

# Managing Public Disputes



*A Practical Guide for Government,  
Business, and Citizens' Groups*

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## Understanding Public Disputes: The Spiral of Unmanaged Conflict

 Disputes over public issues come in all sizes and shapes. They occur between communities and their decision makers, between factions in government, between organizations, and between organizations and the public. Some conflicts erupt into bitter confrontation and rapidly grow worse. Others are chronic disagreements that flare up periodically, then die down and become dormant for a time. Many disputes are predictable; others catch us by surprise. Conflicts that are splashed across the morning newspaper or performed live on the evening news are so public and so political that they are hard to resolve by non-adversarial means, but for every confrontation that reaches national attention, there are thousands of smaller, less glamorous controversies that cost people time, money, and anxiety and that readily lend themselves to conflict management techniques.

Few people enjoy dealing with conflicts. Conflicts are unpleasant and stress provoking. They distract people from pursuing more productive endeavors, and they are expensive. But not all of them are destructive. Some conflicts may lead to a sharpening of critical issues and the creation of new systems and institutions beneficial to society. The open expression of disagreement is natural and necessary in a free society (Coser, 1956; Curle, 1971; Himes, 1980). Indeed, efforts to stifle dissent are the first sign that a democracy is in trouble. Conflict is inevitable, but sometimes resources are squandered in "putting up a good fight" rather than more wisely used in solving a problem. And often the costs are incurred incrementally, with escalating

damage to everyone not assessed until it is too late. The challenge to a manager is not to try to eliminate conflict but to handle disagreements as productively as possible.

Our focus is on public disputes: controversies that affect members of the public beyond the primary negotiators. Public disputes nearly always involve one or more levels of government—often as a party, and usually as a decision maker. Disputes may center on a proposed project, on the development or application of regulations, or on questions of local, state, or federal policy. Although techniques for managing public disputes are similar in some respects to other forms of conflict resolution, such as labor-management bargaining and family dispute mediation, public disputes tend to be more complex, and they demand attention to factors that are unimportant or nonexistent in disagreements in which only two parties are involved.

Throughout this book, we use anecdotes to highlight ideas. We also refer frequently to seven case examples that are described in Chapter Two. We chose these cases—which range from a negotiation of a few days between three parties to a multiyear, 30-party, decades-old dispute—to illustrate the wide diversity of situations in which conflict management procedures have been applied. Our experience convinces us that all managers—program directors, elected officials, and professional staff—can use these procedures effectively in their work. Success in conducting a conflict management plan will depend on a manager's awareness of the peculiarities of public disputes and on the ingenuity he or she uses to deal with them. The ideas presented in this book are intended first to help professionals design and organize an effective program and second to come to their aid when the inevitable hitches, setbacks, and surprises show up.

### Characteristics of Public Disputes

Public disputes are decidedly different from most labor-management conflicts and family disputes, in which the adversaries are few and are easily identified. Although no dispute is exactly like another, public disputes do have common characteristics.

*Complicated Network of Interests*

Public disputes involve several (often many) parties. And the parties are groups or organizations, not individuals. Representatives at a negotiating table are therefore responsible not just to themselves but to others as well, and they are sometimes people of diverse and competing interests. A convener has the problem of deciding (with the concurrence of the parties) who should be represented in a negotiation. For example, in a comparatively simple negotiation of a railroad right-of-way and trestle, on what seemed to be a single issue, the representatives included elected officials from two counties, staff from each county, a regional supervisor, a local manager of a federal agency, a state manager, and both volunteer directors and professional staff from two citizen groups, who also spoke for several other groups that had agreed to pool their representation. If all interest groups had demanded separate representation, there could have been as many as twenty parties at the table, with several individuals from each party in many cases. One can expect a complicated network of interests when a controversy involves a public issue.

*New Parties Emerge.* No matter how carefully a program is designed to include all the interests, it is common for new parties to be identified as the process unfolds. Often, during deliberations, issues that had not been considered central to the discussion are identified and determined to be important. These new ideas suggest new participants. In one dispute over water management, it became clear after several months of negotiation that attention was shifting from agricultural use in the lowlands to water diversion at high elevations. It became necessary to add a representative of the ski industry, who would not have been interested in discussions about lowland water use but who did have a major economic stake in use of water in the mountains. In other situations a party that has a direct stake in the outcome will surface to the surprise of other participants and will demand a place at the table.

*Varying Levels of Expertise.* Public disputes often involve complicated financial questions, complex regulatory procedures,

and detailed technical data. The understanding of technical information may vary dramatically among individuals involved in a negotiation. In a public meeting to review monitoring procedures for a nuclear facility, a scientist stood up, waved a 300-page document at the anxious citizens seated in the audience, and said, "This is my master's thesis. There is no way you can possibly understand all of the complex issues associated with radiation monitoring in this book." Although some of the citizens did have a working understanding of the subject, they knew that the scientist was correct. They resented his arrogance, but they also feared the imbalance of power implied by their lack of scientific knowledge.

*Different Forms of Power.* Power comes in a variety of forms, including that derived from financial resources, legal authority, knowledge and skills, numbers of people, access to decision makers, personal respect, and friendships. Government agencies gain power through administrative policies, regulations, and directives. They usually have substantial technical information as well. Private companies have financial resources to gather information, acquire technical expertise, and engage in political and public relations campaigns. Citizen groups, who often see themselves as powerless, exercise power through political pressure and through litigation. Experience in negotiating is also a form of power, as are knowledge, political leverage, and constructive working relationships. Money, of course, is power, and organizations involved as parties in a conflict may vary significantly in their ability to commit financial resources to solving a problem. Some have the money to assign staff members to do technical studies, develop strategies, and produce materials. Others rely entirely on volunteer assistance and may not have the resources to do as thorough a job as the paid staff of their adversaries.

*Lack of Continuing Relationships.* In many public disputes, the parties do not know each other and have no desire to continue relationships after the problem is settled, although some of the individuals representing negotiating organizations

may have continuing relationships with each other. A public utilities commissioner, for example, knows the staff of the office of consumer counsel and the managers of regulated utilities, but the commissioner may not be familiar with a group of local citizens that is organized for the sole purpose of fighting the siting of a proposed power plant. This situation contrasts with labor-management and family disputes, where, even though strong differences are present, the parties may temper their actions because they know that they will see each other after the conflict is over. When people do not understand the history of the other organizations involved and their problems and special sensitivities, they are more likely to make incorrect assumptions about the motives of their adversaries and they may unintentionally issue provocative statements that make resolution more difficult.

*Differing Decision-Making Procedures.* The organizational structures of conflicting groups vary enormously, which means they use widely differing procedures for making decisions. Some groups are legally constituted as governmental units or as for-profit or nonprofit organizations. They have boards of directors who are responsible for the organizations' actions and they have clearly defined management structures. Other groups are loosely formed committees brought together for the sole purpose of advocating a position in a conflict. Leadership may be self-proclaimed and tenuous, and other organizational roles may be unclear. Corporations have established hierarchies for making decisions, and it is possible to determine who is responsible for making a decision and how that decision is to be made. Government organizations also have their hierarchies, but determining who will make the final decision may be less certain. On the other hand, some public interest advocacy groups rely heavily on consensus decision making, where the entire membership of an organization is consulted and must agree to any action that is taken.

Difficulties arise when decisions must be made quickly. Parties with a hierarchical decision structure are usually represented by responsible individuals who can make decisions and

commit their organizations. Representatives from loosely organized groups, however, require more time to consult with their membership and achieve consensus, and their decisions may not hold.

*Unequal Accountability.* Accountability varies among groups depending on the type of organization. Corporations are held accountable by law for their behavior. They are concerned about their public image and have ongoing relationships with governments and other organizations, which subject them to additional accountability pressures. Citizen groups do not have the same legal constraints. Their behavior and the reliability of their commitments depend on the character of individual members and on public opinion.

#### *Procedures Not Standardized*

*No Formal Guidelines.* Unlike labor-management negotiation and international diplomacy, public disputes have few institutional mechanisms for resolving conflicts. Disagreements become long-lasting conflicts or are settled in one way or another without standard procedures for convening the parties for face-to-face discussions to resolve their differences. Government seems the logical convener, but it is rarely seen as a disinterested third party by business or the public. The influence of governments on the way conflict is handled is complicated by uncertainty as to which level of government or which agency within one level has responsibility for solving the problem. In fact, a common difficulty in managing public disputes is sorting out jurisdictional issues (President's Commission, 1980).

Enforcement of agreements is also done on a case-by-case basis. A court may agree to oversee a settlement, a governor may accept the responsibility for monitoring an agreement, an organization acceptable to all parties may be asked to supervise implementation or a committee may be established for such a purpose. But many efforts to resolve public disputes break down at the end, in the enforcement of the agreements.

*Influence of Government Rules and Regulations.* A complex system of federal, state, and local rules and regulations influences efforts to deal with public problems. Mandated public hearings, ex-parte rules preventing discussion between parties and regulators, obligatory public comment periods, and other regulations governing the way decisions are made exist to protect the public interest. Unfortunately, they can also constrain discussion and restrict a search for new options, and, quite often, it is not so much the laws as their interpretation and administration that determine whether government is a help or a hindrance. These government regulations vary from case to case (Fisher, 1969; Fox, 1981).

### *Broad Range of Issues*

Public disputes usually involve a wide range of complex issues. A controversy over toxic waste storage, for example, raises health and economic issues as well as the technical questions of how to construct and maintain facilities. The issue of public confidence in a waste storage company's management may be more important than the skills of the engineers. Separate issues of future monitoring for safety, maintenance responsibility, transportation, values of adjacent property, quality of life, and other social and economic effects nearly always dominate the selection of a technical solution.

*New Issues Emerge.* Public disputes are complicated to begin with, and as negotiators explore the concerns associated with a specific issue, new topics for discussion often arise. Negotiators must be prepared to address new issues as they come up and to give them attention equal to the problems they originally expected to address.

*The Importance of Technical Information.* Another characteristic of public disputes is the importance of technical information in understanding the nature of a problem and in finding alternatives to a conflict. Each side brings its own set of facts

and figures into the discussion, and all sides must agree on a common data base before solutions can be developed. Parties rarely have equal access to all relevant information or equal ability to understand or use the figures. In some cases, necessary information is not available to any of the parties because it has not been analyzed in ways that address the specific questions being raised.

*Strongly Held Values.* Nearly all public controversies entail divergent beliefs about what is right and what is wrong, what is just and what is unjust. Many policy decisions are essentially choices among competing values, and some of the most heated of all public controversies result when someone's fundamental beliefs about what is important are threatened. Values may remain unstated, but they come out in such statements as, "People are more important than birds" and "All you care about is making a fast buck."

Accusations of greed or elitism do not get to the bottom of the problem. Often what appears to be an intractable confrontation between competing economic interests or a clash between developers and preservationists has its roots in the differing experiences and worldviews between the young and the middle-aged, between urban and rural, between those who have lived through a depression and those who have not. Neither side can understand the other.

In this time of rapidly changing values, bitter and sometimes violent clashes occur between those who try to force their ideas on others and those whose sacred beliefs are threatened. But not all differences over values must come down to the non-negotiable pro-abortion/right-to-life kind of warfare. Conflicts happen not because the values are different but because one side demands that the other side give in.

What are the consequences of having many parties in a dispute? How important are long-standing animosities? What is the significance of the technical content of conflict? These and other similar questions are essential elements in an approach to resolving a public dispute. The danger is that factors such as

these may be so far outside a decision maker's normal experience, so unfamiliar as elements to be considered in drawing up a management plan, that they will be underestimated or ignored, and the result may be failure of the entire program. Public disputes are different from most other conflicts in their complexity and unpredictability. These characteristics are important to remember in designing a conflict management program.

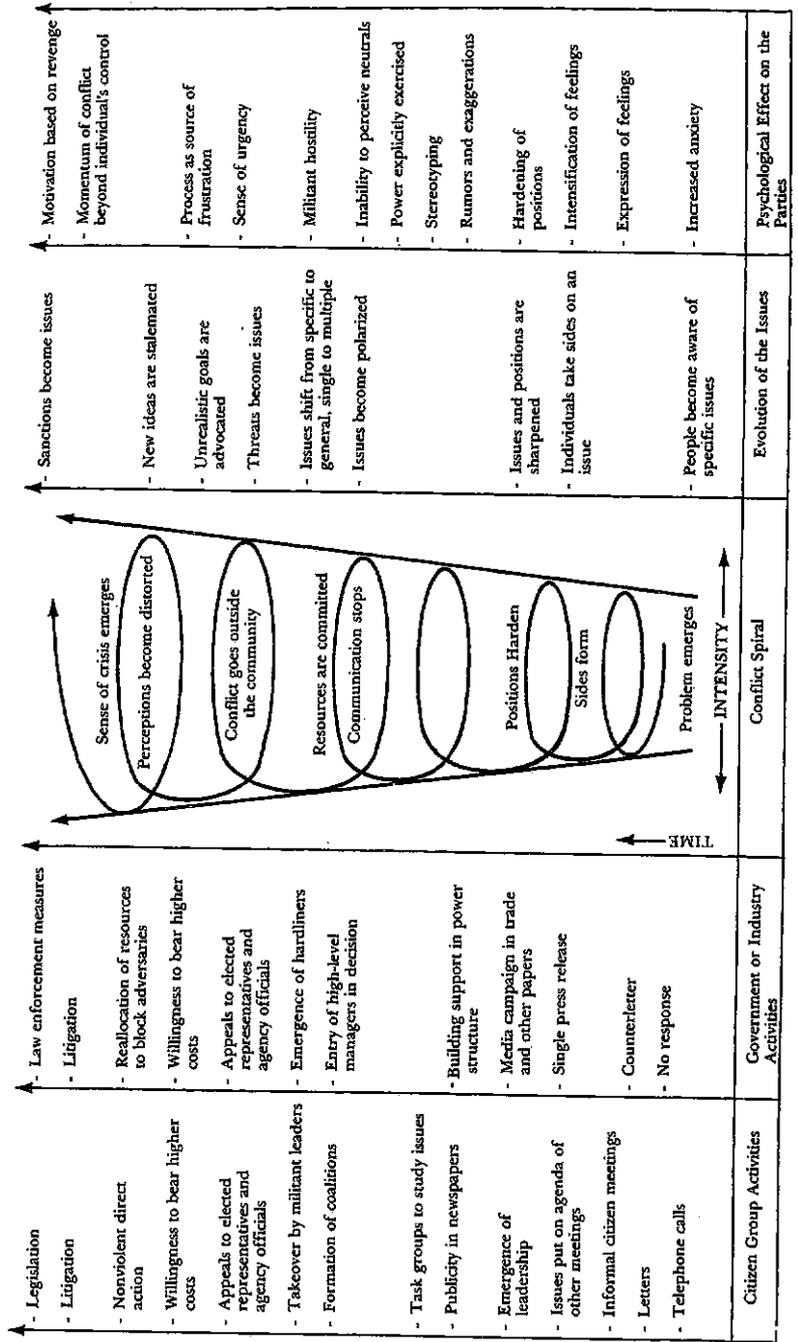
### The Spiral of Unmanaged Conflict

Conflict is dynamic. Unmanaged conflicts seldom stay constant for long. Simple solutions that might have worked in the beginning may be ineffective and even cause more damage if they are attempted when the conflict is fully developed. For example, restoring communication between warring factions will simply make matters worse if the wrong people do the talking or if the parties no longer trust each other.

The following sequence is typical of public disputes: One or more parties choose not to acknowledge that a problem exists. Other groups are forced to escalate their activities to gain recognition for their concerns. Eventually everyone engages in an adversarial battle, throwing more time and money into "winning" than into solving the problem. The following description outlines the evolution of an unmanaged conflict. Figure 1 depicts the changes in activities, issues, and psychological perceptions that occur as a conflict escalates.

*The Problem Emerges.* An organization, private or public, announces that it is contemplating changing conditions for community residents—tear down a historical building, build a new development, or widen a road, for example. At this point there is curiosity or mild concern. A step up the spiral occurs when citizens try to obtain more information and receive an unsatisfactory response. Inquiries come at a time when plans are incomplete, and officials wish the citizens would go away until they know what is going to happen themselves. But citizens are worried now.

Figure 1. Spiral of Unmanaged Conflict.



*Sides Form.* Reluctance to discuss plans is seen as deliberate stonewalling. Caution is interpreted as deceit. People who until now have not thought they had a stake in the issue begin to move toward one side or the other. More people form definite opinions and feel the need to get together with others who have similar views. They meet and support positions similar to theirs. They choose sides. As groups, they write letters to officials and try to persuade the news media that their position is the only correct one. Reporters find the differences between the parties to be fertile ground for news stories. The conflict expands as more people learn about it in the press.

*Positions Harden.* People talk more with others of similar views and less with people with whom they disagree, even in circumstances that are not related to the dispute. Positions harden, and people become rigid in their definitions of the problem and their opponents.

*Communication Stops.* Information is exchanged haphazardly between the parties. Misunderstandings are common, and communication takes on an increasingly adversarial tone. The timing and methods used by officials to involve the public may be out of phase with what is happening in the developing conflict. Public hearings can be too late and too adversarial to have a positive influence.

In the early stages of conflict, people talked with each other and exchanged opinions. But somewhere along the way public discussions turned to public debate. People are frustrated by the situation and angry at each other. They become intolerant of other points of view and lose interest in talking about perspectives other than their own. Listening to counterpoints is unpleasant because they have invested heavily in one side of the argument and this is no time for second thoughts. As a result, conversation between the parties stops, and information is used as a weapon to promote a position or win a point. Information that would lead to a solution no longer flows between the parties.

*Resources Are Committed.* Until now, most citizens have been dismayed by the growing controversy. Outspoken leaders have been seen as troublemakers. From this point on, moderates will be given less attention and militants will become more influential. As positions become more narrow and more rigid, they also become clearer. Bothersome questions of fairness, the shades of right and wrong, are less of a problem. Individuals gain a sense of personal power in being a part of the group. They are ready to commit resources and to incur costs, aware that serious demands will be made on their personal time and on financial resources.

*Conflict Goes Outside the Community.* People begin to look outside the community for support and power. They appeal to state or national political figures and ask for help from national organizations. What was once a community problem expands into a new, much wider arena of conflict.

In forming coalitions with outsiders, the local groups acquire additional financial resources and expert knowledge about the ways to carry on a fight, but their goals are absorbed into broader programs of the national organization.

Outsiders are less reluctant to attack local individuals personally. They see the residents who disagree with them solely as adversaries and not as people they will have to greet in church or at the next PTA meeting. Lawyers or other professional "hired guns" come between the parties and prevent personal negotiation. Moderates lose control to new, more militant leaders. Relationships between the parties become openly hostile. Threats are exchanged. People do not like to be threatened, so the threats become issues themselves.

*Perceptions Become Distorted.* Parties lose objectivity in their perceptions of the character and motives of their adversaries. Shades of gray disappear and only black and white remain. Whatever "our" side does is honest, and whatever "their" side does is malevolent.

Neutrals are seen as part of the enemy because they are not on "our" side. Throughout the growth of the conflict spiral,

people narrow their focus and become less capable of generating new strategies for solving the original problem.

*Sense of Crisis Emerges.* The community is divided into factions. Normally residents are accustomed to altercations between officials and irate citizen groups and they expect the town to work out its disagreements. But now, it seems, there is little hope of resolving the original dispute. Long-established confidence in the community's ability to handle its problems wavers and gives way to a sense of crisis. Newspapers highlight arguments between community leaders and ignore positive efforts toward resolution.

The initiating organization realizes that its project is seriously threatened. It feels embattled, grows tense and rigid, and says things it wishes it hadn't. The news media pick up and report the rhetoric.

The parties are now willing to bear higher costs, costs that would have seemed unreasonable earlier. Their goal becomes progressively to win at any cost. They try intimidation and destructive use of power, thus adding to the issues and to the heat of the conflict. Clashes over peripheral questions and personal vendettas assume their own momentum. In the angry, tense atmosphere, the parties commit themselves to destructive retaliatory actions that in calmer times would have been rejected as beneath their consideration.

*Outcomes Vary.* The next step may be litigation. Uncertainty as to which side will gain the most is then replaced by uncertainty about when the trial will be held, which lawyer will prevail, and how close the judge will come to solving the problem. All chance for direct negotiations between the parties is gone. Costs continue to mount.

Or the government may make the final decision. Government agencies prefer to cooperate with the parties, but they may be forced by circumstances to assume the role of regulator. Flexibility in the choice of options and the manner in which regulations are administered is lost as an agency becomes the enforcer.

Violence is another possibility. Vindictiveness and desire for revenge are sometimes present in public conflicts, but they rarely lead to personal injury or vandalism. Occasionally they do when all other methods have failed. Violent confrontation has occurred in disputes over high-voltage power lines, over the killing of whales and baby seals, and in other situations in which the effects of an action seemed irrevocable and catastrophic (Nagler, 1982).

The concept of the spiral emphasizes several important points. Unmanaged conflicts tend to become more serious because the people involved in them are anxious, fearful, and suspicious of the other side. They progressively raise the stakes without knowing fully what the consequences will be. They do not notice that their perceptions of their adversaries and themselves are changing and that they are progressively incurring risks and costs that would have seemed intolerable earlier in the struggle. Complex public disputes can become sinks for resources that the parties never meant to commit.

Many conflicts start with a resolvable problem and grow beyond hope of resolution because they are not dealt with early. It is sometimes said that the conflict manager should let a situation "ripen" or polarize before attempting to handle it. This suggestion seems tantamount to telling a doctor that a bad cold should be allowed to develop into pneumonia before he or she prescribes treatment. On the contrary, the great value of taking a hard look at where the dispute is on the spiral is that one can then choose an interim strategy that will slow down or stop expansion of the conflict. The purpose of conflict management activities, such as establishing communication, defining issues, and facilitating effective meetings, is to interrupt the spiral of conflict.

The cost of pursuing destructive conflict includes damaged reputations, fractured personal relationships, and community disruption, as well as the more easily recognizable financial expenses of legal fees, delayed project costs, revenue losses, and personal time. Resources are spent in carrying on the fight rather than solving the problem, and the damage to the community

may be irretrievable. (For other perspectives on ripeness, see Lax and Sebenius, 1986; McCarthy, 1984.)

Our society tends to accept confrontation as inevitable. Conflicts unfold as somehow preordained. If no action is taken to change the dynamics, concern and curiosity change into fear and anger and then into conflict behavior—choosing sides and calling each other names. The lesson of the conflict spiral is not that its progress is inevitable but that it is predictable when nothing is done to manage the conflict. (For more about the dynamics of unmanaged conflict, see Boulding, 1962; Deutsch, 1974; Kriesberg, 1973.)