

John Forester

Reflections On Our Deliberative Democracy-Dispute Resolution Workshop and Participants' Notes About Worries and What's Missing

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I found our June meeting both rich, tantalizing, and, of course, frustrating at times too. The scenarios worked effectively to counteract our flying off in widely divergent directions, and they also pre-empted a few more focused moves to ask, of both practitioners and theorists, "What would you really like to learn from others here?" Discussions between theorists and practitioners are notoriously difficult, and I think we did pretty well: the theorists seemed heartened by the richness of case experience and perhaps succeeded by setting themselves some new challenges; I'm less clear what practitioners took away from the theorists except for a renewed sense of the theoretical significance of their work.

After noting several comments that I found striking and significant, I will add the notes I collected from our participants about what most worried them in their work and what they thought we might have been missing.

Reflections on a series of striking comments:

1. The question about **practitioners' biases** led to an initial discussion of aspirations and hunches, and I think we can say much more. DR practitioners have biases:
 - a. that interdependence produces opportunities to negotiate, a space of possibilities to explore;
 - b. that parties to disputes typically posture, take initial strategic positions that deserve respect as first, not last, words regarding what they want, are willing to do, and might yet act on;
 - c. that inequalities typically present in complex public policy disputes do not yet involve sufficient legal or constitutional inequities or violations of rights that negotiation should be considered inappropriate;
 - d. that conversation matters even when parties distrust, dislike, disbelieve and are disinclined to talk to each other (but disrespect?);
 - e. that disputants bring partial information and judgments ("raw opinion" as Dan Y. put it) and can and will learn;
 - f. that disputants can create workable options and proposals under supportive conversational conditions that protect them from escalating arguments about blame, and
 - g. that there's always more going on in a dispute than meets the eye and the ear, so journalistic or even policy analytic (!) accounts based on separate, disputant by disputant interviews, for example, will be terribly misleading guides to what a dispute is really about and to what might really be possible (be jointly crafted and mutually agreed to).
2. The question about inevitable or **necessary injustice** should be understood as a matter of inevitable incompleteness, or seen as deeply ambiguous. Does an effective DR process in a complex dispute promise complete justice? Probably

- not. Does an effective DR process create a sufficient justification for public action? Sure. Can DR practitioners guarantee justice? No. Can there always be people who wish they'd been included and who might feel not well represented? Sure. I take David Kahane's thesis of "essential injustice" to be one of "necessary humility" in a practical world; he is not implying that another process could realistically do better, just that even a fine DR process will often have serious limits (re: those not fully represented, information not fully considered, etc.)
3. Carrie's comment toward the end that many of us "are **trained to argue**," are trained to debate, strikes me as fundamental. We have cultural models, institutions, training, and familiarity with argument and debate, with images of neutral moderating, with argumentative styles of attack and counterattack, even with ground rules, and we are all too familiar with the ways that vigorous argument can become ad-hominem and personal. We are all too familiar with the often, even stereotypically, gendered versions of guys arguing while women are disgusted at the guys' neglect of the relationships involved. This matters all the more when we contrast all that to the public ignorance – lack of models, institutions, training, and familiarity – with the basic creative moves of joint inquiry, mediated negotiations, and consensus building. I hope to write a bit about three quite distinct but often confused, even if interrelated, processes and actions of encouraging dialogue, moderating debate, and/or mediating negotiations (doing consensus building).
 4. Dan Yankelovich's quick observation about the complex **evolution of "raw opinion" into "considered public judgment"** deserved far more time than we were able to give it. This evolution typical of dispute resolution processes raises significant questions about the respect necessary to give to those pounding the table with opening demands and positions, the public understanding of dispute resolution processes, and understanding that these processes are not about making compromises to betray one's principles. (Notice that the word "compromise" hardly arose.)
 5. For my tastes, we paid too little attention to the ways that we think **parties learn**, to the ways that would promote that learning, and to what that implied for institutional design and practice. We know a lot, I think, about how to help parties learn about each other and about the technical substance of issues—(meals and small groups and participatory rituals for the first; joint fact finding and related techniques for the second) —but I'd have loved a discussion about how DR processes encourage learning about others' and one's own interests and furthermore about "value," about what's at stake, about the "facts that matter" in particular cases that haven't yet been recognized by any party.
 6. I wonder in retrospect if we spent a great deal of time on process design (and representation, for example) and far less time on **3rd party roles** and actual practice and practical judgment. Larry's opening remark that the complete absence of discussion of 3rd party behavior in the theoretical literature strikes me as a point of real depth and significance. It's significant in research implications; it's deep in the sense that it reveals a structural and processual rather than a pragmatic bias in the theoretical literature, and perhaps even an implicit formalism or scientism, a search for a system that will be abstractly sufficient and legitimate

- rather than a search for an informed sense of practical judgment that reflects and might inform what practitioners (can and ought to) do. I hope to finish up a lot of work about these issues sooner than later!
7. Peter Adler's comment that (roughly) "**decision-makers have problems too**," and that 'they need this stuff,' came late but reflects a huge challenge for all of us: a better understanding of the culture, function, and structure of administrative systems in which DR processes can really be helpful and actually welcomed by "decision-makers." Larry remarked at one point that we don't understand why these processes aren't more widely embraced, and both comments need more attention.
 8. Closely related to the sense of under-utilization of DR processes we find Dan Y's mention of an unexplored topic: the **public resistance** to DR processes. Perhaps we could spend a whole day on this, because certainly DR practitioners around the country find themselves disabusing people all the time about various myths of what DR and consensus building involve: no, it's not about replacing regulatory agencies, it's supplementing them; no, it's not about compromising your principles, it's about avoiding lose-lose outcomes and reaching mutually satisfying outcomes; no, it's not about giving up on expertise and letting anyone's technical information dominate, it's about taking advantage of the best available information and avoiding my expert vs. your expert; and so on. The resistance to these processes is enormous (will I give up power, look weak, betray my values, do less well than I can on my own...), and we badly need to work on this.
 9. Jim Fishkin and Carolyn Luckensmeyer showed us that we (and the public) can rethink questions of scale (regarding suspicions that "this can only work with small groups or in small communities,") and Larry's work has done this too. But **suspicions about time** linger, and so Susan Podziba's DOL example bore further discussion: on crane safety regs, after they'd spent seven years with committees writing reports and nothing happening, they hired Susan who then did a successful reg-neg in 18 months that produced a workable, implementable rule. It's terribly important to see if we think Susan's case was a huge exception or an indication that, quite counter to stereotype, DR processes might be more efficient time-wise than regulatory processes held hostage to blue ribbon committees and the courts.

There's a lot more for us to do. What a stimulating couple of days it was!

Participants Responses to What Worried Them and What They Thought Missing:

What of these issues worries you in or about your own work?

- How to develop an integrated understanding of deliberative democracy, dispute resolution and larger democratic theory – on that is both normative and lends itself to prescriptive application.
- The multi-track or multi-layered dimension: a vision of connecting micro-institutional-public decision-making within inclusive processes (MS)
- The relationship between DD and community, and the role of power as an intermediary between community and community decision-making.
- Utter irrelevance.
- Figuring out how parties learn at the table.

- Having an impact: People go to a lot of trouble and we have to be sure their time is not wasted – getting from talk to action.
- How it scales up to a broader account of government/governance.
- The articulation of conflict and consensus.
- The lack of real capacity to engage and catalyze genuine shifts of consciousness and heal subtle alienation and damage; also group dependence on structural solutions which can't work.
- How to move high quality deliberation from the periphery to the core of political decision-making processes.
- Non-responsiveness to where people are vs. using 'tried and true' designs and moves.
- Resistance of public officials to the benefits of public dispute resolution. (LS)
- The lack of focus collectively on the creation of new governance mechanisms that stay authentic over time. Also: embedding these processes in the context of institutional decision-making – how to do this meaningfully and sustainably.
- Existing institutions are not compatible with deliberative policy formulation.
- There is no King! (that is, no one site/actor/location where the decision can be taken.)
- The challenge of bringing the values, strategies, and methods into America's political culture, the way we have the legal culture.

What are we missing altogether?

- Discussion at a deeper level of the relationship between deliberative democracy and representative governance.
- Too much on right decisions, too little on processes
- The institutional basis for reflective learning and continuity between decisions.
- Discussion of political setting, or outcomes.
- Learning about value, and learning about interests.
- The precise design of deliberative institutions has still been only vaguely discussed – with many crucial differences glossed over
- Practice.
- We're mostly missing a discussion of how to improve the elected representative process to make it (and representative-constituent communication as well as rep-rep communication) more "deliberative" (by which I mean "helping to illuminate both common and conflicting interests"). Perhaps we are missing altogether the processes of mourning and working through that Dan Yankelovich has written on.
- Core questions below this inquiry that stimulate and align this group (and) what do people most care about, that keeps them up nights?
- Cases where the population of potential stakeholders is unbounded – e.g. transnational, transgenerational.
- The impact of dysfunctional national political culture on our efforts.
- The fact that power in political contexts is dynamic, not static.
- Strategies for addressing the resource issues on a local, regional, national, global basis.
- What is our role (if any) as change agents?

- Expertise: the value of experts of content (not process) (though no longer once Panel 3 presented).
- Why we want what we want! However dynamic it may be: the end goal.