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Beyond 3 Minutes: Expanded Legal Framework for Public Participation

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Three Minutes at the Microphone

How outdated citizen participation laws are corroding American democracy

Most people dislike public meetings. This is true for both the public officials who preside over them and the citizens who attend them. But over the last two decades, a wide range of participatory meeting formats and dynamic online tools have emerged – so why do we continue conducting public business in such an outdated fashion?

There are a number of reasons, but one is the legal framework that governs public participation. At the local, state, and federal levels, these laws can stifle innovation, fail to ensure transparency, and discourage public officials and employees from reaching out to citizens. When combined with other kinds of engagement opportunities, traditional public hearings can work, mainly by providing a sense of closure and validation to public debate on an issue. But since our legal framework supports only the bare minimum of deliberation, the pressure of dealing with contentious policy issues falls squarely on a format that isn't up to the task. The consequences go far beyond miserable meetings: as the relationship deteriorates between the people and their public institutions, the legitimacy and financial sustainability of governments continue to decline.

New needs, old processes

If you attend a public meeting, it is easy to see why no one enjoys the experience. The vast majority of these gatherings are run according to a formula that hasn't changed in decades: officials and other experts present, and citizens are given three-minute increments to either ask questions or make comments. There is very little interaction or deliberation. Turnout at most public meetings is very low – local officials often refer to the handful of people who typically show up as the "usual suspects." But if the community has been gripped by a controversy, turnout is often high, and the three-minute commentaries can last long into the night. On most issues, the public is either angry or absent; either way, very little is accomplished.

For 21st Century citizens, who are more skilled and educated than their predecessors, who have access to endless quantities of information through their smartphones, and who are used to having a wide array choices open to them, these old meetings seem like a waste of time; there is little for them to learn, and little they can contribute.

Most of the laws governing public participation are at least thirty years old; one of the most notorious, California's Brown Act, just turned sixty. They predate the Internet as well as many innovations in face-to-face engagement, and it is unclear how they apply to:

- Use of Twitter and other social media platforms by public officials and public employees;
- Participation by public officials and public employees in neighborhood online forums, email listservs, and other online arenas;
- Participation by public officials and public employees in small-group dialogue and deliberation as part of larger public engagement efforts;
- Use of online tools to announce and proactively recruit for public meetings (rather than the old formula still found in many laws, which require governments simply to post a notice about a meeting in a city bulletin); and
- Collaboration between public institutions and private, nonprofit, charitable, and faith-based institutions in organizing and supporting public participation.

In all of these scenarios, our laws ought to uphold values such as transparency, privacy, inclusion, fairness, and freedom of speech.

In the Knight Foundation's "Soul of the Community" study, researchers found that attending a public meeting was more likely to reduce a person's sense of efficacy and attachment to community than to increase it. At the federal level, the poorly structured "town hall meetings" on health care reform in the summer of 2009 led to a number of highly publicized clashes between constituents and Members of Congress, and were widely viewed as being detrimental to the policymaking process. In legislative hearings, school board meetings, zoning hearings, and city council proceedings all over the country, democracy is dwindling, three minutes at a time.

Reframing the relationship

Many local leaders understand the implications of this shift. They know that the financial pressures facing local governments, school systems, and other public institutions are not just the result of the recent economic downturn. "If we think we're going to come out of this recession and expect everything to go back to normal, we've got another thing coming," says Harry Jones, county executive of Mecklenburg County, North Carolina. "We need to reach out and reframe our relationship with citizens – the people who are the ultimate source of our revenues."

To support this new relationship, our public participation laws ought to support newer, more meaningful forms of citizen engagement. Over the last two decades, Jones and many other local leaders have pioneered a new generation of participation practices. These range from much more intensive, deliberative face-to-face meetings to a burgeoning array of online tools and arenas. The most successful of the face-to-face efforts rely on proactive, network-based recruitment to bring more than the "usual suspects" to the table. They use small, facilitated groups that allow people to explain why they care about an issue, become more informed about it, consider a range of policy options, and decide how they can contribute to problem-solving – in addition to making recommendations to government. In some cases, as with the practice of Participatory Budgeting, citizens vote on how public money should be spent. Neighborhood and school online forums have emerged that employ some of the same tactics, giving

leaders the chance to interact with sustained networks of citizens. And online tools have been established that allow people powerful and convenient ways to report problems, generate and rank ideas, work in small action teams, and visualize options for public budgeting and land use planning.

Many of these efforts have been initiated by people and groups outside government, from community foundations to neighborhood organizers to universities to Chambers of Commerce. But whether or not they are led by public officials, most of these efforts occur outside the scope of official citizen participation processes and the laws that govern them.

Revising the legal framework

Over the last year, a working group that includes representatives from the International City/County Management Association, American Bar Association, International Municipal Lawyers' Association, National League of Cities, National Civic League, Policy Consensus Initiative, and Deliberative Democracy Consortium have worked to produce new legal tools for public participation. These include:

- A model public participation ordinance for local governments
- A model public participation act for state governments
- A document describing local policy options and techniques for strengthening public participation.

The intent of these tools is not to offer cookie-cutter solutions for city councils and state legislatures, but to encourage them to at least consider their options. This would be a great help to city attorneys and other legal advisors, who often have to make recommendations without clear laws, legal precedents, or policymaker intentions.

The legal tools crafted by the working group are intended to allow innovation, not require it. "We took as our inspiration the laws on alternative dispute resolution (ADR) enacted during the 1980s and 90s," says Lisa Bingham of Indiana University, a public administration scholar who has taken the lead for the working group in the drafting process. "Simply by authorizing public agencies to use mediation, facilitation, and other ADR processes, those laws resulted in a dramatic proliferation of these practices at every level of the legal system."

The same is needed for public participation techniques. We must free public officials and employees to engage the public without abandoning the goals of transparency and accountability. We must enable government to reach out to its constituents, adapt its practices and expectations, and repair the relationship. The success and even the survival of our governments may depend on it.