# CRITICAL ISSUES AND PERSPECTIVES IN CONFLICT RESOLUTION

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The equitable, rational resolution of conflict is unarguably a generic objective of planning—whether the conflict concerns the appropriate use of physical and social resources or the relative power of individuals in the decision-making process. Thus it is not surprising to find that alternative forms of conflict resolution which promise more optimal outcomes than traditional regulatory and legal mechanisms find their adherents among planning practitioners and educators. However, few question the assumptions on which these techniques are based or fully evaluate the implications of their implementation. This paper presents a critical framework for understanding the potential and limitations of evolving conflict-resolution methods in planning contexts.

## Alternative Forms of Conflict Resolution

In recent years, a range of more informal and cooperative approaches to social conflict have been introduced by public agencies, courts, corporations, consultants and non-profit organizations. These can be characterized respectively as conciliation, mediation, or arbitration processes on the basis of format, use, and effect.

*Conciliation*, the least formal of these approaches, is most commonly used in counseling situations to reconcile differences among relatively intimate parties (spouses, parents and children, housemates). Participation is generally voluntary, although it may be a requisite step in case administration or adjudication as in divorce or juvenile proceedings. The objective of conciliation is to reopen communication and reestablish trust in ongoing relationships, ease misunderstandings which have arisen, and prepare the parties to deal with problems and changes in their lives. Intervention by a counselor, conciliator or other third party is limited; the process is loosely structured and agreements are rarely specified in writing or made enforceable.

*Mediation*, more formal than conciliation, is typically guided by a set of rules or principles, developed by the mediating agency, which the parties agree to respect and follow. These concern the mediator's role, and the parties' good faith cooperation with the process through which issues and concerns are to be addressed. Mediation may involve individuals who are very familiar with one another, such as neighbors at odds over a personal or property matter; groups which are separated by hostility or social distance from one another, such as police, parents, and youth; or those whose business and working relationships are imperiled, such as lessee and lessor, municipal government and regional agency. Mediation often occurs in a context of more or less deliberate negotiation, with parties clarifying points of difference and terms of

agreement in writing with the assistance of the mediator(s). However, the resulting agreement is usually not enforceable by outside parties, so that its effectiveness is dependent on the parties' commitment to future cooperation.

*Arbitration*, the most formal and binding means of resolving conflicts, short of standard administrative and legal remedies, is generally used among parties whose ties are marginal or highly specific. Arbitration is often specified as the first or exclusive method of dispute resolution by administrative agencies or contracting parties. The most common instances of its use are in labor-management and landlord-tenant disputes. The parties appear before a professional arbitrator who has the authority, after hearing all relevant evidence on their claims, to issue a decision which is enforceable but is subject to appeal.

**Contrasting Views of Conflict: Three Perspectives**

Drawing on the growing literature concerning dispute resolution, mostly written by persons trained in law rather than planning, I have identified three fundamental theories of social order, conflict, and change which offer substantially different underlying interpretations of recent efforts to address planning-related conflicts in a more innovative and responsive manner.

The *legalist view* is based on the premise that society is ordered, and conflict is largely aberrational. Because the legalist approach is concerned with maintenance of order and consensus, it stresses means of diffusing disputes and minimizing differences which are consistent with established procedures and require minimal non-routine effort.[1]

The legalist approach carries particular judgments about the significance of conflict and the way in which it should be addressed. Disputes are generally perceived as discrete acts or events which deviate from external norms presumed to be valid. This concept of conflict tends to isolate claims from the social context in which they arise. It presumes that agencies' primary or exclusive function is to objectively "settle" apparent differences between parties, not to address underlying issues relevant to the immediate conflict.[2]

Implicit in the legalist approach is the view that disputes are essentially dysfunctional and localized. Stability is considered to be the norm. Systems are designed to eliminate deviance, suppress conflict and reaffirm social integrity through efficient "resolution" of specific disputes.[3] In urban neighborhoods, this order-maintenance function usually falls to the police, whose responsibility is to "dissolve" rather than solve community problems.[4]

Similarly, planners often assume roles which require them to ignore or minimize the meaning of social differences and conflicts in their work. The standard scope of Environmental Impact Report review, for example, may preclude examination of elements in a development proposal which are likely to create difficulties later, e.g., housing needs; reuse of the plant in the event of closure.

Forums for receiving citizen comment, e.g. in the Community Development Block Grant program, are often organized to most expeditiously satisfy external funding sources rather than meaningfully involve residents in program and policy decisions, thereby overlooking or obscuring points of dissent within the community.

The doctrine of "rational" intervention, especially as applied to physical planning, shares many legalist assumptions. The classic planning model posits a disinterested professional who acts largely as a technical intermediary—assessing pertinent data, evaluating outcomes of a limited range of alternatives and presenting analyses which will expedite action. This planning paradigm, promoted as a means of facilitating efficient and objective decision-making, fails to address salient issues beyond the purview of paid staff, including implementation problems and those posed by alternatives not formally advanced.

The *expressionist perspective* offers a critique of the ways in which legalist institutions (whether they be grounded in law, planning or other fields) suppress and manipulate conflict. Those who hold this viewpoint believe (a) that conflict is integral to both individual and community development and (b) it should, therefore, be acknowledged, even encouraged. Otherwise, they reason, people will fail to learn from their encounters with others and become frustrated in their efforts to understand and act on common concerns.[5]

Expressionists claim that cultures of greater diversity or stress pay a particularly high price for conflict-avoidance. They envision dispute resolution as a means of confronting, understanding and attempting to accomodate differences which (when misperceived or misdirected) produce alienation and injury. This view assumes that most people, if given the choice and sufficient support, will prefer to seek a reconciliation with others rather than remain in conflict or withdraw dissatisfied.[6]

Whereas the legalist view assumes that individuals are typically able to withdraw from conflicts or resolve them in ways which are mutually satisfactory,[7] expressionism suggests that people in conflict have limited and non-optimal options due to institutional constraints and economic or social pressures to which they are subject.

This critical theory supports proposals for new forums more responsive to individuals' concerns and to the quality of their environment. Reforms in citizen participation illustrate expressionist tendencies within planning practice. Measures requiring planning agencies to issue public announcements and information, to submit certain draft reports, such as EIR's, for public review, and to assess public response in program evaluation are supported by those who see the planning process as both interactive and educational, i.e. as a vehicle through which contrasting interests in a given community may face one another, address unmet needs and social priorities, influence public policy and thereby contribute to

more cohesive and inclusive community development.

The trend toward more active public involvement in development planning appears to be based on these expectations as well as in a practical interest in forging, through compromise, a strong consensus which will enhance overall planning. By encouraging more open deliberation and adopting development stipulations that are more responsive to local conditions, planners aim to reduce public opposition to proposed projects. The negotiation of development agreements offers new opportunities for soliciting and utilizing public comments and proposals.

Advocates of such reforms generally share the legalist commitment to a stable and ordered society. They argue that more participatory and pluralist mechanisms should be developed to adapt to increasingly diverse and disruptive urban environments. Their implicit aim is to repair the social fabric within these communities, rather than raise issues of power or resource inequality which may exist between these groups or areas and the larger society. However, proponents of extreme expressionism abandon the concern for social stability, claiming that conflict has primary value for individuals independent of any institutional resolution and it should not necessarily be controlled or mitigated.[8]

The *transformationist view* differs from the two preceding perspectives in its attention to collective conflict and the implications of power inequalities for the disputing process. Theorists of this view offer a useful critique of the assumption (prominent in contemporary reform circles) that efforts should be concentrated on immediate and tangible disputes between parties who have some direct relationship, e.g., neighbors; family members; criminal and victim; consumer and business manager. These critics claim that such a definition of disputing wrongly equates social conflicts with more or less routine matters and fails to acknowledge or address far deeper and more important grievances, e.g. intergroup or class tensions within the society.[9]

They also contend that conventional rationales for mediated settlements fail to take into account that one party may have sufficient leverage over others to preclude meaningful negotiation, or that the intervention of a third party necessarily alters the relative position of other parties.[10] For example, a planning staff might decide to arrange a meeting between a developer and a citizen group with concerns about a proposed project. It is unlikely that the citizen group will be able to substantially alter this proposal since the developer typically has established site control and has advanced a specific development plan with the aid of hired consultants. By comparison, the citizen's group rarely has either direct property interests or the resources to develop a detailed, feasible alternative. Since the planner/mediator is normally expected by superiors to act quickly and do what is possible to facilitate development, it is probable that the citizens' group will be unable to do more than obtain

minor modifications of the proposal before them, unless they are exceptionally expert and well-organized. A mediator, like a judge, will often evaluate a dispute on the basis of perceived community opinion or self-interest, even though this may result in an expedient decision that comes at the expense of one or all parties involved.[11]

The principles of advocacy planning are generally consistent with the transformationist rationale for more autonomous, participatory, equitable and comprehensive mediation forums. Proponents of the few local dispute resolution programs which function independently of the courts or other public agencies suggest that these programs' development of participants' understanding, skill and organizational strength is more critical than their impact in discrete situations—much as advocacy planners viewed the significance of poorer neighborhoods' struggles to change controversial redevelopment policies in the late 1960's and early 1970's.

Similarly, the expectation by some that more open and balanced community-based forums for addressing salient social tensions can become catalysts in a broader movement for a redistribution of political power and economic resources[12] is akin to that held by advocacy planners, though the latter were more inclined to use confrontational tactics to counter the leverage of their institutional antagonists, than to bargain with more influential parties. Indeed, there is a tension between organizing and negotiating strategies, as the latter may tend to diffuse popular resistance through protracted, inconclusive discussions and reduce legitimacy and leverage of community leaders in the process.

**Social and Political Constraints in Informal Dispute Resolution**

The relevance of social conditions and status differences to the disputing process suggests that introduction of these reforms among diverse populations ought to be responsive to the differing positions and values of individuals, groups, and cultures. The success of informal forums in relatively simple or closed communities, for example, is often attributable to the high cost of avoidance (loss of reciprocity) or the presence of a defined and respected hierarchy. In contrast, more fragmented and mobile urban environments are generally associated with weaker communal authority and tend to undercut the effectiveness of those dispute-resolution approaches which rely on a sense of interdependence and collective identity.[13]

Differences among norms of residents and non-residents or among member groups of a community complicate the search for shared interests on which the resolution of conflict depends. Those living in a given area may tolerate what others consider illegal or inappropriate activities, such as commercial uses in residential districts, noise in public places, or inconsistent building design. They might, therefore, interpret imposition of alien standards by planners or other authorities negatively, even if these are introduced indirectly via negotiation rather than by *fiat*.[14]

Such friction is based on real differences in resources, not simply misperception. Minority groups or viewpoints are usually not given equal weight, however well represented or whatever their merit, because of the dominance of other groups in the community. Conversely, certain conditions may permit a powerful minority to exert inordinate influence in the context of negotiations. A principal employer, for instance, might extract significant concessions from leaders of an economically dependent population. In other cases, a small but articulate and well-organized interest group, such as residents opposed to public housing or increased zoning densities, is able to block projects or policies which would benefit those less influential in the local power structure.

The relative power of the parties will influence their response to conflict. Less powerful parties tend to "lump it", i.e. endure the costs of an unresolved dispute, because a successful resolution appears unlikely, while dominant parties choose to ignore grievances against them [15].

**Courts: More Equitable and Efficient than the Alternatives?**

Lacking a forum for informal reconciliation of their differences or preferring not to use those available, disputants often seek administrative or judicial remedies. Their resort to external authority and an adversarial process is frequently inefficient insofar as it imposes additional burdens on the parties, impedes discussion between them and heightens rather than diffuses tensions. In planning contexts, the personal and social costs of resulting fiscal and development impasses have wasted limited resources, polarized constituencies and spurred support for more cooperative approaches that might achieve more productive outcomes.

However, informal and voluntary approaches can be successfully applied only to a limited range of problems and issues as the foregoing analysis indicates. In cases where one party has decidedly more leverage than others, it will be difficult to obtain the full cooperation of that party or arrive at an equitable settlement. An additional concern, voiced most strongly by transformationist proponents of class action remedies, is that mediation may prove to be a patchwork and individualized solution despite its appeal, coopting broader claims which are properly legal or political. For example, a company sensitive to publicity of damage caused other property-owners will likely prefer to negotiate semiprivately with individual complainants than face greater scrutiny from regulatory agencies.[16]

One defense of courts' role in the settlement of such conflicts is that they can provide weaker parties with more equitable relief than can be generally obtained via mediation, since they have the requisite authority to compel participation and performance by a stronger party who would otherwise not cooperate or make concessions.[17]

The evolution of small claims courts in the United States illustrates some of the central contradictions evident in the

contemporary shift toward decentralized dispute resolution forums. The major objective in establishing these courts was to consolidate cases which were considered relatively simple and to expedite processing of these. Rapid processing, however, tended to favor more powerful parties (typically creditors seeking judgments against debtors) and preclude full hearings of what were commonly quite complex disputes. Judicial oversight, justified by claims that extrajudicial forums would deny parties due process, established uniform and traditional procedures in small claims cases which undermined the intent of reformers to provide a more open and conciliatory context for settling ordinary grievances.[18]

**Control and Consistency in the Administration of Dispute Resolution**

Approximately fifty years after small claims courts were introduced, a similar debate has arisen over whether decentralization of dispute resolution functions should be independent of established legal and governing institutions. Conflicting opinions on this question can be traced to fundamentally divergent views of the new forums' strategic position and purpose within the larger society.

Those who take the legalist stance see these forums as a means of more efficient service delivery to disputants with low-order problems. They argue that mediation should be standardized and institutionalized to expedite processing and reduce associated costs. Expressionist and transformationist critics contend that this legalist rationale serves the administrative prerogatives of central authorities and the interests of certain immediate parties, while neglecting the needs and capacities of others involved, as well as related social networks. They, therefore, propose that mediation forums be administered principally by laypersons from the community or staff accountable to residents, rather than by court personnel or other agency professionals[19].

Others propose that the new forums overcome the internal contradiction of small claims courts by clearly distinguishing formal from informal functions.[20] For exampe, conciliation or structured mediation might be appropriate for preliminary discussions among conflicting sides in a local or regional development controversy, while more formal arbitration methods would probably be needed to prepare a legally binding development agreement.

**Transformative or Cooptive? The Role of Innovative Dispute Resolution in Community Development**

The movement toward community-sponsored (as opposed to institutionally-developed) dispute resolution programs is based largely on populist conceptions of autonomy and cultural change. Proponents of citizen involvement in the mediation of planning-related disputes believe that participation can provide a stimulus for community revitalization. By relying on themselves rather than on external authorities and successfully addressing local problems,

however specific, residents gain the skills and confidence requisite for sustaining viable communities.[21] Democratization of police and planning functions is envisioned as residents assume greater responsibility for short-term problem-solving and longer-range policy making. [22]

However, these innovative programs most often deliver services without advancing an integrated theory of citizen empowerment and social change, leading some critics to advocate intervention in larger issues such as resource inequalities among groups and communities.[23] Transformationist critics reason that without an implicit understanding of the underlying causes of social conflict, local programs tend to reinforce defensive, oppressive or divisive forms of "community" rather than challenging ingrown prejudice and privilege. Other community development theorists justify a localist programmatic emphasis as a means of overcoming host communities' political and economic dependency, following the logic advanced by proponents of ghetto development.[24]

Those who share the transformationist or advocacy perspective theorize that the long-term survival of community-based mediation forums will require a more explicitly political strategy. Because they have been modest in their goals and capacities to date, these programs have been largely tolerated by established institutions. Yet they will come into conflict with courts and public agencies as they expand their purview to larger issues of governance. To secure necessary legitimacy and funding, programs will have to mobilize widespread support for the fundamental goals of decentralized, democratic decision-making.

Another scenario for the evolution of such programs casts the State in a more central and manipulative role. Officials may respond to demands for reform by granting citizens limited opportunities for participation without extending any significant degree of control over the planning and regulatory process.[25] Under the guise of decentralization, courts and public agencies—supported by those whom such empowerment threatens—could create subordinate units to expand their influence at the local level. "Little city halls" and similar neighborhood-scale projects, it is argued, have been designed to reaffirm existing hierarchies despite promises of reconstituting public authority.

Less centralized or formal means of reconciling community interests present planners with several challenges. How narrowly are planning issues to be defined for the purposes of debate? Which parties may participate? How much leverage and responsibility will parties have in making, authorizing or implementing decisions which result from deliberations? What degree of consensus justifies administrative recommendations and action? The foregoing analysis suggests that the assumptions and objectives (implicit or explicit) of those who develop and institutionalize planning process reforms of this kind will shape the answers to these questions.

Opportunities to change social structure and public policy through such reforms will be greater if these reforms encourage rather than inhibit divergent viewpoints, challenge rather than reinforce existing power inequalities, and address rather than evade fundamental questions of economic and social justice which underlie specific planning concerns.

## NOTES

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