



# Meaningful Engagement – The Public's Role in Resource Decisions

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# The Role of the Public in American Government

- Upon leaving the Constitutional Convention in 1787, Benjamin Franklin was asked what sort of government the delegates had created. He famously replied –

*"A republic, if you can keep it."*

- A democratic republic requires not merely the consent of the governed, but also, most critically, the *active engagement of an informed citizenry*

# Elected Representatives Refining and Enlarging Public Views

- In *The Federalist Papers*, No. 10, Madison notes that representative government provides a means –
  - "to refine and enlarge the public views, by passing them through ... a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations....
- For Madison, the ideal outcome of this arrangement was that –
  - "the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves ...."

# Congress and the Public

- **Congress – The “People’s Branch”**
  - Madison’s ideal of passing our individual “public” views through our representatives who will demonstrate “wisdom,” patriotism” and a “love of justice” seems quaint and naïve today
  - The system has arguably been corrupted beyond recognition
    - “Participation” at the congressional level is, at best, characterized by “rent-seeking” behavior by powerful individuals, corporations, and organizations
    - At worst, it involves direct or indirect bribes
  - Tragically, the “people’s branch” has arguably evolved into the least accessible branch of government to ordinary people

# My Father and Public Participation

- His parents emigrated from Italy; put himself through college at Univ. of Michigan
  - Successful career as electrical engineer
  - Despite health problems, smart and engaged
    - Favorite television channel is C-Span
  - Cares passionately about public policy
    - But complains that “we don’t live in a democracy”
  - Legally blind, but writes letters to newspapers and policymakers
  - Calls Senator Levin’s office frequently, expecting to talk with Senator Levin, thus far without success
  - Enormously frustrated – even angry – that he has no way to engage meaningfully with legislative policymakers

# Public Participation in the Other Branches

- **Judiciary**

- Sierra Club v. Morton guaranteed public access to the courts
  - But standing remains an obstacle and access to Courts is generally limited to those with means
  - For the system to work, the judiciary must be available as a check on the other branches of government

- **Executive**

- Unelected agency officials – “the headless fourth branch of government” – has arguably evolved into the most accountable branch of government
- Focus of presentation will be on public participation in legislative processes before government agencies

# Overview of Presentation

- What are the reasons for and the problems with public participation
  - Is it always a good idea?
  - What are its advantages and disadvantages
  - Does it allow for meaningful engagement?
- How do different approaches to decision-making influence public participation?
  - How is public participation defined for purposes of this presentation?
  - Describe various models of public participation
- What is the future of public participation?

# The Reasons for Participation

- Participation leads to better decisions
  - The collective wisdom of a society will lead to decisions superior to those reached by any single individual, group of individuals, or organization
  - That collective wisdom can best be discerned by engaging interested parties in an open and fair Socratic dialogue
- Participation helps fulfill the civic obligation that each of us has to improve our government
  - Democratic notions of civic republicanism or civic virtue that trace to ancient Greece and Rome
- Participation promotes good government
  - When government officials know they will be held accountable for their decisions by an engaged public they act more responsibly

# The Virtues of Participation

- Amartya Sen describes the virtues of participation as having –
  - Intrinsic importance
    - Promotes civic engagement and deliberative democracy
  - Instrumental importance
    - Helps keep government honest and accountable
  - Constructive importance
    - Promotes better decisions
- Unfortunately, participation does not always support these virtues

# The Problems with Participation

- Even the wisest among us may find it difficult to discern the collective wisdom
  - We stand a better chance if we attract smart, talented people to public service but that is no guarantee of good decisions
- The cost of discerning the collective wisdom will likely be proportional to the difficulty of the problem
  - Is participation worth the cost if the ultimate decision is not likely to change?
- Bad faith on the part of administrators and rent-seeking behavior on the part of participants, can distort our ability to discern the public good

# The Pros and Cons of Public Participation

	Advantages	Disadvantages
Citizens	<ul style="list-style-type: none"> <li>Educates</li> <li>Empowers</li> <li>Civic engagement can help build trust</li> <li>Influence policy</li> <li>Collective wisdom</li> </ul>	<ul style="list-style-type: none"> <li>Time-consuming</li> <li>Tedious; information overload</li> <li>No assurance of influence</li> <li>May promote alienation and distrust if comments ignored</li> <li>Can politicize decisions</li> </ul>
Government	<ul style="list-style-type: none"> <li>Educates</li> <li>Agency engagement can help build trust</li> <li>Collective wisdom</li> <li>Legitimizes policy</li> <li>May help avoid litigation</li> </ul>	<ul style="list-style-type: none"> <li>Time-consuming</li> <li>Expensive</li> <li>Possible loss of control</li> <li>Possible distortion of public views</li> <li>May promote “rent-seeking”</li> <li>May promote litigation if comments ignored</li> </ul>

# What is Public Participation?

- Public participation can take many forms
  - Boston tea party, revolutionary war
  - Influential writings of Madison, Hamilton, Payne and others
  - Civil rights and anti-war protests of the 1970's
  - Democratic elections
  - Congressional lobbying
  - Litigation
- Focus here will be on administrative law-style participation in legislative processes

# The Public's Role in Resource Decisions

- Government officials as expert managers
  - Normative view of decision-making
  - Decisions are good or bad; right or wrong
  - Smart, dedicated people will make good decisions
    - **The Progressive Era**: 1890's – 1920's
      - Gifford Pinchot and the utilitarian movement
    - The New Deal era
    - Kennedy era: “The Best and the Brightest”
    - Al Gore: The Assault on Reason
    - Tools like cost-benefit analysis and risk assessment reflect this approach

# The Public's Role in Resource Decisions

- Strict expert approach seems autocratic
  - It often lacks transparency
  - It is largely indifferent to public input
  - Smart, dedicated people sometimes make bad decisions
- This has led some to suggest a pluralist approach
  - APA and some aspects of environmental laws of the 1970's might support this approach
  - Agencies are largely agnostic as to outcomes. They view themselves as mediators among competing interests
    - Marketplace of ideas
  - Public choice theory and opportunities for rent-seeking become ascendant

# The Public's Role in Resource Decisions

- Pluralist model may lead to decisions incongruent with the public interest
  - Political power or narrow, but vocal interests may drive decisions
- Problems with pluralism has led some to embrace civic republicanism and deliberative democracy
  - Public participation seen as a civic good
    - Promotes public engagement and good results
  - Unlike pluralism, decisions not so much from a competition of views but rather from a process of interaction that leads to a consensus or at least better understanding of the issues
  - Well-run NEPA processes and collaborative processes might reflect this model.

# Coming Full Circle

- Deliberative processes can be cumbersome and expensive, and may not engage all stakeholders
  - A “successful” collaboration may still lead to controversy and results that are contrary to the public interest
    - E.g., The Quincy Library Group
- Better approach may be reliance on expert agencies, subject to “meaningful engagement” with the public when participation is appropriate
  - Expertise is a necessary but not a sufficient condition for good decisions
  - “Good” decisions are also informed by values and ethics
    - Should we preserve polar bears? Roadless areas?

# Should Public Participation Happen?

- Is there a reasonable chance that public participation will promote civic engagement, a better government, and/or a better decision?
  - Is the interested public sufficiently informed to contribute meaningfully to the decision?
    - If not, can the public be educated at a reasonable cost?
  - Is the agency open-minded and fair-minded (and wise?)?
  - Is the outcome preordained?
- Can the public be engaged in a meaningful way at a reasonable cost (time and money)?
  - Is the agency committed to minimizing the problems with participation?
  - Is the process designed to reflect the importance and type of proposal

# Meaningful Engagement for Different Modes of Participation

- **Notice and comment processes**
  - Is the agency open and responsive to comments?
  - Can private meetings help the agency and/or the public become engaged?
- **Town hall meetings**
  - Is agency engaged in a dialogue or simply providing an “open mike”?
  - The Babbitt example
- **Workshops and collaborative processes**
  - Are they designed to educate and engage in problem solving?
  - Can a truly representative group be feasibly assembled?
- **Open houses**
  - Will one-on-one “engagement” occur with policy makers or with low level staff people?
  - Is there a record of the engagement and commitment to respond?

# The (Optimistic) Future of Public Participation

- What will it take to “keep” the republic?
  - Meaningful and active engagement
    - A transparent, accessible process
    - The Forest Service example <http://www.fs.fed.us/sopa/>
    - A pre-decisional dialogue
      - “[A] dialogue is a two-way street. the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.” Home Box Office v. FCC, 567 F.2d 9 (D.C. Cir. ‘77)
      - Al Gore, *The Assault on Reason*
    - An affirmative commitment on the part of the agency and the public to engage meaningfully – even when the other side resists

# The Future of Public Participation

- **Structural Reforms**

- The “informal” rulemaking process is broken

- Overly cumbersome process has led agencies to circumvent it entirely
- APA amendments may be necessary to streamline the process, especially for modest proposals

- Restore vigor (and rigor?) to NEPA and agency planning processes

- Make meaningful engagement the touchstone
- If the agency decides to engage the public, do so early and often

# Conclusion

- Meaningful participation can lead to better decisions, an engaged public, and improved agency performance
  - A public, meaningfully engaged, will be encouraged to become more engaged
  - Conversely, if public comments are ignored, a disillusioned public will withdraw from the process
- Agency processes must be designed to fit the proposal and to engage the public in a meaningful way or not at all
- Meaningful engagement requires that public comments be fairly considered and addressed by an open-minded, broad-minded, and wise official who understands the issues

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