

What I always tell people is, “Whenever you get to the table, you still are surprised, because you never can anticipate [really fully] where people are going to come from.

Rationality and Surprise: The Drama of Mediation in Rebuilding Civil Society

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Introduction

In a globalizing world, we need to understand both the institutions that can sustain vibrant civil societies and the practices that can skillfully and sensitively animate those governance processes. This essay responds to both of these challenges by examining the contributions that mediators can make to resolve public disputes that involve not just bargaining over divergent economic interests but reconciling vastly differing social and cultural identities as well.

Mediating public disputes, we shall see, is no panacea, no technical fix. When fundamental commitments come into conflict, mediation becomes not irrelevant but just one strategy to complement those of legal and legislative action. But we should not be too quick to rule mediation out, and we have lessons to learn about our own presumptions about ‘mere talk,’ or mere third party facilitation. Although this essay explores the work of mediators of disputes at city and state-wide scales, planners, activists, and citizens alike in varying contexts can learn a good deal from these mediators’ skills, insights, and strategies.

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Living in civil society routinely involves our hope and cynicism: how we imagine, in the face of our differences, that we can or can't live together. For all the rhetoric of multi-culturalism and diversity and respect and dialogue, defenders of civil society appear to know a great deal more about how to talk the talk than they do about how to walk the walk: to practice the citizenship skills required to animate and nurture civil society rather than merely to espouse its important ideals (Fung and Wright 2003).

Too often it seems, when we see differences of values or religions, culture or class, race or gender, a deceptively simple realism can blind us by suggesting, "No, we can't do that with them; they'll never listen; they'll never talk to us about the real issues here."

So some friends, for example, might say about others, "There's no use talking to them; nothing's going to be possible"—even when a great deal might really be possible—and the result, we might suspect, is that our friends may just have set themselves up for failure.

We can call this problem, "the problem of seductive cynicism—and the failure of hope." This threatens not just our friends, but our lives as democratic citizens in civil society more generally (Dryzek 2000). We have several good reasons to worry and to take this problem seriously:

As a problem of practical rationality and ethics, how do we fall into traps and miss real opportunities when they're right in front of us? How do we fail to realize social goods, and so suffer the consequences needlessly?

As a problem of negotiation: how do we reach mutually lousy, "lose-lose" compromises when we could actually achieve substantially better-for-both joint gains?

As a matter of identity and respect: how do we fail to recognize differences: How, instead of building mutually respectful relationships, do we presumptively dismiss them (Sandercock 1998, 2000)? How are we tempted to take value differences too literally and then miss specific possibilities behind irreconcilable abstractions—and so miss specific things we can do together?

As a matter of practical learning and daily organization: how do we talk ourselves out of learning, so that we keep ourselves stupid and betray the promise of planning at its core, the "organization of hope" (Friedmann and Douglas 1998; Forester 1999)?

We can explore these problems by examining a specific practical example: by asking what urban and community planners, who work in the face of diverse conflicts, can learn—about realism and not losing hope—from the mediators of complex public disputes, mediators whose job it is to think carefully about complex conflicts and practical possibilities in civil society.

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By exploring what planners can learn, we can respond to certain silences, even failures, not just in planning education but in our own broader education of citizens in civil society as well, and mediators' experiences, we shall see, can help us to address these silences, these failures. Both planning and our broader civic education may not just keep too quiet about really “dealing with differences” and working with conflicting stakeholders, but they may also often encourage our selective attention and selective imagination—that’s a polite way to say, “our blindness”—in three ways:

By having us think, first, about “analysis” and even, or especially, “rationality” so that our emotional sensitivity, expression, and responsiveness seem idiosyncratic, less practically important than our “knowing the right answer” about what ought to be done.

By having us think, second, about a notion of “interests” that by implication leads us to treat “identities” as apparently non-negotiable; and

By having us think, third, of “deep value differences” as presumptively differences not to be negotiated, as practically non-negotiable, as well.

So we need to explore carefully examples in which skillful mediators seem to have surprising success as they face strong emotions, identity conflicts, or deep value differences—just those situations in which planners (or we ourselves!) might well have thrown in the towel, so that then we can really ask, of both mediators and planners, “What could they have been thinking?”

What were the mediators thinking that helped them to achieve surprising results?

What thinking might have led planners (or the rest of us), though, in exactly the same situations to give up too soon?

When mediators who work with conflicting parties produce surprising results, in part they are showing us possibilities that we find surprising because we do not yet adequately understand how they were possible at all. Iris Murdoch put a part of this beautifully once, when she said of learning from good practice, “Where virtue (good practice) is concerned, we often apprehend more than we clearly understand, and [we grow] by looking” (Murdoch 1970). We see, and “apprehend,” more than we clearly understand, and we learn; we “grow by looking,” she suggests.

Now, if we look closely at consensus-builders and mediators—we too will see, that they can teach us that our bodies reach where our intellects often do not: that actual practice can and has led theory, that our good intentions can get us so righteously stuck, that our “understanding” in

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all its realistic and well-informed glory can persuade us that nothing's possible when trying, sketching, playing, even taking walks and sharing meals, really show us that a great deal's possible after all.

If we listen to mediators, we find that they speak again and again of finding possible outcomes that none of the parties first thought possible (Forester and Weiser 1995). T.S. Eliot wrote of poetry as a "raid upon the inarticulate," and mediators, we may come to see, work every day to raid the impossible, to bring back working agreements across boundaries of suspicion and distrust, culture and commitment, race and class and gender, agreements that no one first thought possible (Susskind et al 2000).

So what we can call, "The drama of mediation," might teach us about outcomes (and practices) that we never thought possible, and the surprise we discover can teach us not just about new possibilities but about old expectations, old ways of thinking that won't pay off, old ways of looking that blind us to what we really can do (Schön1983; Schön and Rein 1994).

In what follows, let us explore these questions (in particular, what were the mediators thinking?) in three parts by working with excerpts from oral histories of mediators, excerpts we can take not so much as histories of facts but as windows onto the world of their practice.

In the first part, we find that two practitioners characterize mediation and consensus-building as issues of power and emotion shape public disputes;

In the second part, we shall consider three short stories: First, an account of a mediator facing officials' fears of explosive comprehensive planning meetings in three counties; Second, an account involving identity conflict in a California land use dispute, and Third, an account involving deep value differences between abortion opponents and advocates;

Finally, the third and concluding part will suggest what planners and the rest of us might learn from these mediators' thinking.

Let us begin then with two mediators who summarize the promise of mediation in a world of power and emotion. The first suggests why traditional zero-sum hardball might not work anymore—and why he came, and we might come, to take mediation and consensus-building seriously.

He tells us,

I've spent most of my career as a conflict generator . . .

Conflict generating is fundamentally the process of raising an issue to visibility and forcing public polarization so that fifty percent plus one will land on your side:

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It's essentially the opposite of consensus building processes, although it uses all the same fundamental skills: Understanding where people are coming from, how far they're willing to move, getting people to feel comfortable so that they're willing to reveal information that they initially withhold, all of those . . .

Sam Rayburn is alleged to have said, "Any bill that passes by more than ten votes wasn't strong enough." [Now] that's the ultimate statement of the virtue of non-consensus: That if in fact you only need fifty percent plus one to make policy, then in fact getting more [votes] than that means you gave up more than you had to.

But in many of the public issues that we face today—because we have empowered, over the last generation, so many people to obstruct so effectively—fifty percent plus one is not enough, sixty percent plus one is not enough, seventy percent plus one is not enough, so that indeed you need to get closer to ninety percent plus one in order to actually carry out policy.

And at that point, the skills required to get fifty percent plus one have to be re-tuned toward a different objective—and it may be a hundred percent minus one or it may just be ninety percent plus one depending on the scale.

But most of the work that I [now] do falls more into the ninety percent plus one to the hundred percent minus one than the fifty percent plus one range.

Now, this is an almost confessional statement of a practitioner's own evolution from being a distributive win-lose conflict generator to a more collaborative consensus builder, and his transformation has nothing to do with idealism, but everything to do with power: fifty percent plus one is no longer enough, he argues—in many situations of on-going interdependence, it doesn't work, the society and polity has changed, implementation is held hostage to many parties' abilities to be obstructionist. Still, he suggests that many of the skills, "understanding where people are coming from and how far they're willing to move," remain the same for the consensus-builder as for the conflict generator!

So far we have a direct account of self-interest: if you want to get something done, pay attention to those who can block or delay or obstruct you. But lots of situations are not so straightforward and clean. The second story suggests that there's no talking about mediation without talking too about suspicion and anger, humor and irony too. So listen, for a moment, to a facilitator who thought she'd lost it in a small town's land-use case, as she tells us what she did, and what we might have done:

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There were a couple moments in the meeting when things became hot.

Now there was one moment I remember really well—when a woman in the front of the room became really enraged about attorneys, and she said,

“Well, you know, the problem is that the town just tries to do something, and then somebody tries to stop it, and then it all goes to these attorneys, and they just keep fighting each other and everybody just keeps spending money on these attorneys.”

As she was speaking she rhymed off all the major issues in the community like the shopping mall and the franchises. . . , and she touched every button in the room. . . I could see every person in the room rising up behind her, you know filling with rage.

And I thought, “Ohhh no,” I felt I was going to lose control of the meeting.

But when she stopped speaking, I, I just, I sort of lightly made a joke, and I said, “What should we do then? Should we shoot all the lawyers?”

And everybody just burst out laughing, and the moment was kind of salvaged.

But I think. . . it’s necessary to have a sense of humor about it, and to be mindful of everybody in the room and respectful of everybody in the room, and whenever somebody put something negatively I would just try to find a positive idea there. I’d try to turn it around to a positive [suggestion].

So someone would rant and rave about [something], or somebody became angry about . . . houses being built in cornfields,—they [really] didn’t want to see that—and I said, “Well then, what do you [suggest]? and [since] they [had] said something about a land trust in the course of talking, I picked out that idea and I said, “So, are you saying it would be good if we had a local land trust that could try to protect some of this land?”

And they said, “Yes,”—[you see?]

So it was really a question -- whenever anybody spoke negatively -- of trying to turn it around into a positive suggestion, or just coming back with, “Well, what would you like to see happen?”

You know? “What would you like to see happen?” And that set the tone for the meeting, and really had set the tone for our organization as a whole about what we’re trying to do, which is find positive solutions.

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Now here's a wonderfully rich, but iffy and critical moment in which we see a public discussion of land use possibilities confronted by legacies of anger, not just one person's but widely shared anger too; we see a group about to turn on an easy target, a common enemy (lawyers!); we hear an experienced practitioner worry and wonder if the discussion was heading irretrievably south, but we see more than her handling the anger rippling through an audience too.

We see part of the promise of mediation, not in comedy, but in the rationality of emotional responsiveness here, a responsiveness taking the form of humor and irony that reaches beyond anger and frustration to care for future action. We see part of the promise of mediation—not in cooling out anger but—in recognizing and turning it toward a persistent and practical questioning of possibility, a persistent evocation of hope: Ok, we don't want to spend all our money on lawyers, so now what? What do you propose? What can we do? This, she suggests to us, is what mediation's all about. Other students of urban conflict and difference similarly recognize passion, humor, and emotion as central to the story of practical rationality in everyday work (Sclavi 1994, 2002; Sandercock 2003).

So we can turn now to three short accounts that suggest not just the political and ethical challenges of mediation, but practical lessons for any planners and the rest of us who work or live in the face of public or community conflict, ethnic and cultural differences, or differences of deep value commitments.

II. Antipathy, Distrust, and the Baggage of the Past: County Comprehensive Planning in a Contested Corridor

Listen first to a mediator working with county governments in a busy East Coast transportation corridor. He tells us:

We were asked by one of the counties to help them consider how they ought to do comprehensive [land use] planning . . . in their part of the . . . corridor.

Part of their concern was that this is an area which is somewhat more blue collar, a little bit tougher—a little less civil—than you have in other parts of the county: there was a lot of bitterness that the other parts of the county had been getting better service, and there was a feeling that there was no way to open up traditional citizen participation without getting completely out of hand and getting explosive.

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And so they asked us: could we propose a process, do process design work, give them advice on how they might proceed with comprehensive planning?

Here's a planning process that had been stymied by fear and evasion; by the threatening difficulties of "traditional citizen participation" and a sense of incompetence in the face of meetings getting 'completely out of hand,' "explosive." Here's an allusion to missing "social capital" in the form of missing trust, norms, and networks: trust that others at the meeting won't explode, norms that they needed a process design to suggest, networks that the convened parties begin to form (Briggs, Putnam).

So what happened?

"We said, "Would you be interested in considering a process which integrated what you're doing with what's going on with the adjacent jurisdictions in the corridor?"

And they said, "You are out of your mind."

Now this might reasonably be a point at which many planners pack their bags. As planners they're trained to see the impacts the counties have on one another, but they're often not trained to know what to do when they've made a proposal and the key officials respond by saying, "You're out of your mind."

So let's follow this mediator's story:

We said, "Well, let's take a look." We then went out and interviewed about a hundred and thirty people, roughly one-third business, one-third citizen-activist and political types, and one-third governmental officials.

We then constructed four focus groups representing slightly different geographical areas, but each mixed in terms of those three sectors. And we then constructed, out of those focus groups and out of the interviews, a team of fourteen people who represented all of the jurisdictions and all of the sectors—who then formed a negotiating group to discuss process for integrated planning.

He goes on:

That group, through us, then presented the proposal for a pretty dramatically different kind of process to the planning agencies in two of the counties and to the county council [in the] third—and it eventually won approval for that new process, which is now beginning.

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Now this was so far “just” the beginning, and this practitioner recognized the enormous amount of hard work remaining to be done, but he also usefully reminded us of what had been accomplished too. He tells us:

Now, this was a consensus building process in the sense that county officials believed initially they could not sit in the same room with each other—but ultimately [they] sat down and came to an agreement about how the process ought to work. It included the county official who said, “I don’t think I can sit in the same room as those people.”

Obviously, this is not the same as building a consensus on comprehensive planning, land use, transportation, environmental management, growth [and so on] in the corridor, but it’s clearly the first step.

Now, we’ll go beyond that first step in a moment, but let’s not lose what we can learn from this much. What might planners and others see happening here?

First there’s not getting stopped cold by the officials’ visceral skepticism: “I don’t think I can sit in the same room as those people.” This wasn’t a coolly reflective, intellectual skepticism that said, “pretty dubious.” This was “You’re crazy” to think about getting all these people together, getting us together with “those people.”

Second, we see that from an initial point of officials’ worries about cooperation, the process built upon careful representation and “a negotiating group” that discussed, recommended, and then gained official approval and mandate for a process that few people thought possible, that had been dismissed as “crazy.”

Third, there’s a deceptively simple, but politically complex process of learning via interviews. This same practitioner suggested how much more than information such crucial “interviews” can produce. He tells us:

While I love [doing] surveys . . . I know that for purposes of conflict resolution surveying absolutely is no substitute for personal contact. Interviewing is partially information gathering, but it’s sixty percent relationship building. You are introducing yourself and inviting people to trust you.

It’s a negotiation in itself. And if they trust you, to share information with you, and you treat that information with the respect that you promise, it’s then not a very large leap to say, “Now, will you trust me to put together a meeting where you won’t get beaten up?”

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So interviewing and asking questions can reach far beyond information gathering—and here we see not just qualities of sharing information, manifesting respect, earning trust, building relationships, but then all of this in the service of convening conversations, “a meeting,” in which parties fears of aggression, antipathy, distrust and disrespect, can be overcome in the pursuit of practical learning and actual civic deliberation (Reich, Dryzek).

We need not make too much of this first story—but we can take as simply worth exploring further this achievement of cooperative and officially mandated results in the face of its earlier dismissal, a dismissal not by cranks but by officials centrally involved!

But now let’s turn to cases involving identity and deeper value issues.

III. Challenges of Identity In Land Use Planning

In Southern California a developer wanted to build 100 or more new homes. Local Native Americans opposed the project because the land in question held an ancestral burial ground. Political officials were worried about still other constituents—as we hear from our next practitioner—neither Anglo nor Native American, but Asian American. He begins,

When the [Mayor and county supervisor] found out that somebody neutral with the experience that I’ve had working with Native American issues was available, the mayor immediately asked me to come into a private meeting with him. In his mind there were multiple parties, and he couldn’t figure out what their position was, and he wanted to know, could we assist? He was more than willing to sit down and work with the parties, [and] he wanted to . . . begin to get a representative body that could enter some constructive forms of negotiations.

So that’s when we entered into a series of public meetings. Our role initially was to talk to many of the tribal members in the area. In those meetings, what I attempted to do was to go over . . . what the developer was proposing, and what the city was permitting the developer to do—acknowledging that there was a sacred burial ground, and acknowledging that the developer would be flexible and try to be respectful to the Native American interests—but the Native American interest needed to begin to grapple with what they felt they wanted to accomplish—what they felt was sacred and religious and respectful.

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Here we have a mayor interested in a negotiated solution, not just pushing through the formal permitting process. But the mayor, we hear, unsure both about the real issues and about the parties, turned to a mediator experienced with tribal issues for help. He continues:

[The tribal members] wanted to try to keep the ground from getting excavated. They wanted to try to set that land aside so there wouldn't be development on it, and they also had an interest of [seeing that] whatever was built around complemented the intent of the tribe's use, historically, and demonstrated a respect for what their burial ground would be . . . So the picture started clearing up.

At this point, the picture may be clearing up, but we could easily enough worry about impasse, legal suits, and traditional political power. Negotiated outcomes don't appear all that promising when one party says, "Let's get the shovels," and another says, "Don't touch the land—it's sacred." We seem to have all the signs here of what might easily be an intractable conflict involving identity issues.

So let's see what happened. Our mediator goes on:

Meanwhile the veterans' administration was looking for land, and there were veterans pushing the city to get some kind of a veterans' home, and they were a third party [coming] into the picture. The city was very interested, and the county was very interested, in having a veterans' home [because] there was a [military] base in that area, and just a large constituency [so] that [the home] made political sense to the supervisor and to the city to support .

Now the picture's getting more complicated, and he goes on:

The developer owned the land. The developer was asking and trying to get permission and permits approved to do the building;

The city and the county were leveraging, "We'd like a veterans' home," and the Native Americans were leveraging, "You're on a sacred burial ground."

So you really had three agendas.

So far, viewed from the outside, we have: new housing vs. a veterans home vs. a sacred burial ground: it still doesn't look very promising. But our mediator tells us that their meetings discovered more:

Now—what was really interesting was that the Native Americans loved the idea of having a veterans' home there because what that did for them was that it gave the land respect for the elders . . .

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They liked the concept of having a living place for elderly people that would be respectful to their property, and they felt that the veterans would accomplish that. So the veterans and the Native Americans began to talk, and they began to agree—that they supported each others' agendas.

How did that happen? He explains:

[A (Native American) leader (had) evolved who basically tossed out a couple of concepts that he felt were important. One was setting aside five acres, and a second was building a Native American memorial on that site which would complement a veterans' home and would give some tribute to those Native Americans that participated in America's wars. That became the hook: the Native Americans gravitated to this concept because it was so reverent, respectful of Native Americans, and it so well complemented the veterans home, and it gave tribute, like no other tribute to Native Americans in this nation.]

So, he continues, the negotiation started to take shape:

The developer had to consider [whether] to get a permit. He had no objections to building a veterans' home and giving twenty-two acres of land for that purpose. He had no objections to giving some land . . . to the Native Americans, if that be what they wanted—he was flexible on that—so long as he got to build on the balance of the thirty something acres and build, I think, a hundred twenty homes.

What happened, [he goes on,] was that the city and the county had very clearly stated that a veterans' home was going to be a clear criterion for allowing the permission for the development. One of the commissioners on the State veterans' review board—who was, I think, of Native American ancestry—had indicated clearly that if the town hoped to gain State approval and [hoped] the State to come and bring money and build the veterans' home, it was going to have to come in unified with the Native Americans as well as with the veterans. So the leverage was all set for reaching some accord.

So here, a dispute that we could easily have framed as irreconcilable, to excavate or not, to leave the land untouched or build new housing on it, no longer seems hopeless. We began with images of marketed land versus sacred land, the clash of one group's interests, or perhaps even

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ways of life, against another's, and now we sense possibilities that might satisfy the interests (and perhaps the ways of life) of each of the apparent adversaries.

But even more importantly, we see our own earlier expectations of irreconcilability refuted, and so we find ourselves surprised to see new possibilities we had not imagined. We might find ourselves less cynical, more curious now, and needing to understand better how our earlier practical assessments of likely impasse could have been mistaken. We need to ask seriously, "What were we thinking? Why might we easily have missed encouraging and achieving such mutually beneficial outcomes?"

We see here what we earlier called "the drama of mediation and negotiation": we start with conflict and apparently irreconcilable interests that have little to do with each other, and we wonder how in the world these parties will ever stop living at cross purposes, and then skillful negotiators and mediators sometimes come up with results that no one expected. We need to explore how these dramas work: how at times our own comfortable realism about struggles of power, interests, and identity can keep us stupid or blind (or both), keep us from finding options and possibilities that really do work for the people involved (Heifetz and Linsky 2002, Kolb 2003). So we need to explore, once more, how mediators snatch possibilities from the apparently impossible, and how planners and others working in the face of multiple and conflicting parties might do the same.

IV. More Progress Where Little Negotiation Seems Possible

Let's turn now to a third story, a third drama of negotiation. We might come to see, in the wonderful words of Russell Norwood Hanson, that "there's more to seeing than meets the eyeball," that there can well be more going on in a case than we expect, and that when our expectations too quickly blind us, we need to learn to see more, we need to learn to learn, to know that we don't know what we need to know even though we are confident in what we do know.

As we'll see, this practitioner's account seems full of apparent contradictions: he seems to disavow the promise of "agreement," but he tells us of agreements reached nevertheless. He speaks of non-negotiable issues, but then points toward evidence of real and productive negotiated agreements. Let's listen closely to appreciate what he says,

"The program [I work with] does not start from negotiation theory. Indeed it starts from the premises that: the conflicts that go the longest and cause the most

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damage are rooted in non-negotiable issues, race, class, gender, religion, nationality, deeply held values, that those deep rooted issues, therefore, will not be resolved by negotiation, and that the end product of a resolutionary process is not, therefore, an agreement.”

That creates a somewhat different framework for what we do.

[So the end product], often, is an understanding. Parties come together, parties who are deeply divided; they join in an analytical process, and they go away not having agreed about a damn thing but having come to understand their own situation and the other people’s situation better.

So far, we have not an appeal not to any negotiated outcome but to improved understanding, and of course we should want to know what any such ‘understanding’ might be good for: If some parties gain control and resources while others gain “understanding,” we might worry about just what they’re understanding.

Still, understanding our own situations and the others with whom we must act might certainly be goods in themselves, but of course there’s more to it. This mediator continues:

[With that understanding] they act unilaterally in the future in ways that are less conflictual, more constructive for each, and in fact they may find that while they can not get within a shred of agreement on issue X, they in fact have dozens of issues A,B,C, to J on which they can cooperate--many of which are essentially negotiable.”

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Now here we start with non-negotiated “unilateral actions”: what parties do on their own, uncoordinated with others, and we have the suggestion that their “understanding” far short of any agreements, might lead these unilateral actions to be less adversarial and more constructive for each party. In such a case, again without any explicit and reciprocal agreements, parties might produce non-negotiated but mutually fruitful “joint gains.” (Axelrod; Winship)

But what follows these non-negotiated, more mutually constructive actions in this mediator’s account is even more interesting: Honoring the assumption that on certain issues no agreement—not a shred—will be possible on a central, defining, “focal” issue, still, he suggests that “they may find,” they may discover, clearly having not approached one another with this understanding or this expectation, that there may be “dozens of issues on which they can cooperate.”

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But here, of course, we're back to the possibilities of actual negotiation discovered in a setting in which no negotiation at all seemed possible on a dominant issue. But there's a lesson here too: what we can come to treat as a dominant and defining issue, we now see, can paradoxically be a blinding one. We think we see the central issue, it looks non-negotiable, and we draw the implications for action: let's not waste resources trying to do the impossible. But this practitioner suggests that this apparently reasonable rationale, 'nothing's possible,' hides the real possibilities we have.

So, this practitioner teaches us, seeking "agreement" too early on can not only be hopeless, but worse: the pursuit of agreement can actively dis-empower us. We don't just set ourselves up for a fall, but we keep ourselves stupid: we ignore opportunities right in front of us.

How can this work? Listen a bit more, as he continues:

I'll give you a classic example. [A few years ago], the pro choice and pro life forces in [this state], which is heavily Catholic, had really gone to war with each other, and the state police were proposing to go to the legislature seeking new authority to interpose themselves to prevent violence.

There was a meeting arranged between leaders of the pro choice and the pro life forces who immediately agreed that it would be very undesirable if such legislation was passed and that they should jointly oppose it on a variety of free speech grounds.

Now here we have an agreement prompted by what both parties take [perhaps for different reasons] to be an external threat: increased intervention by the state police. But their discussions produced more, he tells us:

As the discussions went forward they discovered, not entirely to their amazement, that they also shared strong common interest in increasing health care for at risk teenagers and pregnant teenagers—and they [also] wound up forming a coalition which voluntarily proposed a set of rules for how they would picket each other to sort of lower the risk of violence, thereby forestalling the state police proposal.

Simultaneously they formed a coalition in the legislature to increase state funding and support for prenatal health care. That coalition, despite all the wars and despite all the interventions of groups like Operation Rescue from outside the State coming in, has held up and [for many years] since it has succeeded in increasing

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state funding for health care even at times of budget cuts. And that has, at some level, improved the civility of debate.

Now, on the fundamental issue of abortion, needless to say, the two sides did not convince each other and did not agree, and if the purpose of bringing them together was to seek common ground on that issue, they might never have come together, and my guess is that it would have failed. But, bringing them together in a different context made it possible for them to identify very constructive things that they could do.

Now several different outcomes deserve our attention here. First, two adversaries that have been involved in deeply and fundamentally value-defined, bitter, and at times violent conflict found ways to agree practically:

- a) On steps to resist legislative support for increased police power;
- b) On steps to develop rules for picketing to lower the risks of violence at demonstrations;
- c) On steps to improve health care for at risk teens;
- d) On steps to form a coalition to lobby the legislature for prenatal care funding; and
- e) On ways to improve the level of adversarial debate, of "civility," at a time when anti-abortion protests were increasingly characterized by the intimidation of women at clinics and an escalating rhetoric tantamount at times to the incitement to violence.

But that's not what's most important here, as surprising as these agreements between archenemies might be. The far more important lesson for planners and mediators alike follows: "if the purpose of bringing them together was to seek common ground on that issue, they might never have come together. . .But, bringing them together in a different context made it possible for them to identify very constructive things that they could do."

Here, this mediator suggests, looking for agreement on the core issue would have led to failure. That's the easy and obvious part for the political realists who say, "Of course, they'll never agree!" But even more importantly, failing to bring the parties together at all—because they so obviously and realistically could not agree on the core issue—that realism too would have been a source of failure and missed opportunity because, again, "bringing them together in a different context made it possible for them to identify very constructive things that they could do."

So this mediator teaches us a deep lesson about our presumptions of others who appear to hold deeply, "fundamentally," different values than our own. The realists—the ones who say,

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“It’s no use talking; they fundamentally disagree”—are being far too literal, and so, superficial, and so they’re likely to miss many real opportunities that grow from conversations that are in deed possible even when a central negotiated agreement is not.

So we have at least one punch line from this third story: “agreement” can at times be a deceptively simple, inappropriate early goal of dispute resolution, and our perception of “no possible agreement” on a central issue, our own negotiation realism, can produce our own blinding failure. So this is all a story about realism that can become cynicism with the best of intentions. We’re thinking about differences on a key issue; we really do think no agreement’s possible, and we’re both right, narrowly, and wrong, more practically. We might be happy to learn that we’ve been wrong, but we’d have been even happier to have recognized and acted on our real opportunities in the first place!

Conclusion

We might close by considering how skillful mediators manage to snatch possibility from the jaws of impossibility, how they raid the impossible, when others think the game’s up. How do they seem to do it, and what lessons do they suggest that planners and other citizens too need to learn in situations of complex public disputes? Consider six points:

1. Skillful mediators seem to know that in public disputes there’s always more going on than meets the eye, that parties always care about even more, sometimes much more, than they say as a matter of public posture—so that as planners and citizens we should be very careful about tying our own hands with the political rhetoric of those who seem to be adversaries. To put this more bluntly: in a globalizing context of increasing cultural diversity, we need to listen ever more carefully to, and beyond, “the words”!

2. These mediators have their presumptions too, but they presume that in times of conflict, stereotypes and fears can focus parties’ attention in limiting ways, so that parties need to, and can in fact, learn. As parties to complex disputes, facing differences, we need to know that we don’t yet know all we might, so we can come to learn first and only act strategically to achieve our ends secondly; Once again, in a globalizing environment, we can anticipate that our increasing contact with cultural, social, linguistic, even religious diversity will mean quite directly and practically that we must presume less and learn more.

3. These mediators assume that parties can surprise one another, with new information, gestures, offers, disclosures of self, and more that can enable them (us!) singly and together to

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act in new ways as they and we learn from, and respond to, one another. So the mediators presume that in the first place, conversation matters more than agreement, as we saw in all 3 cases. In civil society, this means we must resist the urge to bargain, to look for simple deals, simply to trade and exchange rather than allowing ourselves to talk, to listen, to find new ways to avoid the stereotyping that ends up making us stupid, not perceptive.

4. These mediators know too that when disputes take win-lose or zero-sum complexions, complications can help. We look stuck, but more information, more concerns, new relationships, fresh recognition can get us unstuck, as the role of the veterans played in the second case. Additional complexity can save us from our own “rush to interpretation,” our pre-emptive, poorly informed realism that blinds us to possibilities we really have. This may sound easy, but it makes personal demands that are not always simple: we need to tolerate ambiguity and complexity, beliefs unlike our own, ways of organizing the social and cosmological world that are unlike what we know. Planners who can appreciate difference in these forms will help cultivate diversity in civil society rather than run from it or suppress it.

5. The mediators whose work we have explored assume that dispute resolution involves not only knowledge and value claims and commitments, not only differences over epistemological and ethical claims, but practically embodied performances, small offers, reciprocal gestures, the sharing of information and the building of trust, as we saw in the first case’s interview process. More precisely, these mediators’ practice tells us to focus less on conflicting arguments, less on general and abstract knowledge and value claims, and more on the specific tone, style and conditions of conversation, dialogue, or argumentation, the practical, embodied character of others’ and our own speaking and listening. This means, in a globalizing environment, that planners must not only think differently but act differently: they must learn conventions and rituals of meeting and eating, of walking and working together. The work of civil society happens in word and deed together.

6. These mediators presume that when parties care about more than they say, they too have to manage multiple, conflicting, and ambiguous goals, responsibilities and obligations—and that, as practical actors, “others” can and will improvise, innovate, and cooperate practically to solve problems and build new working relationships, as the abortion opponents and advocates did, in unforeseen, unimagined ways. So too in increasingly diverse and interdependent relationships, planners will come to appreciate that difference is not just issue-defined but is far more complex—and that complexity can provide opportunities as well as obstacles to work together.

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So this essay makes no claims for mediation in general, but rather for what we might learn from mediators whose work suggests lessons about our own presumptions (and the ways these often hold us captive), our own seductive cynicism and failure to act on good judgment, our own failures of hope. In situations that can look to the realist's eye quite irreconcilable, mediators can surprisingly snatch cooperative, consensual outcomes from looming impossibility. If we want to improve planning and public policy practice, and the more general practice of civil society in a globalizing world, in situations that look equally problematic, we as planners and citizens alike should look carefully at what these mediators do.

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