Environmental Mediation: An Alternative Approach to Policy Stalemates

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ABSTRACT

Environmental mediation is a new and innovative attempt to overcome the policy stalemates that frequently hinder effective environmental policymaking. It brings together environmentalists, business groups, government officials, and a neutral mediator in an attempt to negotiate a binding settlement to a specific controversy. This essay describes this approach, discusses its advantages over more traditional dispute resolution processes, and explains how it is able to produce acceptable agreements in such a difficult policy area.

Introduction

The last several decades have witnessed a dramatic rise in the number of political groups vying for policymaking power. A dizzying variety of organizations – including public interests groups, minorities, environmentalists, corporations, the New Right, and the Moral Majority – are now all actively involved in attempting to influence public policy. Unfortunately, however, this burst of political participation has not been easily assimilated by the policymaking system. As some observers have noted, this increased participation of special interest groups has fostered a politics of confrontation and polarization [1]. Samuel Huntington, for example, has argued that our traditional policymaking institutions have found it increasingly difficult to satisfy all of these competing interests, and thus the government frequently finds itself in a situation of policy paralysis, unable to create or implement coherent policy programs [2].

The area of environmental policy is often cited as an example of this problem. Increased participation by developmental and environmental interests in legislative,
administrative and judicial policymaking processes has seemed only to increase polar-
ization over these issues, and has yet to produce a coherent and widely accepted
approach to environmental policy. The intense lobbying that inevitably accompanies
legislative battles over environmental policy has often only produced stand-offs, or
overly vague legislation that only ensures the reemergence of conflict during the
implementation phase [3]. Efforts to resolve these controversies at the administrative
level have also been largely ineffective [4]. Public hearings, for example, which are
ostensibly designed to facilitate public participation in the resolution of these policy
controversies, are often viewed as charades by many of the participants. Administra-
tive decisions are inevitably seen as arbitrary and mistaken by one side or another, and
thus the disputes usually wind up in court. But the use of litigation to resolve policy
differences has also been far from satisfactory [5]. Litigation usually involves exten-
sive delays, and at best it only produces piecemeal decisions, not coherent policy
programs. Moreover, since much environmental litigation is initiated under the
Administrative Procedures Act, or the National Environmental Protection Act, the
subsequent decisions often only settle procedural issues, and leave many of the
substantive controversies unresolved [6].

These kinds of frustrations and delays have caused some to question the utility of
heightened public participation. Huntington has argued that we have too much
participation in Western democracies, and that only a more authoritative approach to
policymaking will restore the effectiveness and efficiency of our policymaking pro-
cesses [7]. This conclusion has been reflected in such policy proposals as Carter's
Energy Mobilization Board which would have severely restricted opportunities for the
public to challenge energy policy decisions [8]. However, there has emerged in recent
years, in the area of environmental policy, a new approach to resolving policy conflicts
– an approach which represents an alternative to this more authoritarian path. This
new approach is known as “environmental mediation,” and as we shall see, this
process suggests that more intense participation, not less, may be the key to overcom-
ing the problems of policy paralysis.

Defined most simply, environmental mediation is an ad-hoc policymaking process
in which representatives from environmental groups and business groups sit down
together with governmental officials and a neutral mediator to negotiate a set of
binding policies to resolve a particular environmental dispute [9]. Unlike arbitration,
environmental mediation is a process in which the mediator has no power to impose a
settlement – all settlements must be voluntarily agreed upon by all the parties involved
in a dispute. The principle role of the mediator is to use his or her skills to diffuse
hostility, to clear up miscommunications, and to integrate the demands of the various
parties into an acceptable solution. In its essence, then, environmental mediation is an
attempt to reestablish the process of negotiation and compromise that many feel has
been on the wane in Western democracies. Somewhat surprisingly, this calm and
reasonable approach has met with some success. Since its emergence in the mid-1970s
mediation has been responsible for successful agreements in such difficult areas as