

*Governance and Conflict
Resolution in a Global and
Comparative Perspective*

Lisa Blomgren Bingham

Keller-Runden Professor of Public Service

Indiana University School of Public and
Environmental Affairs

Bloomington, Indiana, USA



Overview

- ★ Governance: From government to collaboration
- ★ Two Movements from Civil Society:
 - ◆ Alternative or Appropriate Dispute Resolution (ADR)
 - ◆ Participatory or Deliberative Democracy
 - ◆ Both address conflict in governance
- ★ The Policy Continuum: Uses of processes at each stage
 - ◆ Selected examples



Governance

- ★ Traditional government
 - ◆ Hierarchical
 - ◆ Command and Control
 - ◆ The Bureaucracy
- ★ Governance
 - ◆ Devolution to nongovernmental actors
 - ◆ Contracting out, partnerships
 - ◆ Collaborative public networks
 - ◆ Role of citizens and stakeholders evolving



Civil Society: ADR Movement

- ★ Post WWII conflicts in society
 - ★ Labor movement provides private justice system
 - ★ Adapted to civil unrest in urban centers in 1960s
 - ★ Businesses opt out of courts with ADR in 1980s
- ★ Mediation: Neutral assists disputants with negotiation and settlement
 - ★ No decision authority
 - ★ Settlement is voluntary
 - ★ Confidential
- ★ Arbitration: Neutral private judge decides
 - ★ Confidential, parties control decision rules



Civil Society: Participatory Democracy

- ★ Adversarial governance in representative democracy in 1980s to 90s
 - ✦ System broken & unresponsive to people
 - ✦ Need to enhance transparency & accountability
- ★ Deliberation and dialogue
 - ✦ Reasoned exchange of views, not debate
 - ✦ Mutual respect, civility
 - ✦ Neutral forum
 - ✦ Effort to reach common ground & consensus
 - ✦ Deliberative democracy, collaborative governance



The Policy Continuum

- ★ Policy process as stream
- ★ Upstream: Participatory democracy
 - ✦ Used more in process of making policy
 - ✦ Legislative or quasi-legislative
- ★ Midstream: Both participatory democracy and ADR
 - ✦ Used for implementation of policy
- ★ Downstream: ADR
 - ✦ Used more in process of enforcing policy
 - ✦ Judicial or quasi-judicial



Upstream: Legislative Processes

- ★ Policy steps: Identifying a policy problem, identifying solutions
- ★ Processes in use:
 - ★ Direct democracy: referendum and initiative
 - ★ Community Visioning
 - ★ Public Conversations Project, Study Circles USA
 - ★ Citizen Juries, Planning Cells in Denmark & Australia
 - ★ Consensus Conferences, Denmark, Canada, Australia




Study Circles



- ★ Citizens meet in small groups across a community over a period of months or years.
- ★ They study a policy issue, collect and digest information.
- ★ The circles meet in a combined large group.
- ★ They exchange views, set priorities, select solutions

(www.studycircles.org)



Upstream continued

- ★ Policy steps: Setting priorities, selecting from among them
 - ✦ Input processes: AmericaSpeaks 21st Century Town Meetings, Deliberative Polling
 - ✦ Agreement-seeking processes: Policy dialogues: ChoiceWork, Public Solutions
 - ✦ EU Citizens Summit: Major effort to build democracy across Europe with citizens setting agenda
- ★ Policy steps: Drafting proposed legislation, enacting it
 - ✦ AmericaSpeaks: Americans Discuss Social Security
 - ✦ Direct and representative democracy

AmericaSpeaks: 21st Century Town Meetings




- ◆ 8-10 Participants at facilitated tables
- ◆ Open invitation & targeted recruitment for demographically representative sample
- ◆ Dialogue & deliberation
- ◆ Handheld keypad voting
- ◆ Theme team
- ◆ Preliminary report of keypad voting by end of day



Large scale deliberation: Up to 3,000 in a room



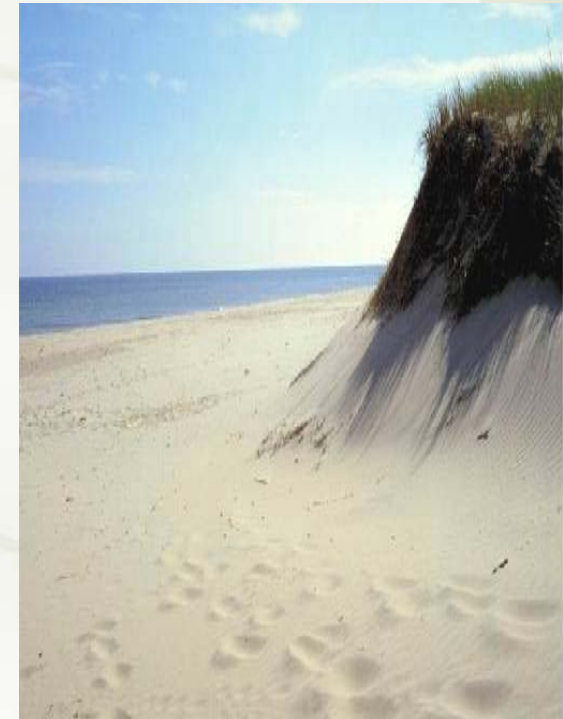


Upstream Quasi-legislative Processes: Agency Action

- ★ Policy steps: Identifying Approaches or Tools for rules or regulations, setting priorities, making choices
 - ◆ Same as earlier, but also
 - ◆ Participatory budgeting: Porto Alegre, Brazil; China; Washington DC Citizens Summit
- ★ Policy step: Drafting proposed agency rules or regulations
 - ◆ Negotiated Rulemaking, also called regulatory negotiation or rule by consensus

Negotiated Rulemaking

- ◆ US Negotiated Rulemaking Act of 1996
 - ◆ Convener does feasibility assessment
 - ◆ Reasonable number of interests
 - ◆ Consensus decision rule
 - ◆ Agency willingness to use rule
 - ◆ Likelihood of reaching consensus in reasonable time
 - ◆ Professional facilitator or mediator
 - ◆ Confidential until agreement
- ◆ Example: National Seashore Off-Road Driving, endangered species, fragile barrier island





Midstream: Implementing Policy Choices and Rules

- ◆ Policy step: Enacting Regulations
 - ◆ Traditional public hearing
 - ◆ Notice and comment
 - ◆ E-rulemaking
- ◆ Policy step: Implementing Regulations
 - ◆ Negotiation, facilitation, mediation
 - ◆ Policy consensus
 - ◆ Environmental conflict resolution and governance



Environmental Conflict Resolution (ECR)

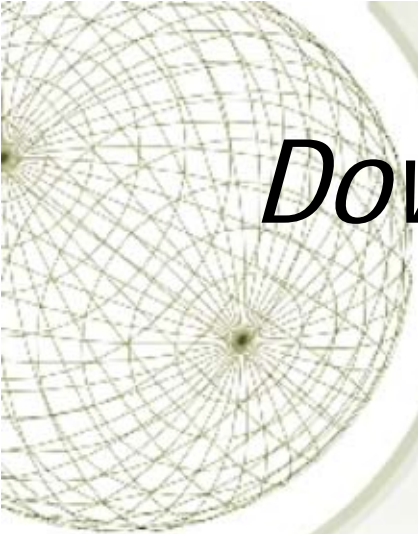
- ★ US Institute for ECR
- ★ Mediators, facilitators
- ★ Convene collaborative stakeholder groups
- ★ Identify interests
- ★ Work toward consensus
- ★ Implement agreements
 - ◆ Watershed management
 - ◆ Land use
 - ◆ Allocation of natural resources www.ecr.gov





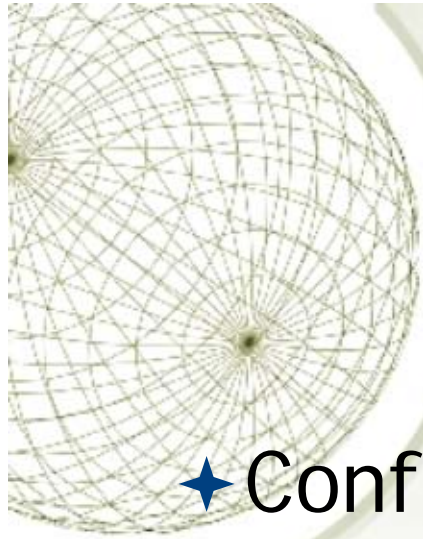
Downstream: Quasi-Judicial Policy Processes

- ★ Policy step: Enforcing Legislation and Regulations through Executive Power
- ★ ADR in lieu of agency adjudication and civil enforcement
 - ★ Facilitation
 - ★ Mediation
 - ★ Fact-finding
 - ★ Advisory arbitration
 - ★ Binding arbitration
- ★ Institutionalized through Administrative Dispute Resolution Act of 1996 in US



Downstream: Judicial Power and ADR

- ★ Policy step: Enforcing Legislation and Regulations through Judicial Power
 - ★ International Court of Arbitration for Sport
 - ★ Arbitration Boards established through international trade agreements
 - ★ National court-annexed ADR Programs: Mediation, fact-finding, advisory arbitration, binding arbitration, mini-trials, summary jury trials across Europe, Australia, North America
 - ★ Private dispute resolution, MEDA project in EU



Conclusion

- ★ Conflict management technology improving
- ★ Increasingly incorporated into national governance processes at every stage
- ★ Provides avenues for voice, collaboration with citizens and stakeholders, consensus-building