

# Environmental Mediation: An Alternative Approach to Policy Stalemates

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## ABSTRACT

Environmental mediation is a new and innovative attempt to overcome the policy stalemates that frequently hinder effective environmental policymaking. It brings together environmentalists, business groups, government officials, and a neutral mediator in an attempt to negotiate a binding settlement to a specific controversy. This essay describes this approach, discusses its advantages over more traditional dispute resolution processes, and explains how it is able to produce acceptable agreements in such a difficult policy area.

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## Introduction

The last several decades have witnessed a dramatic rise in the number of political groups vying for policymaking power. A dizzying variety of organizations – including public interests groups, minorities, environmentalists, corporations, the New Right, and the Moral Majority – are now all actively involved in attempting to influence public policy. Unfortunately, however, this burst of political participation has not been easily assimilated by the policymaking system. As some observers have noted, this increased participation of special interest groups has fostered a politics of confrontation and polarization [1]. Samuel Huntington, for example, has argued that our traditional policymaking institutions have found it increasingly difficult to satisfy all of these competing interests, and thus the government frequently finds itself in a situation of policy paralysis, unable to create or implement coherent policy programs [2].

The area of environmental policy is often cited as an example of this problem. Increased participation by developmental and environmental interests in legislative,

administrative and judicial policymaking processes has seemed only to increase polarization over these issues, and has yet to produce a coherent and widely accepted approach to environmental policy. The intense lobbying that inevitably accompanies legislative battles over environmental policy has often only produced stand-offs, or overly vague legislation that only ensures the reemergence of conflict during the implementation phase [3]. Efforts to resolve these controversies at the administrative level have also been largely ineffective [4]. Public hearings, for example, which are ostensibly designed to facilitate public participation in the resolution of these policy controversies, are often viewed as charades by many of the participants. Administrative decisions are inevitably seen as arbitrary and mistaken by one side or another, and thus the disputes usually wind up in court. But the use of litigation to resolve policy differences has also been far from satisfactory [5]. Litigation usually involves extensive delays, and at best it only produces piecemeal decisions, not coherent policy programs. Moreover, since much environmental litigation is initiated under the Administrative Procedures Act, or the National Environmental Protection Act, the subsequent decisions often only settle procedural issues, and leave many of the substantive controversies unresolved [6].

These kinds of frustrations and delays have caused some to question the utility of heightened public participation. Huntington has argued that we have too much participation in Western democracies, and that only a more authoritative approach to policymaking will restore the effectiveness and efficiency of our policymaking processes [7]. This conclusion has been reflected in such policy proposals as Carter's Energy Mobilization Board which would have severely restricted opportunities for the public to challenge energy policy decisions [8]. However, there has emerged in recent years, in the area of environmental policy, a new approach to resolving policy conflicts – an approach which represents an alternative to this more authoritarian path. This new approach is known as “environmental mediation,” and as we shall see, this process suggests that more intense participation, not less, may be the key to overcoming the problems of policy paralysis.

Defined most simply, environmental mediation is an ad-hoc policymaking process in which representatives from environmental groups and business groups sit down together with governmental officials and a neutral mediator to negotiate a set of binding policies to resolve a particular environmental dispute [9]. Unlike arbitration, environmental mediation is a process in which the mediator has no power to impose a settlement – all settlements must be voluntarily agreed upon by all the parties involved in a dispute. The principle role of the mediator is to use his or her skills to diffuse hostility, to clear up miscommunications, and to integrate the demands of the various parties into an acceptable solution. In its essence, then, environmental mediation is an attempt to reestablish the process of negotiation and compromise that many feel has been on the wane in Western democracies. Somewhat suprisingly, this calm and reasonable approach has met with some success. Since its emergence in the mid-1970s mediation has been responsible for successful agreements in such difficult areas as

power plant siting, land use, pollution abatement, preservation of park lands, mass transit planning, and others [10]. The process is also now well on its way to becoming institutionalized, with small environmental mediation institutes in Seattle, Boston, Boulder, and elsewhere [11].

This essay will explore two of the central political questions surrounding environmental mediation:

- (1) What advantages does mediation have over other approaches to resolving environmental policy disputes; and
- (2) What is it about this particular form of political participation that accounts for these advantages?

In answering these questions, I will be using a short case study of a successful mediation effort, interviews with mediators and negotiators, and the emerging literature in this field. The bulk of the essay will be an examination of three of the characteristics of environmental mediation which separate it from other participatory approaches and which help to explain its success:

- (1) Its emphasis on direct dialogue between competing interest groups;
- (2) The unique role of the mediator in facilitating an agreement; and
- (3) The delicate balance of power that must exist between the opposing parties.

The examination of these characteristics will reveal that the success of environmental mediation should not be totally unexpected – at least not for those familiar with the participatory tradition of democratic political theory. Political theorists in this tradition – such as Rousseau, Pateman, and Bachrach – have long predicted a variety of political benefits coming from direct, face-to-face political dialogue and interaction; and, as we shall see, the successes of mediation serves to confirm the benefits derived from this unique form of political participation. But before we begin to touch on these broader points, it is helpful to first become more familiar with what mediation efforts actually look like in practice – so let us start off with an account of a successful mediation project that took place in the state of Washington in the late seventies.

### **The Case of Portage Island**

Portage Island is 865 acres of beautiful forests and sandy beaches located in Puget Sound near Bellingham, Washington [12]. For fifteen years there was an ongoing controversy over who should own the island and how it should be used. Originally the island was owned by various members of the Lummi Indian Tribe whose reservation was adjacent to the island. In 1965, the Whatcom County Park Board paid \$1.4 million, including \$450,000 from the Interior Department, to buy the island from these owners and develop it as a park. Originally the Lummi Tribe had strongly supported the sale, but in 1970 the Tribal Council changed its mind and began to oppose non-Indian use of the island. Some of their objections centered around the fact that

one could get to the island only by boat or by driving through the Lummi Reservation and then crossing a sandbar that is exposed at low tide. Council members feared that marine traffic would interfere with the fishing nets and the shellfish grounds that the Indians had around the island, and that increased motor traffic through the reservation would be disruptive. Lummi opposition to use of the island as a county park was also fueled by their growing sense of sovereignty. As one council member explained: "This is a small reservation, about 1500 people living on 12,000 acres. A lot of our land has already been sold off to non-Indians. With Portage, we would be losing nearly another thousand acres. We began having second thoughts" [13].

By May of 1970, the situation had deteriorated into the kind of polarization and stalemate that critics of increased participation fear. The Park Board owned the island, but the Indians had put up no trespassing signs on the sandbar and were patrolling the waters to prevent non-Indian access. Throughout the 1970s the stalemate dragged on. The stand-off was also reflected on the federal level where the Bureau of Indian Affairs supported the Lummi position and other parts of the Interior Department supported the Park Board position. In 1978, Interior Secretary Cecil Andrus was anxious to resolve the issue and asked John Hough, Director of the Western Field Offices of the Interior Department, to explore the possibility of getting the two sides together to negotiate a settlement. Eventually it was decided to ask the Office of Environmental Mediation at the University of Washington to mediate the dispute. Andrus gave the mediators three months, until March of 1979, to generate an agreement. If the attempt failed, he then would make a decision himself.

The two mediators, Leah Patton and Vern Huser, were faced with an extremely difficult task. Years of controversy had embittered both sides of the dispute. Members of the Park Board were frustrated and angry and swore that making Portage Island into a park was a matter of "pride and principle." At first, they insisted that they would only meet with the Indians if the issue was *how*, not whether, the island would be used as a park. The Lummis were equally adamant about their position. And not only did the two sides have conflicting interests, there was also a large cultural gap which increased suspicion and made communication difficult.

Aware of these difficulties, Patton and Huser began the mediation process. Three representatives from each side attended the first meeting at Fisherman's Cove, a restaurant on the Lummi reservation. The meeting began at six in the evening and ran into the early hours of the next morning. The first few hours consisted of dinner punctuated by awkward silences and stilted conversations about the weather and local news. For some, this was the first time they had dinner with an Indian or non-Indian. The business portion of the meeting consisted primarily of formal statements of positions and concerns, with little give and take. There were six more meetings between January and March, and these were characterized by more relaxed and spontaneous exchanges. Between the meetings the mediators called the participants, asking questions, clarifying positions and suggesting areas of agreement. They also reported to the Interior Department on the progress of the talks.

Eventually an agreement began to emerge. The Park Board representatives expressed a willingness to sell the island back to the Lummis, if they would agree to let it be used as a park. The Lummis eventually agreed, with the stipulation that no boat landings or marinas be included in the plan for the park, thus protecting their fisheries. They also insisted that the BIA provide the money to buy back the island. Andrus eventually agreed on the grounds that providing the funds was a small price to pay for settling the dispute. The settlement was also seen by Andrus as being consistent with BIA policy to solidify tribal land holdings. There were a few last minute hitches, but these were overcome and on November 10, 1980 the Whatcom County Commissioners voted to sell the island back to the Lummis and the dispute was formally ended. At that occasion, both Lummi and county authorities expressed the hope that future Indian and non-Indian relations would be informed by what they called “the spirit of Portage Island”; and the *Bellingham Herald* hailed the agreement as “the first time the tribe and those outside the tribe have been able to resolve a major point of difference,” and as “a first step forward in improving relations between the tribe and non-Indians living in Whatcom County” [14].

### **The Advantages of Mediation**

The Portage Island case illustrates several of the advantages that environmental mediation has over more traditional and authoritative methods of resolving environmental policy disputes:

- (1) It allows for more direct and meaningful participation by interest groups in the actual decisionmaking process;
- (2) It can often be more efficient than administrative and judicial policymaking; and
- (3) It can produce longer lasting and more satisfying solutions to difficult policy disputes.

Of all of these advantages, it is the claim to efficiency that is the most immediately intriguing; for efficiency is a virtue which has long been championed by those who wish to *minimize* public participation in policymaking. The clear implication of the work of theorists like Huntington is that more authoritative forms of decisionmaking are desirable largely because they are more efficient, i.e., decisions can be made more quickly, and costly stalemates can be more easily avoided. However, these advantages of authoritative policymaking may be more apparent in theory than in practice. Consider, for example, what would have most likely taken place in the Portage Island case if Secretary Andrus had decided to resolve the dispute through administrative fiat. Such a decision could have been made quickly, but given the intensity of feeling on both sides, it is almost certain that any decision made by Andrus would have been quickly challenged in court by one side or the other. Given the typically slow pace of legal proceedings and the congestion in the court system, litigation could easily have gone on for many years. Indeed, that is the usual fate of many environmental disputes.

Given this ever present possibility of prolonged litigation, advocates of environmental mediation argue that their approach is often the more efficient option. As Scott Mernitz has noted, mediated settlements can often take less time and cost less than half as much as court decisions [15].

Mediation is efficient in large part because it is based on the realization that there is more to making policy efficiently than simply making decisions expeditiously – that one must always face the problem of how to efficiently implement and enforce those decisions. One of the major disadvantages of administrative decisionmaking is that it often invites implementation problems – such as the endless litigation that is typical in environmental disputes. In contrast, mediation, while taking some time to arrive at a decision, has the advantage of potentially simplifying these implementations and enforcement stages. Mediators have discovered what the participatory tradition of democratic theory has long maintained: that public participation in policymaking is desirable not only because it is more democratic, but also because it makes policy implementation a much smoother process. As Carole Pateman has observed, people who participate in policymaking tend to see the policy as their own, rather than something alien fostered onto them from some distant authority, and this “enables collective decisions to be more easily accepted by the individual” [16]. In the case of environmental mediation, all policies generated by the process have already been voluntarily agreed to by the participants, and that naturally minimizes the likelihood that these groups will employ obstructionist tactics to interfere with the implementation of those policies.

However, the greatest advantage of mediation may lie not so much in its ability to produce efficient decisions, but in its potential to produce *better* decisions, i.e., policies that satisfy more interests and actually help to resolve or mitigate intense environmental conflicts. Environmental controversies typically attract a wide range of interested parties; and the large number of different interests involved makes it unlikely that an authoritative policymaker (no matter how well intentioned) will be able to make an unilateral decision that will satisfy all of them. Lawrence Susskind had described one controversy over the environmental impact of the expansion of Boston’s subway system that involved the city of Cambridge, the Massachusetts Bay Authority, the Sierra Club, the Massachusetts Audubon Society, many local business groups, several Cambridge and Arlington residents’ associations, and others [17]. As the number and diversity of interested parties grow, so does the probability that policymakers will have difficulty fully appreciating the merits of their various interests, or understanding what trade-offs between these interests would be acceptable to each of these parties, and so on. In contrast, environmental mediation allows parties to represent their own interests directly in the policymaking process. Thus, in situations where disputes are politically complex, mediation seems to offer a greater chance of producing a decision that all interests can agree upon as fair. And while it would be faulty to conclude that all such mediated settlements are necessarily just or in the public interest, mediation does increase the possibility that a wider range of interests will be satisfied with the decision.

The source of environmental mediation's ability to produce better and more efficient policy decisions is the fact that its specific aim is to resolve the political rifts that often lie at the heart of policy problems. This is the crucial difference between mediation and more authoritative approaches to ending policy controversies. Administrative and judicial processes usually only seek to *decide* an issue, not to finally *resolve* it. As a result, these authoritative approaches often produce decisions of an all-or-nothing nature, where one side wins big and the other loses big. Since the losers gain little from these decisions, it is not surprising that they continue to pursue their goals through additional court cases, appeals, or other obstructionist tactics. The essence of environmental mediation, however, is to fashion a compromise agreement that partially satisfies the goals of all the parties and thus actually resolves the conflict. When mediation is most successful, as with Portage Island, conflict can actually be put to rest and the sense of community re-established. Of course not all mediation attempts are this successful; some environmental conflicts are simply too basic to be fully resolved. But even in these more difficult cases, mediation efforts can often fashion a settlement or compromise that all sides can live with – one that ends the immediate conflict and defuses the tension in the community. Thus even while mediation may not always be able to claim the virtue of short-term, temporal efficiency, it may claim the virtue of long-term, social and political efficiency, in that it tends to produce policies with widespread community support and tends to heal community wounds.

All of this is not to say that environmental mediation always works or that there are no potential problems with this process. Sometimes mediation efforts fail, sometimes mediation is misused, and as I have pointed out elsewhere, the possibility of co-optation is everpresent [18]. For now, however, I simply want to establish that environmental mediation *can* work and that when it does, it has some impressive political advantages. This brings us to the other subject of this essay: how can we account for these advantages? Why does mediation work? How can such a calm and reasonable process resolve conflicts in such a volatile policy area? The answer to these questions, and the source of environmental mediation's effectiveness, lie, I believe, in the unique and intense style of participation that takes place in this approach. Specifically, there are three characteristics which distinguish this form of participation from other traditional forms of political participation. These characteristics are: (1) environmental mediation's emphasis on face-to-face moral and political dialogue between conflicting groups; (2) the central role of the mediator in facilitating that dialogue and subsequent policy agreements; and (3) the relative balance of power that must exist between negotiating parties. The rest of this essay will examine how these three characteristics help to explain the success of mediation.

### **The Importance of Direct Dialogue**

In explaining the success of environmental mediation, the most obvious place to begin is with the process of direct dialogue that lies at the very center of mediation efforts.

This kind of prolonged, face-to-face dialogue between feuding interests is distinctive; it is certainly not typical of most forms of interest group participation in the political system. Voting certainly requires no such encounters with one's opponents – it can be a purely individual act. Likewise, lobbying rarely involves face-to-face encounters with opposing groups. Even when interest groups come together at administrative hearings, any dialogue that takes place is usually only between witnesses and policymakers – not among the groups themselves. As Gail Bingham, the editor of *Resolve*, a newsletter on environmental dispute resolution, has observed: “The real disadvantage of public hearings is that people who attend and speak don't talk to each other” [19]. And finally, participants in judicial proceedings usually find themselves restricted to speaking through lawyers, with exchanges being indirect, formal, and legalistic. In short, then, traditional avenues of participation in policymaking offer little opportunity for a direct discussion of the issues between opposing groups.

However, according to advocates of environmental mediation, the process of “talking to each other” can have several important advantages in resolving policy disputes. First, this kind of direct dialogue allows for a wide-ranging and open discussion which enables participants to address all the dimensions of a dispute. In contrast, many other forms of participation prematurely restrict the subjects of discussion and can tend to obscure the real sources of the controversy. For instance, participation through the court system, a typical battleground in many environmental disputes, tends to restrict discussion to only those issues which are *litigable*. But what is litigable may differ greatly from what is at the heart of the dispute. In the case of the Alaskan pipeline, many court battles centered around narrow right-of-way issues, while the real dispute was clearly over whether the pipeline should be built at all [20]. Similarly, public hearings can often restrict discussion in a way which ignores or obscures the main political issues at stake. Testimony is often limited to that which bears directly on the narrow subject at hand – the validity of a specific environmental impact statement, or the particulars of a specific piece of legislation – with the discussion of larger issues considered to be irrelevant or out of order. Of course, when the basic issues go unaddressed, they often also go unresolved, and this only encourages the continuation of the conflict. In contrast, the directness and informality of the discussions involved in environmental mediation leave the participants free to address the central issues of the controversy and perhaps resolve them.

A second major advantage of direct dialogue in ameliorating environmental conflicts is its ability to reduce the possibility of miscommunication – a factor which can often play a large part in exacerbating these disputes. Because interest groups typically operate at a distance from each other, they often must rely on indirect sources, such as media reports, for much of their information about each other's activities and positions. This information tends to be sparse and often is filtered through the perceptions of third parties. Miscommunication and misunderstanding are often the result. An incident which took place during the Portage Island controversy illustrates this point well. At one point, the director of the Park Board was quoted in a local paper as

declaring that the island was open to any county resident who wanted to use it. The Lummis perceived this as a direct challenge, resented the fact that they had not been consulted in this decision, and immediately began putting up no trespassing signs and patrolling the waters around the island. However, the newspaper article was a distortion of the director's comments. He was merely responding to a legal question concerning right of access and stated that in principle all county residents have a right to use county property. As one Park Board member commented later, "The answer that (he) *had* to give was that since the public owns the island, the county cannot keep the public off of it" [21]. But the director had not intended to encourage people to use the island at all. These kinds of miscommunications are minimized when opposing parties have the opportunity to talk directly with each other and make sure their positions are clearly understood.

Another inflammatory factor that can be mitigated by direct dialogue is the inevitable tendency for opposing interests to stereotype each other. Because feuding groups perceive each other at a distance, all the more detailed and complex human features of those in the opposition tend to be lost, and they appear only as crude silhouettes. Thus it is easy for both sides in environmental disputes to simply see each other as "environmental crazies/greedy capitalists" – rather than seeing each other as real and complex human beings with genuine concerns. This kind of stereotyping has several pernicious effects. Most obviously, it exaggerates the differences between the opposing parties. Undoubtedly, some of the political polarization that exists between groups in environmental disputes is due to very real differences in values and interests – but nevertheless, polarization is usually made more extreme by this process of stereotyping.

There is, however, another more subtle, but equally problematic, effect of stereotyping: it allows and encourages a more manipulative and dehumanized form of political interaction. In its essence, stereotyping is a way of dehumanizing one's opponents, a way of turning them into objects. And it is much easier to coerce, manipulate, deceive, or mistreat "objects" than real human beings like oneself. As innumerable generations of soldiers have learned, it is much easier to kill and maim "gooks" or "krauts" than it is to kill and maim other human beings. The same dehumanizing process is at work on a lesser scale in many environmental disputes, where stereotyping of the opposition may help to justify or legitimize even the most unscrupulous political tactics. A particularly telling example of this process was found by Mark Dowie, a journalist who attended a conference of utility and nuclear industry executives. The purpose of the meeting was to discuss strategies for dealing with the anti-nuclear movement. At one point in the conference,

... the pace quickened when it was decided that the appropriate label for the (anti-nuclear) movement's leaders should not be "crazies" or "revolutionaries" but "destroyers" – describing people, who, after all, "really just want to destroy America and the system." Emotions ran higher when the primary objective for the new strategy became "to destroy the destroyers" [22].

While this particular example of dehumanizing stereotyping was found in an industry group, one could undoubtedly find similar processes occurring in environmental groups – or indeed in any interest group engaged in a bitter policy conflict.

Advocates of environmental mediation argue that dialogue plays a crucial role in breaking through these dysfunctional stereotypes. It seems that it is difficult to maintain simplified stereotypes in the face of prolonged discussion. In part, this is a function of simply spending time with one's opponents and thus getting to know them as real people. But it may also be that the very nature of the dialogue itself encourages participants to regard each other more as human beings. Much of the dialogue that takes place in environmental mediation is moral in nature – it is concerned with the subjects of what is just, what is in the public interest, and so on. Participatory theorists have suggested that for this kind of genuine moral and political dialogue to take place, each side must recognize and respect the other as responsible human beings. Hanna Pitkin has made this point in relation to the process of moral dialogue:

... discourse or conduct is moral only if it treats and addresses each person as a person, as an end in himself, rather than an object or means to some other end. . . . Moral discourse, then, is precisely the kind of exchange which Martin Buber calls an "I-Thou" relationship, in which the other is addressed and conceived of as a human being, a person basically *like oneself*. It is a relationship that requires mutual identification and empathy. Thus, one can say, following Arendt, that moral discourse is a mode "in which human beings appear to each other, not indeed as physical objects, but *qua men*" [23].

Pitkin is suggesting that authentic moral discourse requires and promotes a certain attitude toward others – an attitude in which efforts to manipulate or deceive are seen as inherently illegitimate. Instead, the essence of moral dialogue is moral reasoning and persuasion. We must appeal to the moral sense of the other and this requires that we respect them as morally responsible human beings. Otherwise, genuine moral and political debate is impossible. Thus, to the extent that this kind of genuine dialogue takes place, it helps to undermine our perception of others as objects.

Of course the whole point of establishing clear communication and moving beyond initial stereotypes is to promote better mutual understanding among the various parties in the dispute. Compromise agreements are facilitated to the extent that parties can come to see some validity and merit in their opponents positions – and this is much of the purpose of dialogue. Moreover, reasoned dialogue may not only increase our appreciation of the other's concerns and interests, it may also teach us a crucial lesson about the nature of politics and the need for accommodation. Both Hanna Pitkin and Hannah Arendt have argued that participation in political debate makes us more sensitive to the "plurality of perspectives" that is an inescapable part of the political world. In Pitkin's words: ". . . political discourse is neither just manipulative propaganda, nor just a moral concern with the cares and commitments of another person, but something like an addressing of diverse others in terms which relate their separate, plural interests to their common enterprise, to a shared public interest" [24]. Thus to be able to be simultaneously aware of the inevitability of diverse interests and perspec-

tives, and also the necessity of reaching agreement among those perspectives, can be a valuable step in our political education. It tends to make us more responsible and mature political actors.

Such claims about the political benefits of dialogue, as long as they remain on the level of theory, may be easy to dismiss – especially if one is a political cynic. But the experiences of many of those who have taken part in environmental mediations lend some support to these theoretical claims. Many participants report that after a period of prolonged dialogue they began to see beyond their preconceptions about their opponents and began to see them more as real human beings with (at least somewhat) reasonable concerns. In the case of Portage Island, George Adams of the Lummi Tribe reported that, “I grew to trust one of the Park Board members particularly. He listened. When he spoke he showed that he had heard us. This guy wasn’t into control and power. He wanted the Island to be a park, but in a way we could live with” [25]. Even William Dittrich, described as one of the hardliners of the county negotiating team, acknowledged that “We did learn to appreciate their problem a little more.” “I could see,” he said, “that the loss of an 865 acre island is a big thing if you want to preserve the reservation” [26]. As a reporter for the local newspaper concluded, one of the most important facts about the Portage Island negotiations was that “negotiators for both sides finished the bargaining with a great deal of respect, admiration, and trust for those sitting across the table from them” [27]. Similar reports have come from other mediation projects [28].

Finally, dialogue may also have one another, unexpected, effect on the participants – it may cause them to reassess their own interest and values. With Portage Island, for instance, one of the reasons that the Lummis eventually agreed to develop the island as a park was their realization that this use of the island might actually have certain advantages for them. According to Allan Talbot, one of the main advantages for the Lummis in accepting the island as a park was that it “meant that the Tribal Council would never have to deal with the politics of determining its future use. According to some observers, the fear within the Tribe that some future Tribal Council would sell off Portage Island for commercial development was one of the biggest reasons why the Tribe was willing to accept its permanent status as a park” [29]. Thus, during the process of dialogue and negotiation, unforeseen benefits of the county’s position came to light and the Lummis began to reassess exactly what their interests were. This kind of self-reflection would have not surprised advocates of participatory politics, for another point often made by theorists of participation is that one of the major benefits of direct political participation is that it increases one’s understanding of one’s *own* interests – as well as the interests of others. Peter Bachrach, for example, has written extensively about the “value of participation as a way of understanding one’s own position,” and he has observed that “a man becomes aware of his political interests only as he becomes a communicative being” and participates in “democratic structures that facilitate political reflection” [30].

One’s political positions are usually formed in the uncritical company of others with

similar interests and outlooks. Within interest groups, for instance, serious challenges to basic, shared assumptions rarely take place. However, the dialogue that is often a part of direct participation necessarily exposes one's position to unprecedented critical questioning, and requires one to explore more fully the assumptions and rational justifications of one's positions. This kind of reflection may result in the recognition of weaknesses in one's positions. One may be led to reassess one's own needs and interests. Also, it is not unusual for participants to environmental disputes with a strong technical dimension to become aware of previously unknown inadequacies or inconsistencies in their data [31].

In this way, dialogue can be helpful in moving negotiations beyond a process of merely "splitting the difference" between two dogmatically held positions. Through these critical exchanges, negotiations can become a *learning* process in which parties begin to appreciate better the merits of their opponents' positions and may also come to reevaluate the adequacies of their own. In other words, genuine dialogue may encourage parties to actually *change* their positions rather than simply "compromise" them. Clearly such an outcome is not guaranteed – one could easily imagine situations in which dialogue is unfruitful. But nevertheless, the existence of the kind of reasoned dialogue that can take place in environmental mediation creates at least the possibility that the benefits discussed above could be realized.

### **The Importance of the Mediator**

The process of face-to-face moral and political dialogue takes us part way toward understanding how and why mediation efforts succeed – but we still need to account for how this reasoned dialogue comes about. It certainly does not seem to occur naturally, and simply bringing feuding parties together is usually not sufficient in itself to ensure a rational exchange of views and progress towards agreement. Thus it is important to consider the role of the mediator in facilitating this process of dialogue. Some observers, like Scott Mernitz, have emphasized the importance of the mediator's role in promoting reasonable exchanges and creating an atmosphere conducive to compromise. In his words, "one of the prime goals of (the mediator) is to promote an atmosphere of cooperation, reasonableness, and understanding so as to aid the parties in fashioning a compromise solution" [32].

In effect, the role of the mediator can be seen as that of a "teacher" who teaches the parties how to engage in rational dialogue and calm negotiation. This is consistent with the thought of many participatory theorists who have suggested that reasoned participation and dialogue are undoubtedly *learned* behaviors – "learned" in that the activity does not come naturally, and that citizens can become better at it the more they practice it [33]. If this behavior is learned, then the notion of having a teacher or facilitator begins to make sense. After all, the parties in a prolonged environmental dispute are often hardly in the mood to simply sit down for a nice chat about the issues. Instead, suspicion and hard feelings tend to be the order of the day. As James Coleman

has pointed out, this negative atmosphere is partly a result of the natural tendency for political conflicts to expand beyond the initial conflicts of interest and to become quickly intertwined with other personal and peripheral issues. According to Coleman, conflicts often become progressively complicated as they (1) emerge around an initial single issue; (2) disrupt the existing equilibrium of relationships in a community; (3) encourage the emergence of previously suppressed and even unrecognized issues; (4) cause more and more of the opponents' belief systems to become involved; (5) result in opponents being defined as totally bad; (6) increasingly personalize the conflict; and (7) cause the dispute to become independent of the initial issues [34].

It is the mediator's job to cut through this intricate Gordian knot of issues and keep the discussion progressing on track. In order to do this, mediators must develop a set of skills that will help to gently focus discussion on main issues and deal with the inevitable tendency for discussion to become overly emotional. Like good teachers, good mediators must know when they should listen and when they should comment on proposals; when they should remain calm and when they should be provocative; when they should cajole and when they should threaten; and when the parties are ready to meet and when they should be worked with separately [35].

In addition, Carpenter and Kennedy have suggested that before initiating meetings, mediators must not only familiarize themselves with *what* the environmental issues are, but also *who* the people are who are involved. One needs to understand, for example, "the forces motivating each group, what role past grievances play in a conflict, and how the personal interests of leaders might affect the motivation of different groups" [36]. This is an important point often missed by politically-oriented observers of environmental conflicts. They tend to focus attention on the substantive issues involved, and tend to neglect what might be called the "psycho-social dimensions" of the dispute. As a result, politically-oriented observers are likely to blame policy polarization and stalemate solely on irreconcilable differences in basic interests or values. However, some of this polarization may in fact be due to the interpersonal dynamics involved in the dispute. Mediators must necessarily become sensitive to that fact, and quickly learn that generating an agreement not only requires the crafting of a substantive compromise, but also requires the successful navigation of the particular psycho-social terrain involved in the dispute. In the light of the importance of these interpersonal dimensions of environmental disputes, some observers have suggested that mediators would have much to gain by becoming familiar with the literature in psychology and sociology pertaining to group dynamics and conflict situations [37]. The implication is that if a mediator is to be effective, he or she must not only be an astute political tactician, but also part psychologist and part sociologist.

### The Unimportance of the Mediator

But while mediators undoubtedly play some role in facilitating dialogue and compromise, mediators themselves do not agree about how important the skills of the mediator are, or what skills are the most useful. For instance, Howard Bellman, Director of the Environmental Mediation Project at the Wisconsin Center for Public Policy, does not believe that a successful mediator need be a master of interpersonal skills or the academic work relevant to mediation. He frequently punctuates his discussions of environmental mediation with such disclaimers as “I’m not a psychologist . . .” “I don’t know anything about psychology . . .”, “I’m not a political theorist . . .”, etc. [38]. Clearly he believes that one can be a good mediator without academic training. Neither does it seem necessary to adopt a sensitive, “touchy-feely” approach to negotiations:

People think the mediator comes and says, “Let’s stop suing each other. Let’s stop yelling at each other. Let’s relax. Here is a comfortable chair. Can I get you some sharp pencils? Don’t you see this is just a human being? This is a reasonable person.” That’s bullshit. What I say to them is “Hey, I was just in the room with that guy and if you don’t reexamine your position, he’s going to come down your throat.” I go back and forth with threats [39].

This distinctly unromanticized view of environmental mediation tends to be typical of those mediators who, like Bellman, come from a background in labor relations. This “labor relations school” of mediation emphasizes a more “realistic” vision of the mediation process. Gerald Cormick, who also comes from a labor relations background, has continually stressed in his writings that many people come to mediation with naive and unrealistic expectations. He likes to point out that one of the most common misperceptions is the belief that “successful mediation is where negotiators learn to like, trust, and agree with each other” [40]. According to Cormick, successful mediations do not require congeniality, and can easily take place in an atmosphere of mutual hostility. For him, the key element in a successful mediation effort is not the benevolent intentions of the parties, nor the esoteric techniques employed by the mediator; rather, the key element is the *context of power* in which negotiations take place. As Cormick explains:

*Mediation requires some relative balance of power between the several parties.* The parties in a dispute will be willing to enter with “good faith” into the negotiation–mediation process to the extent that they are unable to act unilaterally in what they perceive to be their own best interest. Therefore, unless the parties directly involved in a dispute have some relative ability to exercise sanctions over one another, there is slim possibility that good faith mediation will occur [41].

In this view, environmental mediation works not because of some desire of the parties to see each other as real human beings with real concerns, but rather because a wide availability of sanctions (i.e., a relative balance of power) exists that prevents them from achieving their goals unilaterally, thus creating a stalemate which makes com-

promise an attractive option. In understanding this point, one must be careful to differentiate between two types of political stalemates: those in which only one side is frustrated, and those in which both sides are frustrated. It is the latter – situations of mutual frustration – that are most ripe for mediation. A prototypical example of this would be a situation in which an environmental organization can easily delay an environmentally destructive project, but where the developers are likely to eventually be able to complete it. In such a situation, neither side is able to fully achieve its goals, and both sides will incur substantial costs. The developers will face increased building costs because of the delay, and environmentalists will face the certainty of eventual environmental degradation. In such a situation, a negotiated compromise (perhaps where the project goes forward but with the modifications required to minimize environmental damage) may look very attractive because it allows each party to achieve some of their goals and to minimize losses.

Another related characteristic of environmental disputes which encourages mediated agreements is the perceived presence of high-risk for both parties. If there is a stand-off, and the situation is so unpredictable that each party sees a substantial possibility of “losing big,” mediation becomes a more attractive option. Recall that in the Portage Island case Secretary Andrus was threatening to make a unilateral decision if the parties could not come to an agreement. Uncertainty about what that decision would be, and the looming possibility of losing entirely, was an element instrumental in getting both parties to the bargaining table. It is more often the case that a high-risk situation is created by litigation, where the unpredictability of judges and juries make it difficult for either side to be assured of victory. Knowing this, Howard Bellman sometimes actually encourages opponents to sue each other [42]. Litigation is helpful because it not only creates a situation of uncertainty, it also often imposes potentially large financial and organizational costs on both parties. Bellman concludes that litigation often makes the mediators job a much easier one.

When they get into that atmosphere of not knowing how its going to come out, and they are so invested in the situation that its important to them how it comes out, it's really easy to get it over with. They are fearful. They are looking into the jaws of losing. They are coming to the mediator and saying “Can you cut our losses?” [In such situations] the mediator doesn't have to be a powerful person, the mediator doesn't have to be a seductive person, the mediator doesn't have to be smarter than everyone else. He just has to be there, and not be one of them [43].

Bellman and Cormick's perspectives give us a very different view of how and why mediation efforts work – a view which focusses not so much on the inner workings of the mediation process, but on the key importance of certain characteristics of the conflict situation itself. Besides a balance of power, other characteristics that make it more likely that mediation will work have also been identified. For example, *local* disputes are often more easily resolved through mediation than regional or national disputes that involve much larger numbers of interests and governmental jurisdictions. Mediation also works best when the choices facing negotiators are not cast in

“all-or-nothing” terms (e.g., either to build or not to build a nuclear reactor), but include a range of possible options that lie between the initial positions of the disputants [44].

But of all of these helpful characteristics, it is the balance of power (and resulting stalemates) that is most often emphasized by mediators as an essential element in successful mediations [45]. Cormick has pointed out, for example, that if environmental mediation is ever to become more common, environmental groups must somehow begin to redress current imbalances of power between themselves and their opponents. In as much as environmental groups, especially local ones, lack the formal legal, financial, and political resources that are readily available to most governmental and private developmental concerns, they are often unable to force their opponents to the bargaining table. Thus Cormick concludes that “for mediation to become more broadly applied, it will be necessary to develop sources of influence for protesting constituencies” [46].

The importance of this balance is shown not only by the fact that it is necessary if bargaining is to take place, but also by the fact that it is when this balance of power is lacking that the political abuses of environmental mediation tend to take place. Critics point out, for example, that citizen and environmental groups who have a stake in a dispute but have no formal sources of power are often arbitrarily excluded from participation in mediation efforts. For convenience’s sake, mediators sometimes try to restrict participation to only those groups with the ability to block the implementation of an agreement. However, as a result, the final agreement may not address all of those whose interests actually will be affected by the decision. In addition, critics maintain that there have been instances of mediation in which developers have used their more powerful positions to extract major concessions from environmental groups while only making token changes in their own plans [47]. Thus, in the absence of a balance of power, environmental mediation may simply be used in an attempt to legitimize inequitable agreements. All of these problematic occurrences further suggest the central importance of a balance of power to successful, good faith mediation efforts.

### **Power and Reason**

Identifying the importance of a relative balance of power between the parties in environmental mediation adds considerably to our understanding of why and when this approach works. It gives us a valuable insight into the *realpolitik* of environmental mediation. But this insight should not be taken as an indication that the previously discussed ability of dialogue to make environmental conflicts more humane and more rational is an irrelevant or insignificant factor in successful mediations. On the contrary, even the most pragmatic mediators acknowledge that the beneficial effects of dialogue often do appear in mediation projects – that parties often do come to increasingly respect their opponents’ positions, reassess their own positions, and so on. Consider, for instances, a fish-management dispute between the Chippewa Tribe

and the Wisconsin State Department of Natural Resources that was successfully mediated by Bellman. He points out that in the end, the two parties

didn't necessarily change their minds about each other. They didn't necessarily change their minds about sovereignty, about state-tribal relations, and so on. People who were hateful at the beginning were hateful at the end . . . [But] the fact of the matter is that both of them learned about the merits of the other's position during the negotiations; and both of them changed their positions on the merits. They had found weaknesses in their own positions. There was a sort of open-minded exchange, [although] it took a long time to get to that [48].

A more realistic understanding of environmental mediation does not require us to dismiss the importance of reasoned dialogue, it simply gives us a more complex and accurate understanding of how it can come about. It makes it clear that such dialogue is only likely to take place in situations where power is balanced and sources of sanctions equally distributed. The lesson then is not that it is unrealistic to expect people to see each other as human beings with genuine human concerns, but that it may first require a stalemate of power to make this kind of political interaction possible. It is as if one must exhaust all the political options of power and manipulation before one can make the qualitative shift to a new level of political interaction – the level of reasoned moral and political dialogue. When this interpretation of the relation between power and reason in environmental mediation was put to Howard Bellman, he agreed with it, and concluded that, “I think power and reason go together. People are very unlikely to reason with people who don't have power. Power promotes reasoning together” [49].

Again, it is worth noting that the notion that people must usually be “forced” to reason with each other is not an entirely new one, but one that occurs frequently in writings of theorists of participatory democracy. Consider, for example, Carole Pateman's description of Rousseau's theory of the “educational” effects of direct participation. Note the sense of coercion in the passage.

. . . the central function of participation in Rousseau's theory is an educative one, using the term “education” in the widest sense. Rousseau's ideal system is designed to develop responsible individual social and political action through the effect of the participation process. During this process the individual learns that the word “each” *must* be applied to himself; that is to say, he finds that he *has to* take into account wider matter than his own immediate private interests if he is to gain cooperation from others, and he learns that the public and private interest are linked. The logic of the operation of the participatory system is such that he is “*forced*” to deliberate according to his sense of justice, according to what Rousseau calls his “constant will” because fellow citizens can always resist the implementation of inequitable demands [50].

Rousseau stressed that when people meet as “free and equal” citizens in the political realm, they come to realize their interdependence – that they cannot make policy without the agreement of their fellow citizens. This “forces” citizens to engage in persuasion and reasoned arguments about the public interest. Rousseau realized that without a rough balance of power between citizens, reasoned dialogue will not occupy

a central position in politics; and that is why he stressed in his *Social Contract* that the ideal society for democratic politics would be one made up of peasant proprietors, where each citizen would own enough property so that “no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself” [51]. He saw this relative economic equality as necessary to ensure the absence of large inequities in political power. Thus the notion that a society must be characterized by a relatively equal balance of power before reasoned dialogue is likely to play a decisive role in policymaking can be seen to be a relatively old political theory, but one which gains some new credence from an understanding of the workings of environmental mediation.

### Conclusion

Given its many possible advantages, environmental mediation clearly merits serious consideration by policymakers as an alternative approach to settling environmental conflicts. But as I have tried to bring out in this essay, the emergence of environmental mediation also has political implications that go far beyond the area of environmental policy. In particular, environmental mediation sheds a new light on the problem of policy stalemates, and it requires us to rethink our conventional assumptions about the desirability of these deadlocks. As will be recalled, some political observers have argued that policy stalemates are politically dysfunctional, a sign of democracy in crisis, and should be avoided even at the cost of inhibiting democratic participation. But an understanding of environmental mediation suggests a quite different view of these deadlocks; it suggests that stalemates are sometimes a necessary and even helpful stage in the long and torturous process of democratic bargaining over public policy. As we have seen, such stalemates need not always result in permanent policy paralysis; they may often only be a temporary stage – a stage that can actually lead to more genuine political dialogue and more satisfying compromises. It seems then that we need a more subtle and complex theory of policy stalemates, one which acknowledges the fact that a significant sub-class of those stalemates – mutually frustrating ones – can actually serve a positive political function. This is not to deny the real political costs involved in stalemates and delays, but merely to observe that it is these very costs that encourage the parties involved to negotiate in good faith and reach a fair agreement. Thus, a more realistic view of policy stalemates must acknowledge that they not only have potential costs, but potential benefits as well.

Policymakers would do well then to approach policy stalemates with less panic and more patience. Indeed, these stalemates, far from being a sign of democracy in crisis, may simply be a sign of a healthy democracy at work. As a democracy becomes more pluralistic and egalitarian – i.e., as political power comes to be shared more equally among various interest groups – one should expect such stalemates to become a natural and relatively frequent occurrence. And as mentioned before, these stalemates rarely develop into situations of permanent paralysis; societies always eventually

develop ways to overcome these deadlocks. It makes a large difference, however, what strategies a society chooses to deal with this perennial democratic problem. There are many approaches available. One could, for example, simply encourage a situation of political inequality, when there is an imbalance of power between interest groups. Stalemates would become less frequent and troublesome when policymaking is dominated by a limited number of powerful special interest groups. Another method of preventing stalemates would be to adopt a more authoritative approach to policymaking, as implied in the writing of Samuel Huntington. This approach, however, would require the stifling of public participation and the repression of political conflict. Thus, both of these strategies for dealing with the problem of stalemates have obvious undemocratic implications; stalemates can only be prevented at the cost of undermining an open and egalitarian political system.

The alternative to trying to prevent these deadlocks is to acknowledge their inevitability and to develop ways to work through them – an approach that is much more consistent with democratic values and one that is exemplified by techniques like environmental mediation. This approach assumes the legitimacy of political conflicts and searches out new processes and institutions to mediate these conflicts and produce policy agreements. From this perspective, the prolonged stalemates that have afflicted some modern democracies are not so much a product of too much participation, but a situation resulting from the inability of many of our traditional political institutions to integrate competing political demands. Environmental mediation represents a small but significant effort to begin to remedy this institutional problem, and it demonstrates that democratic political systems are continuing to search for ways to deal with one of their persistent predicaments: how to make effective policy in the context of continual political conflict.

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### Notes

1. Robert Lineberry, for instance, has been quite concerned about the political stalemates caused by what he refers to as “hyperpluralism.” It is a major theme in his text, *Government in America* (Boston: Little Brown and Company, 1980). Pressman and Wildavsky also refer to the problem of increased interest group participation in their *Implementation . . .* (Berkeley: University of California Press, 1973).
2. Michel Crozier, Samuel Huntington, and Joji Watanuki, *The Crisis of Democracy* (New York: New York University Press, 1975) pp. 59–115.
3. Laura Lake, (ed.), *Environmental Mediation; The Search for Consensus* (Boulder: Westview Press, 1980) pp. 17–20.
4. Lake, *ibid.*, pp. 14–16.
5. Lake, *ibid.*, pp. 32–57.
6. Scott Mernitz, *Mediation of Environmental Disputes* (New York: Praeger Publishers, 1980) pp. 47–49.

7. Huntington, *ibid.* (ref. 2), pp. 113–115.
8. For a description of this bill, see Congressional Quarterly, *Energy Policy*, (2nd Ed.) (Washington D.C.: Congressional Quarterly Inc., 1981) pp. 106–108, 203.
9. There are actually a number of various forms of third party intervention which go under the name of environmental mediation. For a description of these variations, see Howard Bellman, et al., “Environmental conflict resolution: Practitioners perspective of an emerging field,” *Environmental Consensus*, Winter, 1981, pp. 1–7.
10. For a description of some of the successes and failures of mediation see Mernitz, *op cit.*, Chapter VI, and Allan Talbot, *Environmental Mediation: Three Case Studies* (Seattle: Institute for Environmental Mediation, 1981).
11. For a listing of these institutes and current mediation projects, see current issues of *Resolve*, a quarterly newsletter on environmental dispute resolution available free from the Conservation Foundation in Washington, D.C.
12. This description of this case taken largely from the only full written account of it in the pamphlet by Allan Talbot. This account was supplemented with articles from local newspapers and interviews with some of the participants.
13. Talbot, *op cit.*, p. 7.
14. Bob Partlow, “Portage Island: Agreement is most valuable in terms of Indians and non-Indians being able to work together,” *Bellingham Herald*, April 22, 1979, p. 3E.
15. Mernitz, *op cit.*, pp. 47–48.
16. Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970) p. 27.
17. Lawrence Susskind, *The Importance of Citizen Participation and Consensus Building in the Land Use Planning Process* (Cambridge, Mass.: MIT Environmental Impact Assessment Project, 1977).
18. Douglas James Amy, “The politics of environmental mediation,” *Ecology Law Quarterly*, Spring, 1983.
19. Interview, September 22, 1981.
20. Mernitz, *op cit.*, p. 49.
21. Interview with William J. Dittrich, November 24, 1981.
22. Mark Dowie, “Atomic psyche out: The nuclear industry’s strategy to divide and destroy the opposition,” *Mother Jones*, May 1981, p. 23.
23. Hannah Pitkin, *Wittgenstein and Justice* (Berkeley: University of California Press, 1972,) p. 155.
24. Pitkin, *ibid.*, p. 216.
25. Talbot, *op cit.*, p. 10.
26. Talbot, *op cit.*, p. 10.
27. Partlow, *op cit.*
28. For example, see Tom Alexander’s account of the relationships that developed during the negotiations of the National Coal Policy Project in Tom Alexander, “A promising try at environmental detente for coal,” *Fortune*, Feb. 13, 1978.
29. Talbot, *op. cit.*, p. 11.
30. Peter Bachrach, “Interest, Participation, and Democratic Theory,” in *Participation in Politics*, J. Ronald Pennock and John W. Chapman, eds. (New York: Lieber-Atherton) p. 43.
31. Interview with Howard Bellman, Director of the Environmental Mediation Project at the Wisconsin Center for Public Policy, September 25, 1981, Oberlin, Ohio.
32. Mernitz, *op cit.*, pp. 157–158.
33. Pateman, *op cit.*
34. James Coleman, *Community Conflict* (New York: Free Press of Glencoe, 1957) p. 11; cited in Gerald W. Cormick (1976). “Mediating environmental controversies: Perspectives and first experiences,” *Earth Law Journal* 2: 217.
35. Susan L. Carpenter and W. J. D. Kennedy (1980). “Environmental conflict management.” *The Environmental Professional* 2: 71.
36. Carpenter and Kennedy, *ibid.*, p. 69.
37. Mernitz, *op cit.*, pp. 51–58.
38. Interview with Howard Bellman, September 25, 1981, Oberlin, Ohio.
39. Bellman.

40. Gerald Cormick, "Environmental Mediation in the U.S.: Experience and Future Directions" (Seattle: Institute for Environmental Mediation, 1981) p. 10.
41. Gerald Cormick and Leah K. Patton, "Environmental Mediation: Defining the Process Through Experience," (Seattle: The Institute for Environmental Mediation, 1977) p. 7. Emphasis in original.
42. Bellman.
43. Bellman.
44. For a more lengthy treatment of these and other helpful characteristics, see Mernitz, *op cit.*, pp. 153-163; and Lawrence Susskind and Alan Weinstein (1980). "Towards a theory of environmental dispute resolution," *Environmental Affairs* 9: 311.
45. *Environmental Mediation: An Effective Alternative?* (Palo Alto: RESOLVE, Center for Environmental Conflict Resolution, 1978) p. 25.
46. Cormick, "Mediation in the U.S.," p. 15.
47. For a description of some of the criticisms leveled at environmental mediation, see James E. Crowfoot, *Negotiations: An Effective Tool for Citizens Organizations?* (Helena, Montana: Northern Rockies Action Group, 1980.)
48. Bellman.
49. Bellman.
50. Pateman, *op cit.*, p. 25. Emphasis added.
51. J. J. Rousseau, *The Social Contract* (New York: Penguin Books, 1968) p. 96.