
Conflict, Negotiation, and Public Policy Mediation in the Trump Era

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Introduction

The world of conflict, negotiation, and public policy mediation has markedly changed since the election of Donald J. Trump as president of the United States.

The clash of wills that is conflict has typically been expressed in the public policy arena as the assertion of power and strategy to further particular interests. Passionate conflict on issues is a hallmark of democracy, which provides opportunities to further political stances through multiple governance structures and institutions without resorting to violence.

Today, our national conflict is dispersed broadly across non-negotiable values, competing visions of what the United States stands for, and who within the nation should benefit from its opportunities and who should or will be left behind. This conflict is expressed as passions that simplify all things complex and obscure doubt. Its flames are further fanned as partisans give credence only to validating information and reject contrary evidence. This manifestation of passion empowers those who feel it, and its communal expression is reinforcing. It is easier and feels better to express passion than to undertake the difficult work of reasoning agreement out of a conflict.

The Public Policy Mediation Process

In some situations, when government has been unable to make sustainable decisions on particular issues, agencies have convened diverse groups to negotiate solutions with assistance from public policy mediators. Public policy mediation is an inclusive, transparent process of complex negotiations among government agency officials and diverse stakeholders that often results in consensus agreements rooted in nuanced understandings of a conflict. When this process is at its best,

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deliberations result in civic fusion, a bonding across deep differences to address a shared public problem (Podziba 2013). A benefit of policy mediation is that deliberations among parties that represent every aspect of a situation, supported by expertise as needed, result in agreements that avoid unintended consequences.

For decades, these mediated processes have relied on interest-based negotiations (Susskind 1987), which champion enlightened self-interest according to the principle that parties can best accomplish their own goals by striving to understand the perspectives and interests of other parties. Mediators have worked hard to help representative negotiators gain awareness of what they do not know (Gurevitch 1989), to build curiosity about others, and to attempt to “walk a mile in another’s shoes,” to increase their ability to successfully negotiate resolutions to complex conflicts. Interest-based negotiation relies on creating value for all negotiators by expanding the boundaries of the scope of negotiations and integrating interests through innovative solutions that emerge from intensive deliberations.

In contrast, President Trump negotiates from a perception of unilateral power and an intuitive ability to name and exploit the weaknesses of opponents in real time with no inhibitions and no self-doubt concerning potential unintended consequences (see Shell; Kapoutsis and Volkema; and Kogan in this issue). He successfully creates value by threatening harsh actions and then forcing concessions from opponents and allies by providing exemptions from severe harm. In such deals, he “wins” because some of his constituents benefit, even as he ignores the negative consequences of his actions. For example, in negotiations over aluminum and steel tariffs in the name of national security, the original proposed steep costs were reduced through soft caps and exemptions. Trump claimed a win because the U.S. Treasury paid nothing and profits of large American corporations increased, even as the price of such consumer appliances as washing machines went up by 17 percent (Salisbury 2018) and soybean farmers suffered from retaliatory tariffs (Mayer 2018).

Intensified Passions in the Age of Trump

This extreme shift in negotiation strategy will likely affect the practice of policy mediation. If policy mediation were to be employed to address the nation’s problems at this moment of dangerous division, it would need to be refined to accommodate the dynamics of the new politics and changed expectations among potential parties. Among the many shifts necessary would be managing intensified passions within apparently changing norms of civility, determining who should be at the table given differing expectations of who should benefit from government

actions, the role of expertise and subject matter information in negotiations, and how to conduct outreach and consultations to ensure actionable and sustainable agreements.

Potentially chaotic, seething passion among negotiators has, perhaps counterintuitively, long been a great asset for the public policy mediator. When successfully harnessed, passion can create bonds among people with sustained and deep value differences, fueling the civic fusion needed to break parties free from habitual thought patterns so they can design innovative solutions to their persistent disputes. To an even greater extent than usual, mediators should expect and prepare for more discussions in which passionately polarized partisans state and defend their positions and offhandedly reject what the other side says. In today's environment, in which discourse is notable for its incivility, policy mediators must harness passion as an undifferentiated energy to disrupt parties' discordant and engrained views of issues and each other.

Unlike the anonymity of social media, which can promote hate and incivility, mediators must ensure that face-to-face deliberations result in civil discourse. In my experience, people prefer to present their better selves in diverse public groups, and social context and self-consciousness usually causes outliers – those who prefer to express ongoing anger and personal attacks – to fall in line with those negotiators with whom they share interests and values.

A key element of any policy mediation is the process of determining which categories of stakeholders should participate in the deliberations and who should represent those interests. According to best practices, which are aligned with requirements of the Federal Advisory Committee Act (FACA), a group providing consensus recommendations to the government must include a diverse and balanced set of stakeholders on any given issue.

In many cases, policy mediators recommend representative stakeholder participants to federal political appointees and senior agency managers based on situational assessments they've conducted. Typically, negotiators are selected based on those recommendations with some revisions after discussions and public comment. In the current political environment, policy mediators may need to make extra efforts to insist that all relevant stakeholders be fully engaged – they are likely to face intensified pressure to limit participation to favored beneficiaries and exclude others from conversations about the direction of the nation and apportionment of government benefits.

Trusted subject matter information is critical to effective policy mediation because the better informed the negotiators, the more likely their deliberations will lead to the nuanced understandings of the problem

and of each party's critical interests from which innovative solutions emerge. Typically, mediators help to identify experts, or panels of experts to assist negotiators when they lack sufficient information or draw different conclusions from the same information and thus are unable to resolve particularly complex issues. Finding respected and trusted sources of information is often challenging because the experts' funding sources and past sponsor client relationships can create potential conflicts. In addition, mediators confront the challenge that, for many disputants, principle drives policy and expert information does not change principles. They will likely need to trigger hybrid conversations that integrate trusted subject matter information in the context of principles and values.

Finally, throughout policy mediation processes, representative negotiators have always needed to conduct outreach and consultation with related interest groups and their constituents. Two-way feedback helps negotiators inform their constituents about proposals generated during negotiations and get their responses, and also to educate them about the political and resource constraints the negotiators must collectively confront. In future mediations, negotiators who exercise such leadership may also increasingly confront harsh reactions via social media. Mediators' and negotiators' outreach and consultation process mechanisms will need to take these new dynamics into account.

Conclusion

The federal government will likely continue to employ public policy mediation processes, even during the current era, for example, for Congressionally mandated negotiated rulemaking. The Trump brand of negotiations will eventually prove to be of limited success. The consistency of his tactic of chaotically and unilaterally forcing issues by exploiting the weakness of other parties will allow for other parties to strategize against it (see Cutcher-Gershenfeld, McKersie, and Walton; and Kogan in this issue). In addition, negotiators who rely on short-term power without consideration of long-term impacts and relationships will encourage other parties to develop new alliances among those outside the circle of preferred beneficiaries.

A shift in executive branch negotiation strategy may happen by choice or by crisis. Issues that must be addressed but cannot be resolved unilaterally could arise, and public pressure to accept and address complexity may cause the president to engage a balanced set of stakeholders to jointly reach an actionable agreement. The violent nature of the rhetoric is reminiscent of what preceded the killings of abortion providers in the 1990s and the assassination of Israeli Prime Minister Yitzhak Rabin in 1995. It has already apparently

moved individuals to send pipe bombs to former President Barack Obama, Vice President Joe Biden, Secretary of State Hilary Clinton, and other Democratic legislators and supporters, and some argue that it played a part in the murder of two African Americans at a grocery store in Kentucky and of eleven people at a synagogue in Pittsburgh in October 2018. My feared scenario is that it will catalyze large-scale massacre somewhere that will finally cause us, as a nation, to step back from our tribally induced abyss and figure out how to re-unify as Americans.

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