



11.255

Negotiation and Dispute Resolution in the Public Sector

Spring 2021

Class #2

+ Questions for Today

- **Do you think the approach that cities use to resolve siting, regulatory and policy disputes should be tailored to the details of each situation (and decided by the parties), or, do you think that cities ought to have fairly standard approaches to how they resolve public disputes (the way they have for zoning and land use controversies) ?**
- **What do you think of Fair, Efficient, Stable and Wise as the four criteria for judging the outcome of a public dispute resolution effort? Should there be other criteria instead?**

+ Readings for Today

- Susskind, Lawrence and Jeffrey Cruikshank (1987). **Breaking the Impasse: Consensual Approaches to Resolving Public Disputes.** New York: Basic Books. Chapters 1 – 4.
- Susskind, Lawrence (2006). **Arguing, Bargaining and Getting Agreement.** The Oxford Handbook of Public Policy (Oxford Handbooks of Political Science, Vol. 10). M. Moran, M. Rein, and R.E. Goodin (eds.) Oxford, UK: Oxford University Press.
- Susskind, Lawrence (2007, October 12). **Consensus Building, Dispute Resolution and Social Justice.** Fordham Urban Law Review. pp. 185 – 203.
- Forester, John (2019). **Five generations of theory-practice tensions: enriching socio-ecological practice research.** *Socio-Ecological Practice Research.*



Key Points

1. Persuasion and hard bargaining do not produce results that are as fair, as efficient, as stable, or as wise as the public often desires when public policy choices must be made. Consensus building or the mutual gains approach to negotiation (as a supplement, not a replacement for) direct democracy offers some hope of doing better.

+ Key Points

2. Dialogue can improve understanding if that is the goal, but dialogue alone won't produce agreements, especially when values and not just interests are at stake.



Key Points

3. Hard bargaining will continue to be used in a great many public policy-making situations, in many parts of the world, but the use of this approach ultimately makes it harder to implement agreements (because less powerful parties will feel that they have been unfairly overpowered and seek revenge), undermines trust in government, and often generates sub-optimal (i.e. wasteful) agreements.

+ Key Points

4. Consensus building puts a premium on mutual gains negotiation and creates an important role for an emerging player – the professional neutral (who knows how to use facilitation and mediation techniques) to generate agreements that meet the interests of all stakeholders involved.

+ Key Points

5. The obstacles to institutionalizing consensus building techniques in the public policy-making arena are substantial. It is difficult to overcome the resistance of public officials who mistakenly believe that ad hoc consensus building efforts are a substitute for the legitimate exercise of government or that professional neutrals are a threat to their authority.

+ Key Points

6. More participatory and more collaborative approaches to public policy-making, built around the mutual gains model of negotiation, can enhance the legitimacy of government and reduce the long-term costs of collective action.

MUTUAL GAINS APPROACH TO NEGOTIATION

PREPARE

*Clarify your mandate and
define your team*

*Estimate Best Alternative
to Negotiated
Agreements (BATNA)—
yours and theirs*

*Know your own interests
and think about their
interests*

*Improve your BATNA
(if possible)*

*Prepare to suggest
mutually beneficial
options*

CREATE VALUE

Suspend criticism

*Invent without
committing*

*Generate options that
exploit differences*

*Bundle options into
multiple packages*

DISTRIBUTE VALUE

*Behave in ways that
build trust*

*Identify standards/
criteria for dividing value
that all sides can support*

*Keep at least two
packages in play*

*Use neutrals to suggest
possible distributions*

FOLLOW THROUGH

*Design nearly self-
enforcing agreements*

*Specify mechanisms to
deal with "predictable
surprises"*

*Agree on monitoring
arrangements, including
metrics*

*Keep working to improve
relationships*

+ Negotiation Pre-Test

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