

## **Richard Reuben**

I found the workshop to be very important in terms of helping me get a handle on the relationship between deliberative democracy and dispute resolution, and more broadly, in starting to make the theoretical and practice connections between the two.

I come from the dispute resolution side of the equation, and have been working for the last several years on the relationship between law and dispute resolution, and most recently on the relationship between dispute resolution and democratic governance. I have come across the deliberative democracy literature frequently during the course of this research, but haven't really known how it fits in to the larger literature of democratic theory. I now see that deliberative democracy can be seen as a relatively modern theoretical construct of how democracy can work most effectively, something normatively rather than descriptively based. This is to say, the consent of the governed requires dialogue and deliberation on issues of public importance to achieve legitimacy that is steeped in uncoerced cooperation. This to me is eminently sensible as a normative goal, and I can see how the practical methods and experience of dispute resolution, especially public policy dispute resolution, can richly enhance the facilitation of this kind of democratic dialogue. If deliberative democracy is the theory, then public policy dispute resolution is the practice that gives it traction. In this way dispute resolution can be seen as enabling deliberative democracy, and I think the workshop and its outputs will do a great service by bringing dispute resolution practice to deliberative democracy theory.

Going the other way, bringing deliberative democracy to dispute resolution, again, primarily public policy dispute resolution, also serves an important purpose – that of providing a theoretical justification for this practical work, while also raising the bar for practice in ways that good theory can do. From a utilitarian perspective, it is of course salutary for public policy decisions to be made through consensus; the process helps assure compliance and may even produce “better” decisions. Deliberative democracy provides an additional and deeper justification, though: that these dialogues are tantamount to the exercise of democracy itself. As we discussed, they complement traditional representative structures by bringing democracy closer to the ground, involving actual stakeholders and other interested parties directly in the formulation of public policy and in the resolution of public disputes. Indeed, when government is a participant, one gets the best of both worlds, the expertise of centralization and the pragmatism and passion of decentralization. However, in recognizing this “democratic character” of public policy dispute resolution, as I have called it in other contexts, deliberative democracy also demands more of these processes. For example, broad participation is an important value for deliberative democracy, and the fact that public policy dispute resolution has this democratic character seems to me to raise the stakes on minority participation. David Kahane and I spoke about this in terms of minority Indian tribes in Canada, and the question was how many needed to be included in order to be able to make the claim of a “representative” process. Deliberative democracy would seem to push practitioners to include as many as possible.

Only so much can be done in the course of a tightly focused workshop, and in the future it may be interesting to explore other issues that received little or no attention during the workshop.

For example, it would be good to consider how deliberative democracy might push other aspects of the public dispute resolution process beyond the convening example discussed above. How might dialogue and deliberation be fostered, for example, through the use of Internet and other technology? What is the role of the media as an institutional player in this process?

More broadly, the relationship between traditional representative government and more expansive formats of deliberative democracy is in tension in important respects, and deserves more consideration. (I suspect there has been more discussion of this in the deliberative democracy literature than our format may have permitted.) One particularly important area of inquiry is the capacity of public policy dispute resolution practices to facilitate more formal representative government beyond the familiar context of administrative reg-negs. If used in good faith, public policy dispute resolution techniques can facilitate a deeper level of dialogue and deliberation within the legislative and judicial branches, just as they do in the administrative and “supplemental” contexts. Again, the normative basis of deliberative democracy provides a crucial justification for this extension.

We also had relatively little consideration of the issue of legitimacy, which I view as crucial to the democratic character of dispute resolution. Under what circumstances and conditions is a dispute resolution method, process, or outcome legitimate from the perspective of democratic theory? The fourth hypothetical raised this question in part, and I articulated some considerations for making this assessment, but the topic merited much more discussion and consideration than the hour permitted. If there was another convening of this or some similar group that included exploration of this issue, Tom Tyler of NYU would be a good one to have on hand because of all of the empirical research he has done on this issue.

Another, related, area of inquiry is the relationship between dispute resolution – again particularly public policy dispute resolution – and social capital. Under what circumstances and conditions does public policy dispute resolution foster greater social capital – specifically in the sense of trust in democratic governance, social connection and cooperation among citizens, and a spirit of reciprocity? Robert Putnam’s and following research makes clear how important this kind of social capital is to the effectiveness of democratic governance. My sense is that public policy dispute resolution has the capacity to foster these values, and in so doing re-engage those who have become alienated from the system. It is well worth considering how we might use public policy dispute resolution to facilitate this kind of bottom up re-engagement of democracy through, for example, the selection and framing of issues, the manner of convening, by who, etc.

In my view, this workshop was an important first step in making the linkage between democracy and dispute resolution, and I very much hope that the discussion will continue.