through deliberation by average citizens who may or may not be affected by, or informed about, a policy decision that needs to be made. Although the decision can be enhanced by ensuring diversity in the deciding group (Landemore 2013), we argue

that stakeholder groups (i.e. groups who will be directly affected by the decision) should have a hand in identifying representatives who will speak on their behalf during the deliberative process.

If conducted properly, a formal stakeholder assessment ensures better representation because it identifies all parties affected by a decision, including those who do not yet have explicit representation or leadership (e.g. future generations, marginalized communities). An independent mediator plays an active role in engaging these parties and ensuring that they are included in the process, starting with setting the agenda.

Clearly Defined and Manageable Process

Deliberative democracy advocates believe that deliberation inherently has several benefits, such as increasing tolerance and understanding among various groups (Gutmann (p. 718) and Thompson 2004; Cohen 1989; Dryzek 2000; Chambers 2003). Despite these benefits, it is not guaranteed that consensus will be reached, even under ideal circumstances. In the absence of consensus, some deliberative democracy advocates are satisfied if the process ends with a "majority-rule" vote, noting that the alternative (i.e. political gridlock) may be more harmful, at least in some cases.[11]

We argue that this approach to deliberation (i.e. limited to clarifying the conflict and then simply voting) will always fall short. The goal of deliberation should instead be to reach a consensus by creating more value through joint problem-solving (Susskind 2014), or negotiation (Warren and Mansbridge et al. 2016). Consensus, defined here as a set of commitments that almost all the parties agree would be better than no agreement, is more likely to resolve disputes in a lasting way than a vote of a legislative body, a decision by an administrative agency, or a court decree. This is because such a negotiated consensus is more likely to serve the underlying interests of the parties (Cruikshank and Susskind 1987).

In some cases, deliberation will not necessarily bridge competing values or perspectives but may instead lead to group polarization and hardening positions (Mansbridge 1994; Sunstein 2002; Shapiro 2003). Several elements of PDR can help move parties beyond such entrenched positions. First, although the convener (e.g. government official) may start the process, the independent mediator is explicitly tasked with facilitating a fair process by ensuring that no one dominates the conversation[12] (Stitzel and Forester 1989). A trained mediator also plays a crucial role in continually reminding stakeholders to be creative in their problem-solving and pursue mutually beneficial outcomes. Second, one of the many advantages of using a stakeholder assessment to begin is that it allows various stakeholders to be combined into a single "stakeholder group" with shared concerns. This helps reduce the number of people "around the table" without sacrificing important dimensions of representation, thereby making the deliberative process logistically more manageable. Third, the involvement of relevant stakeholders and an independent mediator in designing the process ensures that the agenda will touch on the

most important concerns of all the parties. We have not seen in practice instances in which a commitment to joint problem-solving (i.e. PDR)—even when consensus has not been reached—has reduced levels of trust or made it more difficult for parties to work together in the future.

Value Creation

In public dispute resolution, no one is pressed to change their interests; instead, they are encouraged to think of ways to meet their interests *and* the interests of others. They can accomplish this goal by creating more value, that is, by generating options (or packages of options) for mutual gain. This requires moving away from a zero-sum approach to deliberation, in which gains by one party are presumed to necessitate concessions by others, to a positive-sum view. This may mean adding new issues that were not on the agenda at the outset, linking issues from one agenda with issues under (p. 719) discussion in other forums, or imagining innovative ways of achieving certain outcomes that are not addressed in law or current practice. This is often achieved in PDR by giving the parties flexibility to invent new options—promoting cooperation and shared problem-solving (Susskind, McKearnan, and Thomas-Larmer 1999). In addition, bundling issues and sub-issues allows stakeholders to trade options or items they value differently, leading to agreement rather than compromise (Raiffa 1982; Lax and Sebenius 1986; Fisher and Ury 1981). Among deliberative democracy theorists, several have recently developed a theory of "deliberative negotiation" that reaches related conclusions regarding adding issues and expanding the range of options (Warren and Mansbridge et al. 2016).

For example, in a development controversy in Oregon, mediation expanded the list of options under discussion beyond blocking new development to recommendations that would meet the dual objectives of managed growth and conservation. This ultimately led to a settlement, which included stricter enforcement of existing regulations, the formation of a new institution (i.e. a land trust) to undertake mutually advantageous actions, and new payments for riparian landowners (Susskind, van der Wansem, and Ciccarelli 2000).

Conflict Management

Much deliberative democracy theory embraces the Habermasian ideal of "communicative rationality" (Shapiro 2003; Fung 2007; Cohen 1989; Gutmann and Thompson 2004; Dryzek 2000). Habermas argues that under "ideal speech" conditions, a socially optimal solution can be constructed through rational discourse (Habermas 1984). However, Foucault and other skeptics argue that power, not rationality, determines the outcome of deliberation (Foucault 2001). The role of power may be particularly influential in cases where "rationality" may be hindered due to scientific uncertainty or in the case of widely

disparate values. As a result, many deliberative democracy advocates argue that the goal of deliberation should not be to promote the "common good," but rather to diminish the domination of the most powerful (Shapiro 2003).

We believe that a deliberative approach enhanced with elements of PDR can ensure a more even playing field and address acute power differentials. For example, the use of a mediator in more deliberative settings can help ensure that the interests of the least powerful stakeholders are tended to, and that they have the help they need to present their views effectively. A mediator can also help convince the most powerful stakeholders to join and stay at the table (Susskind and Cruikshank 2006) by reminding these stakeholders that participating in the deliberative process can lead to a more stable outcome and reduce the likelihood of litigation as well as lower the cost of conflict. Finally, a mediator can argue that the mutual-gains focus of PDR (or deliberative negotiation) can provide an opportunity for the most powerful stakeholders to be involved in creating packages that are of little cost to them, but provide sufficient benefits to other stakeholders to win public support for what is being proposed.

(p. 720) There might also be ways of incorporating joint fact-finding into some deliberative processes. Joint fact-finding provides an important basis for reducing conflict. If the stakeholders agree on what data should be gathered (and by whom) and what methods of analysis should be used, they may still disagree on how the findings should be interpreted, but will no longer challenge the source or reliability of the data.

Conclusion

Deliberative democracy, independently of PDR, can "deepen" democracy by adding to the legitimacy (and perhaps the quality) of whatever is decided. But in most of its current legislative and citizen forms, deliberative democracy usually forgoes the added value that collaborative problem-solving can generate.

PDR can yield results that are fairer (in the eyes of the parties), more efficient (in the eyes of an independent analyst), more stable (in retrospect), and wiser (Cruikshank and Susskind 1987) if the right parties are at the table, have a hand in generating the agenda and choosing their own spokespeople, and engage in joint fact-finding. Such efforts should be managed by an independent mediator, and the parties should take responsibility for meeting not only their own interests but also the interests of others (through value creation). While elected and appointed officials retain the final say in a representative democratic context, experience has shown that such officials are eager to find out how they can deal with controversial issues in a way that will generate a positive response (and political support) from all stakeholders. Such an approach calls for facilitative, rather than top-down, leadership.

It is essential to take account of the particulars in each case in deciding whether some form of deliberative democracy, PDR, or a mixture, should be used. Neither deliberative democracy in the form of randomly selected citizen forums nor PDR can be used if elected and appointed officials do not see a need to involve the public or organized interests in decisions that must be made. In many places around the world no form of "direct democracy" is allowed. There may be legal and constitutional constraints or norms of political practice that prohibit the use of deliberative democracy or PDR. In places where interest groups are poorly organized and civil society is poorly developed, and therefore responsible stakeholders are hard to find, PDR is probably not going to work. Timing can also be an issue. If legal requirements or political pressures demand an immediate response from elected officials, there may be no way for them to consult or engage citizens or stakeholders.

"Fitting the Forum to the Fuss"

In 2006, a group of PDR professionals produced a summary of the tools and techniques used most often in PDR processes around the world (Table 45.1). Deliberative (p. 721) (p. 722) (p. 723) democracy advocates tend to rely on the first three columns (from left to right), emphasizing ways of informing the public, consulting the public and inviting the public to advise officials on how certain decisions should be made. The fourth and fifth columns describe additional tools and techniques that PDR advocates use when the goal is to involve the public (i.e. mostly organized interest groups) in collaborative and consensus decision-making. On the left side of the spectrum there is an emphasis on getting information out and reactions back. On the right, there is a focus on ways of reaching joint decisions and making sure they are implemented. We do not advocate the use of all of these tools in all situations, but rather, emphasize that one should "fit the forum to the fuss" (Sander and Goldberg 1994).

Deliberative Democracy and Public Dispute Resolution

	Table 45.1 Spectrum of processes for collaboration and consensus-building in public decisions[1]				
	Explore/Inform	**Consult**	**Advise**	**Decide**	**Implement**
Outcomes[2]	• Improved understanding of issues, process, etc. • Lists of concerns • Information needs identified • Explore differing perspectives • Build relationships	• Comments on draft policies • Suggestions for approaches • Priorities identified • Discussion of options • Call for action	• Consensus or majority recommendations, on options, proposals, or actions, often directed to public entities	• Consensus-based agreements among agencies and constituent groups on policies, lawsuits or rules	• Multi-party agreements to implement collaborative action and strategic plans
Sample Processes	• Focus Groups • Conferences • Open houses • Dialogues	• Public meetings • Workshops • Charettes	• Advisory Committees • Task Forces • Citizen Advisory Boards	• Regulatory Negotiation • Negotiated settlement of lawsuits, permits,	• Collaborative Planning processes • Partnerships for Action

	• Roundtable Discussions • Forums • Summits	• Electronic Town Halls • Community Visioning • Scoping meetings • Public Hearings • Dialogues	• Work Groups • Policy Dialogues • Visioning Processes	cleanup plans, etc. • Consensus meetings • Mediated negotiations	• Strategic Planning Committees • Implementation Committees
Use When	• Early in projects when issues are under development • When broad public education and support are needed • When stakeholders see need to	• Want to test proposals and solicit public and stakeholder ideas • Want to explore possibility of joint action before committing to it	• Want to develop agreement among various constituencies on recommendations, e.g. to public officials	• Want certainty of implementation for a specific public decision • Conditions are there for successful negotiation	• Want to develop meaningful on-going partnership to solve a problem of mutual concern • To implement joint strategic action

	connect, but are wary				
Conditions for Success	• Participants will attend	• There are questions or proposals for comment • Affected groups and/or the public are willing to participate	• Can represent broad spectrum of affected groups • Players agree to devote time	• Can represent all affected interests and potential "blockers" • All agree upfront to implement results, incl. "sponsor" • Time, information, incentives and resources are available for negotiation	• Participants agree to support the goal for the effort • Participants agree to invest time and resources • Conditions exist for successful negotiations

[1] Developed by Suzanne Orenstein, Lucy Moore, and Susan Sherry, members of the Ad Hoc Working Group on the Future of Collaboration and Consensus on Public Issues, in consideration of and inspiration from the spectra developed by International Association for Public Involvement (http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf) and the National Coalition for Dialogue and Deliberation (http://www.thataway.org/exchange/files/docs/ddStreams1-08.pdf).

2 While all types of processes have intrinsic value on their own, outcomes from the various types of processes on the left side of the spectrum tend to be incorporated into the outcomes of the processes to the right. For example, information sharing and option identification usually occur as early stages in decision-focused processes.

The now well-developed processes of PDR allow a democracy to move beyond simply consulting with and advising the public. They require a carefully mediated process of joint problem-solving involving ad hoc representatives of all relevant stakeholder groups assisted by a professional neutral (moving toward the right side of the spectrum in Table 45.1). The goal of PDR is to generate actionable proposals that must then be acted upon by elected and appointed officials. Our presumption is that it will be difficult for officials to ignore proposals reached by consensus in a transparent way, although they certainly have the authority to do so. In this way, PDR addresses some of the shortcomings of the "first generation" of deliberative democracy theory and overcomes the practical difficulties posed by democratic decision-making in highly pluralistic contexts (as highlighted in the "second generation" of deliberative democracy theory) by offering clearly defined tools to ensure that the products of deliberation shape political decisions in a manner responsive to the public interest.

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Notes:

(1.) Susskind and Cruikshank (2006) provides a more extensive description of PDR in theory and practice.

(2.) Also see Warren and Mansbridge et al. (2016) for a discussion of deliberative negotiation which, unlike early deliberative democracy theory, recognizes the applicability of a mutual gains approach to deliberation.

(3.) We feel the need to clarify between "consensus" as it is often understood in early deliberative democracy theory and our use of "consensus agreements" as they apply to PDR. Early deliberative democracy theory refers to consensus as meaning unanimous agreement around the "common good" that can be reached through rational discourse (Habermas [1962] 1989). This is widely contested, even among deliberative democracy advocates (see Mansbridge 1983; Mouffe 1996; Mouffe 2000; Young 1996; Mansbridge et al. 2010). By "consensus agreement" we mean that even parties with conflicting interests are able to come to an agreement that is better for all of them than no agreement at all. This is done, as we will argue, through a well-managed process.

(4.) See the following: Susskind, McKearnan, and Thomas-Larmer 1999; Susskind, van der Wansem, and Ciccarelli 2000; Emerson and Nabatchi 2015; Wondolleck and Yaffee 2000.

(5.) In 2013, a consensus-building approach was used to site new energy facilities in New Hampshire. The state legislature used the resulting reports and agreements to pass reforms on the siting process (Raab Associates 2013).

(6.) For example, Warren and Mansbridge et al. (2016) note the inclusion of all affected parties is a deliberative democracy ideal that helps ensure more fair and just processes but that there are "many practical difficulties in actually bringing to the literal table all those who might in any way be affected" (148).

(7.) See Table 5.1 "Tasks of the Mediator" in Cruikshank and Susskind (1987) for an extended description of the mediator's role in each stage of negotiation.

(8.) See Susskind and McKearnan (1999) for more on the evolution of public dispute resolution in environmental disputes.

(9.) See Susskind, McKearnan, and Thomas-Larmer (1999), Part 3 for examples.

(10.) See Section 3 of Susskind, McKearnan, and Thomas-Larmer (1999) for examples of joint fact-finding that successfully led to shared agreements.

(11.) For example, Warren and Mansbridge et al. (2016) argue that failed negotiations "freeze existing patterns of inclusion and exclusion," may lead to failure to act on what would otherwise be "collective will," carry efficiency costs and may reduce mutual trust, which could then affect future agreements.

(12.) Fishkin and Luskin (2003) emphasize the importance of moderators in Deliberative Polling for the same reason.

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