

## **The Deliberative Agency: Opportunities to Deepen Public Participation**

Deliberative Democracy Consortium Discussion Paper<sup>1</sup>

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## **INTRODUCTION**

Public involvement in the activities of federal agencies is required by numerous Acts of Congress, among them: the Federal Advisory Committee Act, the Government Performance and Results Act, the National Environmental Protection Act, the E-Government Act, and the National Environmental Protection Act. Recent legislative activity suggests a heightened interest in this area as well.<sup>2</sup> This, together with the increasing use of both face-to-face and online collaborative forums in civil society and the private sector, is increasing pressure upon government agencies to bring the public into decision-making processes. Methods for *deliberative citizen engagement* emphasize non-adversarial, results-oriented, community-wide decision-making on large issues and are being used with increasing frequency around the world in a range of settings. This emerging field of practice is producing an array of tools and processes that can support the evolution of the *deliberative agency*.

This paper will provide a general introduction to this exciting and growing field of democratic activity. The first section will provide an overview of the thought and practice that currently constitutes the “field” of deliberation. The second section will provide an overview of the enabling policy environment for public participation, and the third will explore how deliberation can be used to enhance agency decision-making and share several practical examples of its application to *agenda setting*, *policy formulation*, and *resource allocation* decisions. In conclusion, the authors suggest several ways agency administrators and managers can improve the deliberative aspects of federal agency decision-making.

## **I. DELIBERATION BACKGROUND**

What is *deliberative democracy* and why might democratic deliberation appeal to federal agencies? Deliberation builds upon what the United States government has called “a basic tenet of Western democratic traditions,” namely that “placing citizens closer to the affairs of government strengthens democracy, stability and transparency, and results in more sound government practices.”<sup>3</sup> Democratic deliberation seeks to build upon traditional models of “public participation”—opinion polls, public hearings and meetings, and comment periods—by advancing richer forms of citizen involvement in governance

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<sup>2</sup> Health care, consensus council, nano tech legislation – see Policy Formulation section.

<sup>3</sup> USAID, Local Government Reform Program, <http://www.usembassy.hr/usaidd>

processes, the benefits of which extend well beyond the collection of information useful to decision-makers.

Deliberation is, primarily, a discursive (distinct from, say, an aggregative) approach to decision-making in which citizens come together in a non-coercive environment to identify and discuss public problems and possible solutions. During deliberation, participants “consider relevant facts from multiple points of view, converse with one another to think critically about options before them and enlarge their perspectives, opinions, and understandings.”<sup>4</sup> Ultimately such processes of group reflection are used to render a public judgment as to the best course of action.

Deliberation is often viewed as superior to traditional forms of public involvement through which individuals or organizations state their viewpoints. Deliberation offers a different structure, resulting substance, and civic benefits. Through deliberation, the public is able to come to a better *shared understanding* of underlying issues, make substantively better policy recommendations, reduce friction, and experience “empowerment” as individual citizens. It is expected (but not known) that the civic benefits of deliberation—education, engagement, and social capital—can smooth implementation and provide lasting benefits for democratic life. Furthermore, decision-makers profit from the experience by acquiring substantial information about the values, aspirations, and specific concerns or recommendations of citizens on an issue, reinforcing their leadership position. At the same time, the likelihood of future conflict over the issues is substantially reduced and the road paved for successful, lasting implementation.

### **Characteristics of Deliberation**

Deliberation can be distinguished from other forms of discussion in its emphasis on individuals being willing to, momentarily, set aside self-interest in the outcomes. Deliberative theory suggests instead that deliberators examine solutions in terms of a common best interest, i.e. the interest of one’s neighborhood or community *as a whole*. Deliberation also presupposes that no individual holds the best answer to a public problem; rather the process of structured conversation will yield solutions. Finally, deliberation differs from, for example, negotiation in that participants don’t come to the table with strong ideas about what they will or will not compromise to accommodate the

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<sup>4</sup> <http://www.deliberative-democracy.net>

needs of others. Instead, participants come prepared to engage in the free and equal sharing of information that will help everyone arrive at reasonable, if not ultimately more just, outcomes.

Several general characteristics of ideal public deliberation make it useful to policy and decision-making bodies.<sup>5</sup> These include:

- *Focus on action*, what is to be done in some situation by some agent, either an individual or a group of individuals. The “focus on action” sometimes takes the form of a commitment by decision-makers to incorporate the results of deliberation into policy. In many deliberation efforts, citizens and their organizations—including businesses, nonprofits, associations, churches—take action themselves, in partnership with government or independently from it, to implement ideas that have been generated in the discussions. Many of these successful projects make it clear to participants that they will be expected to help solve the problem at hand, rather than simply making recommendations for others to implement.
- Discussion of a course of action may include arguments based on *appeals to values*, which although often important, may not be included in information-seeking dialogues that stress quantitative analysis. Appeals to, and the subsequent clarification of, values often provides useful advice to policy-makers when trade-offs are concerned, for example when the potential long-term effects of a decision are measured against short-term gains or losses.
- *Absence of pre-existing commitment* by sponsors and participants to a particular outcome. A deliberation dialogue is not, at least at its outset, an attempt by one participant to persuade others to agree to a pre-defined proposal. While a well-run deliberation will require an agenda, it is subject to the influence of participants. As new proposals, concerns or solutions emerge and are recognized as a priority they can be incorporated into subsequent discussions.

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<sup>5</sup> The authors found Hitchcock, McBurney, Parsons. “A Framework for Deliberative Dialogues” (OSSA, 2001) particularly insightful in putting together the following list of characteristics of deliberation.

## ***The Deliberative Agency***

- *Mutual in focus*, not a negotiation of personal interests competing for accommodation in the resulting decision. In general, deliberators are encouraged to approach problem solving from the perspective of a “common interest,” participants seek to ensure general satisfaction among all participants with the proposed course of action, often changing their own views and attitudes toward “what is possible” as a result of deliberation.
- *Information is not withheld*, recognizing that the likelihood and quality of mutually satisfactory outcomes will increase with free exchange of knowledge and information. Experts, decision-makers, and participants seek to disseminate knowledge widely among the group, with an interest in maximizing the availability of data that informs decision-making. Because the process is mutual in focus, there is not much to gain from hiding important facts about a problem before the group.
- Occurs optimally in *small groups* (9-15). Deliberation requires a small group discussion format that optimizes the opportunity for each participant to meaningfully contribute to the conversation. As groups increase in size, intimacy, trust, and individual voice are lost as each participant has less opportunity to speak and competition for “floor time” is increased. Small groups also allow participants to share personal experiences relating to the topic at hand before they get into the more technical or controversial questions.
- Takes place within the provenance of a *decision-making authority*. In principle, ideal deliberation will have an impact on some kind of outcome, for the purposes of governance, on decision-making. Decision-makers, much like citizens, are generally disinclined to support policy proposals over which they have little influence. Therefore participatory deliberation is often sponsored, if not initiated, by a government agency or decision-making body rather than operating independently of institutional processes.

To illustrate the contrast between deliberation and traditional forms of public participation, it is useful to examine a common tool for public participation in policy-making, the public hearing. A traditional public hearing, broadly defined, is designed to facilitate the exchange of information between experts and

citizens, policy-makers and the impacted community. The general purpose of a public hearing is to “receive testimony and public comments” on draft policy, during which policymakers may give background information.<sup>6</sup> Typically, such communication stimulates little in the way of community dialogue despite the best intentions of “outreach” efforts.<sup>7</sup>

While representatives of community groups may regularly be present to offer views of their constituents, the public hearing process fails to facilitate the engagement of citizens with one another or to allow an in-depth exchange with policy-makers. According to the findings of one study, “government agencies tend to practice more of the public information model of communication that stresses the one-way dissemination of information to publics, without giving much thought to feedback or symmetry.”<sup>8</sup> Any “public comments” rendered at such forums are necessarily constrained by time and information as much as by design: there is generally insufficient opportunity to come to an understanding of the range of personal experiences and points of view that are at play beneath the surface of complex policy issues. Results of the same study showed that respondents, “tended not to be overly satisfied with public meetings as a way of involving them.”<sup>9</sup>

Deliberation, by bringing policy-makers and citizens together in discussion, encourages reflection and an understanding of multiple forces and views that surround an issue before citizens render their comments on a potential or draft policy.

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<sup>6</sup> A sample purpose, used for illustration, taken from the draft public participation plan of Allegheny County, Pennsylvania (Department of Economic Development, *Citizen Participation Plan*, 2003).

<sup>7</sup> According to the review of one state’s strategic planning process, despite publicity a major daily newspaper and pushing the plan downward through local government and regional entities, no comments were received on the draft plan prior to circulation before “at least one” public hearing (State of Iowa, “Citizen Participation Plan Relating to the Consolidated Planning Process for Federal Housing and Urban Development (HUD) Programs.” 2001). Such plans, in a casual review of several city and state CDBG proposals, tend to adopt the minimum participation requirements defined in HUD Regulations, 24 CFR §570.431.

<sup>8</sup> McComas, Katherine. “Citizen Satisfaction with public meetings used for risk communication.” *Journal of Applied Communication Research*, vol.31, No.2. May 2003 (p. 167)

<sup>9</sup> *Ibid.*, p. 176.

### **Five Rationales for Deliberation**

There are essentially five general rationales for citizen deliberation in democratic governance.<sup>10</sup> Each rationale implies substantially different outcomes, constituting a range of reasons one might employ to justify the sometimes costly, often time consuming, and always arduous task of organizing a deliberative forum of any kind. No single rationale should be taken as a central or primary justification for deliberative and participatory approaches to governance. Rather, the rationales should be used together to ensure successful policy decisions across the multiple dimensions of an outcome.<sup>11</sup> The common rationales are:

- *Citizen participation in policy formulation and decision-making can reduce conflict.* This **instrumental rationale** argues that, by involving all the perspectives of community members who will be impacted by the policy outcome—and the competing interests—in governance processes, consensus develops around politically reasonable outcomes and lays the groundwork for successful implementation. While insufficient by itself to justify deliberation from the community-members’ perspective, it poses a reasonable advantage over litigation, for example, for agencies and their contractors who run up against mobilized communities.
- *Citizen participation can lead to better, longer lasting, and wiser policy choices.* The **substantive rationale** holds that, given the multiple dimensions of policy outcomes, expert and elite perspectives are limited. Citizens, it can be said, have a good sense of their needs; this argument makes the case that the privately held knowledge of citizens—grounded largely in local experience—uncovered through deliberation can contribute valuable information to the policy process that would otherwise be overlooked.

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<sup>10</sup> The first three rationales are drawn from *Understanding Risk*, by Paul Stern and Harvey Fineberg (Washington, DC: National Academy Press, 1996). The fourth rationale is concluded from the writing of prominent scholars such as Benjamin Barber, David Matthews, John Gastil, and James Bohman.

<sup>11</sup> The authors recently encountered a nearly identical set of points speaking to the “value and necessity” of civic participation developed by the U.S. Department of Energy’s “Smart Communities Network.” These justifications for civic participation are: 1) ensure good plans remain intact over time; 2) reduce the likelihood of contentious battles before councils and planning commissions; 3) speed the development process and reduce the cost of good projects; 4) increase the quality of planning; and 5) enhance the general sense of community and trust in government. The report is available at: <http://www.sustainable.doe.gov/landuse/civic.html>

- *Citizen participation builds citizen competence.* The **civic rationale** makes the case that, in addition to contributing to greater citizen awareness of issues and the competing points of view that surround those issues, citizen involvement in policy deliberation also helps to cultivate the skills of rational dialogue, active listening, and problem solving. An important variation of this, particularly for residents of poor communities, is the **empowerment rationale**, which makes the case for citizen participation on the basis that it gives citizens greater authority, the opportunity to problem-solve and, ultimately, better their lives through empowered mechanisms that impact outcomes.<sup>12</sup>

Furthermore, citizen participation can *build capacity* for solving public problems within communities over time. The capacity-building argument assumes that, by engaging many people and organizations in addressing an issue, and by encouraging them to implement the action ideas they generate, the community can become better able to achieve public priorities.

- *Citizen participation cultivates mutual understanding, builds bonds of trust among citizens, decision-makers and governing institutions, and can effect changes in political attitudes and behavior.* This **social capital rationale** suggests that, by creating opportunities for positive and negative feedback in the policy process, deliberation can re-engage citizens in the political life of the nation and reverse long-term declines in political and civic engagement.<sup>13</sup>
- *Citizen involvement in decision-making is something governments should do.* This is the **normative rationale**, and is grounded in something of a republican reading of liberal democratic theory. Such a view holds that citizens, as members of a political community, have certain rights to self-government, among them the right to have a say in the decisions that impact their lives.

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<sup>12</sup> The language of “empowered” governance mechanisms is drawn from the work of Archon Fung and Erik Olin Wright (2003), who define Empowered Participatory Governance (“EPG”) in three dimensions: deliberation, civic engagement, and institutional influence. These three dimensions of EPG are drawn together as a way of measuring the authority and legitimacy of various approaches to participatory governance.

<sup>13</sup> A good survey of the range of activities such deliberation might inspire is outlined by Peter Levine, in his work *The New Progressive Era* (Lanham, MD: Rowman, and Littlefield, 2000).

## **II. FEDERAL POLICY ENVIRONMENT FOR PARTICIPATION**

Several policy frameworks exist through which to introduce—and strengthen—a deliberative interpretation of “citizen” or “public” participation in policy formulation at the federal level. While agencies often use these policy frameworks as guidelines for informal experimentation with new ways to involve citizens, formal and empowered deliberation in federal agencies is uncommon. Furthermore, there are no shared standards for deliberative practice nor is there a structure for sharing best practices. These are a few of the gaps that can be filled through leadership at the federal level.

Legislation constituting the present policy environment for citizen participation includes:

- *The Federal Advisory Committee Act* (“FACA”), passed in 1972, governs the establishment of Executive Branch advisory committees, commissions, task forces, etc. According to one report, FACA has had a number of notable successes,<sup>14</sup> but “has also created, directly and indirectly, a number of ‘chilling’ effects on public participation in environmental decision-making,” which together “create a paradox wherein agencies are reluctant to engage the public in decision-making outside of FACA,” despite the fact that “significant barriers keep groups (and agencies) from forming advisory groups and committees under the Act.”<sup>14</sup>
- *Government Performance Results Act* (“GPRA,”), passed in 1993, arguably provides a boost to citizen participation. Among other purposes, GPRA seeks to “improve the confidence of the American people in the capability of the Federal Government,” improve public accountability, provide federal managers with “information about program results and service quality,” and “improve congressional decision-making by providing more objective information.”<sup>15</sup> Today most agencies are working under plans that stress transparency and accountability, implying a closer working relationship with citizens, while the reality remains that little in the way of substantial procedural change has taken place to encourage greater citizens influence in decision-making processes.

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<sup>14</sup> Long, Rebecca J. and Beierle, Thomas C. “The Federal Advisory Committee Act and Public Participation in Environmental Policy.” Resources for the Future Discussion Paper 99-17 (January, 1999).

<sup>15</sup> OMB. Government Performance and Results Act (1993).

- *The Administrative Procedures Act* (“APA”), passed in 1947, requires federal agencies to, “keep the public currently informed of their organization, procedures and rules,” and provide for “public participation in the rule making process.”<sup>16</sup> Much like FACA, the Administrative Procedures Act remains a general framework for guiding a broad range of citizen participation activities. In the best circumstances, APA has led to successive rounds of experimentation with “two-way” methods of information sharing and created more bargaining room for “citizens groups” at the table.
- *The National Environmental Policy Act* (“NEPA”), passed in 1969, instructs agencies to work “in cooperation with State and local governments and other concerned public and private organizations” and states that expert committees will consult with citizens advisory groups.<sup>17</sup> The statute further instructs all agencies to, “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making.”<sup>18</sup> Environmental impact statements that have developed out of this legislation, and court decisions of later years, have strengthened a participatory interpretation of the statute. In particular, “scoping”—defining the reach of compliance documents—is one of the few areas in which the public is regularly involved in specialized policy agenda-setting. Court decisions have included language such as, “The EIS [Environmental Impact Statement] should provide the public with information on the environmental impact of a proposed project as well as encourage public participation in the development of that decision.”<sup>19</sup>
- *The Administrative Disputes Resolution Act* (“ADRA”), passed in 1996, promotes alternative means of dispute resolution as an alternative to litigation in Federal courts. While the practice of alternative dispute resolution refers to a well-accepted set of practices, ADRA defines the term broadly as “any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, and use of ombuds.”<sup>20</sup>

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<sup>16</sup> Attorney General’s Manual of the Administrative Procedure Act  
<<http://www.law.fsu.edu/library/admin/1947cover.html>>

<sup>17</sup> NEPA Title I, Section 101(A) [42USC§4331]

<sup>18</sup> NEPA Title I, Section 102(A) [42USC§4331]

<sup>19</sup> *Trout Unlimited vs. Morton*, 509 F.2d 1276 (9th Cir., 1974)

<sup>20</sup> Administrative Dispute Resolution Act of 1996, Pub. Law 101-552 and Pub. Law 102-354.

While circumstances for invoking deliberative citizen participation will likely engender unique conditions, specific methods, such as the Citizens Jury and the Danish Consensus process, described later in this report, could prove instrumental in such cases where the public is deemed a sufficient arbiter of an administrative dispute.

- *The E-Government Act* ("EGOV"), passed in 2002, both ensures the expansion of information availability over the internet and application of APA Title 5 requirements for public participation in regulation onto the internet. More broadly, the EGOV Act seeks to ensure that advances in information technology "provide increased opportunities for citizen participation in government."<sup>21</sup> EGOV also seeks to improve interagency collaboration and promote "better informed" decision-making by policy makers through the use of online tools.

In addition to this broad legislative framework, most federal agencies have developed more specific implementation guidelines. One example is the Department of Housing and Urban Development's "Citizen Participation" guidelines for Title 24 (Community Development Block Grant, or "CDBG") funding. This language calls for public notice, making information available—particularly to those impacted by the CDBG plan and low and moderate income residents—and "a minimum of two public hearings on the proposed plan." While in the best circumstances these kinds of activities fulfill requirements for information sharing and comment, none are particularly promising techniques to empower citizens and build social capital or greater trust in government.<sup>22</sup>

The National Parks Service has recently issued a "Director's Order" (DO-75A) entitled, "Civic Engagement and Public Involvement" which goes a lot further to inspire a collaborative relationship between citizens and government. Among other purposes, the DO seeks to "renew" its commitment to citizens by embracing "civic engagement as the essential foundation and framework for creating plans and developing programs."<sup>23</sup> While it would appear that the order is largely directed at the public planning process, educational programming, and direct preservation efforts, the effort to "institutionalize a civic engagement philosophy" and "provide a framework for successfully engaging the

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<sup>21</sup> E-Government Act of 2002, Section 2(b)(2)

<sup>22</sup> Housing and Urban Development Regulations, Title 24 CFR §570.431

<sup>23</sup> United States Department of the Interior, National Park Service. Director's Order #75A: Civic Engagement and Public Involvement" (November 14, 2003).

public” in its work may prove an opportunity for deliberative democrats to influence administrative responsibilities of the agency.

One of the real barriers to effective deliberative citizen participation, as well as generally improved performance of citizen participation programs across federal agencies, is the absence of inter-agency collaboration, knowledge-building, and knowledge-sharing across agencies. While numerous consulting firms, such as the International Association for Public Participation and Creighton and Creighton, have for years offered high quality training in the field of public participation to agencies, a tremendous amount of experience and knowledge remains within agencies or, perhaps worse, in the hands of external consultants. One gap, then, in the policy environment, is a nexus or coordinating agency for design, training, evaluation and evolution of public participation programs across federal agencies.

### **III. DELIBERATION IN PRACTICE**

*No strategic plan, policy, or program can be effective without a mechanism for citizen involvement (and dissent), even if funds are plentiful.*<sup>24</sup>

#### **Seven Practical Models of Face-to-face Deliberation**

Face-to-face deliberative forums are being carried out today in numerous settings, from civil society to government agencies. Examples of some of these experiments are given later in section four. Among the most promising methods for deliberative public participation in agency decisions are:

- *Study Circles* are employed as part of “democratic organizing efforts,”<sup>25</sup> which involve large numbers of people in diverse, small groups of 8-12 participants. These groups come together during the same period of time to develop solutions to a common concern. The community-wide study circles culminate in an “Action Forum” where all participants come together to develop an action strategy to solve a common problem. Study Circles have been used to discuss a range of issues including education, racism, and police relations in communities across the country.

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<sup>24</sup> Perlman, Janice. “Citizen Participation in City Planning and Development.” *The Mega-Cities Project* (Publication MCP-004, 2000): p. 3.

<sup>25</sup> <http://www.studyircles.org>

- *Local Issue Forums*, developed by the National Issues Forums Institute<sup>26</sup> (“NIFI”) and the Kettering Foundation, involve variously sized groups of citizens who come together to explore urgent public matters. Group members are polled at the end of the forum and results of the poll are made available to decision-makers. Local Issue Forums have been used to discuss a range of issues including gun violence, health care, genetically modified foods, and immigration.
- *Citizens Jury*, developed by the Jefferson Center,<sup>27</sup> brings together a scientific, random sample of 18 citizens who represent the population to discuss, in depth, a critical public issue. Participants are supplied with background materials, hear testimony from experts in related fields, are asked to weigh different points of views, and render a final decision about the best course of action. Citizen Juries have been used in communities across the country to address numerous state and national issues, including solid waste management, health care, climate change, and the federal budget.
- *ChoiceWork Dialogues*, developed by Viewpoint Learning,<sup>28</sup> is a public opinion research method that brings together a representative sample of 40 citizens to work through the choices and trade-offs decision-making on a public issue must address. Citizens are asked to explore issues and work out a mutually acceptable solution. ChoiceWork Dialogues incorporate the use of scenarios and emphasize values-oriented discussion as opposed to information seeking conversations. Recommendations from the group are supplied to sponsoring agencies. ChoiceWork Dialogues have been used to address a range of issues in the US and Canada, including land-use planning, state and local governance, health care, aging, and housing.
- *Consensus Conference*, developed by the Danish Board of Technology,<sup>29</sup> and introduced in the United States by the Loka Institute,<sup>30</sup> brings

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<sup>26</sup> <http://www.nifi.org>

<sup>27</sup> <http://www.jefferson-center.org>

<sup>28</sup> <http://www.viewpointlearning.com>

<sup>29</sup> <http://www.tekno.dk>

together a representative sample of 14 citizens in a “panel” to explore complex technical issues, usually those that relate to technology assessment and technology policy. Citizens and experts engage in question and answer sessions that are open to the public. Panelists then discuss the options before them and their recommendations are made available to key decision-makers in a report. While Consensus Conferences have been used in Denmark and elsewhere in Europe to impact policy on a range of technology-related issues, they have been used much less widely here, where their application has been limited to telecommunications and bio-engineering.

- *21st Century Town Meeting*, developed by AmericaSpeaks,<sup>31</sup> brings together a diverse, demographically representative sample of up to 4,000 citizens to discuss an issue and work through options in small groups. In addition to balanced background materials on an issue, experts and policy-makers are present to participate in table discussions. Through the integration of network laptop computers at each table and wireless keypad polling, results from table conversations can be shared with the entire group, prioritized, and voted upon. The 21st Century Town Meeting has been used to facilitate a nation-wide discussion on Social Security Reform, involve the public in planning the redevelopment of the World Trade Center Site in New York City, and as a biennial city-wide process for strategic planning in Washington, DC.
- *Deliberative Polling*, developed by the Center for Deliberative Polling<sup>32</sup> at the University of Texas, Austin, brings together a random, scientific sample of citizens (usually around 280) who have the opportunity to discuss issues in depth. Polled before coming together, the citizens participate in a series of structured small group conversations and Q&A sessions with experts. Participants are polled at the end of deliberations and the results are compared to calculate opinion change. Results provide decision-makers with a snapshot of how the public would be likely to respond if they had the opportunity to become informed about the issues.

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<sup>30</sup> <http://www.loka.org>

<sup>31</sup> <http://www.americaspeaks.org>

<sup>32</sup> <http://www.la.utexas.edu/research/delpol/>

Deliberative Polls have been conducted around the United States and the world, and have addressed a range of issues including U.S. foreign policy, health care, and municipal planning.

While each method has been applied in a range of community settings, few have had an explicit focus on impacting federal policy and decision-making. Only the Danish Consensus Conference, as it is applied in Denmark today, has formal relations with a government body, in this case the Danish Parliament. Organizers of each deliberative event must, on a case-by-case basis, forge their own relations with a governing body, usually but not always the sponsoring agency, to achieve any impact on policy and outcomes.

The methods outlined above have at least five features in common: a) use of “balanced” or “neutral” background materials; b) use of small group dialogue; c) emphasis on learning through exploration of competing perspectives on an issue; d) new knowledge is expected to inform individual and group recommendations on the issue or problem at hand; and e) “findings” from discussion are made available to community members and leaders in a final report. The next critical step in moving toward a more deliberative democracy is to adapt and institutionalize such practices in the administrative and management processes of federal agencies as well as decision-making bodies at the state and local level.

In the following pages, examples of limited efforts to inform government decision-making will be explored. The specific policy domains include land-use planning, budgeting, environmental regulation, and technology assessment. The final section, “Policy Formulation,” will examine four emerging federal policy efforts to expand the “sphere” of citizen influence in legislative and administrative policy-making.

### **1. Land-use Planning<sup>33</sup>**

Community design—as a movement embracing participatory planning—emerged from “a growing realization that mismanagement of the physical environment is a major contributing factor to the social and economic ills of the world and that there are better

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<sup>33</sup> For an excellent summary of the field of participatory public planning, see John Forrester (2001) [The Deliberative Practitioner](#) or for a review of standard methods, see Sanoff, Henry (2000) [Community Participation Methods in Design and Planning](#).

ways of going about design and planning.”<sup>34</sup> While planning has often sought public input on—or reaction to—design and planning proposals, these processes have not necessarily been deliberative, and therefore lack a critical element of the public response: a considered, shared assessment of the benefits and/or costs of specific proposals to the community at large, and compromise or new solutions identified and proposed by citizens. In *deliberative* planning processes, John Forester of Cornell University writes, “Citizens integrate the worlds of ‘is’ and ‘ought,’ of ‘science’ and ‘ethics,’ as they learn to get something done and what ought to be done in new and unique cases too.”<sup>35</sup>

In typical planning forums—such as workshops, public forums, focus groups and design charrettes—the general public, if involved at all, is provided a set of proposals and asked for feedback, most often in the form of individual testimony. These forums do not *necessarily* encourage or facilitate genuine public discussion of the proposals and their underlying concerns. The new “pragmatism” of participation in community design and planning—in a movement away from Sherry Arnstein’s classic normative description of public participation in terms of levels of “citizen power” or control of the process<sup>36</sup>—establishes the more modest goals of information exchange, conflict resolution, decreased feelings of community alienation, increase in public spirit, and an increase in feelings of public satisfaction with outcomes.<sup>37</sup> While these are substantially different ends than those sought by the staunchest of deliberative democracy proponents, they offer a good grounding upon which to build “stronger” deliberative mechanisms for citizen engagement.

Deliberation can add to participatory planning the explicit goals of *educating* citizens about planning and design factors and trade-offs, and qualitatively *improve* upon design and planning solutions with the recognition of “the importance of stories as elements of policy advice.”<sup>38</sup> These outcomes are achieved through carefully designed and facilitated forums that encourage the exchange of citizens’ and planners’ personally held

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<sup>34</sup> Sanoff, 2000: Page ix.

<sup>35</sup> Forester, 2001: Page 62

<sup>36</sup> Genuine participation is described as cooperation (partnership and delegation of power) and citizen control (empowerment) [Sanoff, 8].

<sup>37</sup> Sanoff, Henry. *Community Participation Methods in Design and Planning* (Hoboken, NJ: Jacob Wiley and Sons, 2000): Page 8.

<sup>38</sup> Forester, John. *The Deliberative Practitioner: Encouraging Participatory Planning Processes* (Cambridge, MA: MIT Press, 2001): Page 19.

information, listening, response, and the dialogue that builds understanding, and resolution, the outcomes of which are reflected in a final proposal.

When contrasted with traditional planning methods, the pay-offs of deliberation may be subtle yet practical. Again, Forester writes:

...Even sophisticated accounts in political science often ignore the real probing and *transformation of interests* that occur in political processes. In the design and planning professions, too, we may lapse into truisms of “compromise,” “fundamental” differences, and “trade-offs” as we fail to realize how *parties can learn, how their wants, interests, preferences, and priorities can shift and evolve* in planning and design deliberations [italics added].<sup>39</sup>

***Example 1: Listening to the City; New York, NY***

Perhaps the most outstanding example of a deliberative planning process began in New York in the wake of the collapse of the World Trade Center towers on September 11, 2001. Organized by the Civic Alliance to Rebuild Lower Manhattan, under the auspices of a partnership between the Lower Manhattan Development Corporation and the Port Authority of New York and New Jersey and with the guidance of AmericaSpeaks, “Listening to the City” was a year-long process to engage the public living in and around New York City in the redevelopment of the 16-acre site.

To date, this process has resulted in two community-wide meetings and several rounds of public hearings to evaluate proposals for redevelopment. The cornerstone to this process was a 4,000 person meeting held July 20, 2002 at the Jacob Javitz Center in mid-town Manhattan. This public “21st Century Town Meeting<sup>40</sup>” brought a cross-section of New Yorkers together with the city’s most prominent planners to discuss the recently released plans to redevelop the site. While the proposals were poorly received by the public, the meeting was enormously constructive in reshaping the priorities and comprehensiveness of the plans. In proposals released by the Port Authority and LMDC in early January, 2003, the influence of the July 20 meeting was clear: the plans reconnect the site with the rest of lower Manhattan. In addition to manifesting grand

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<sup>39</sup> Ibid., Page 62.

<sup>40</sup> The term AmericaSpeaks gives to its public engagement process

visions for replacing the architectural feat that was the World Trade Center, and providing for an adequate memorial, the plans accommodated new transportation infrastructure, reconnected the site with the street grid, sought to foster a “24 hour community,” encouraged residential and commercial development, provided cultural and recreation opportunities, and increased the amount of green space in the area.

Examples of participatory, deliberative planning abound and continue to grow. Not only are practitioners finding greater opportunity to apply deliberation within the planning field for their substantive and instrumental value, but also government agencies such as the Department of Transportation, Federal Highway Administration, and the Bureau of Land Management are incorporating public deliberation into the way they do business.

## **2. Budget Formulation**

Many cities and states today rely on the referendum process to involve citizens in budgetary matters. In the worst cases, this is simply a political maneuver to defuse contentious or difficult decisions politicians must make. At the other extreme, such initiatives risk over-influence by moneyed special interests. Instead of the punctuated, gravelly debates that often surround budget referenda, the participatory budgeting process developed in Brazil offers a deliberative, publicly spirited approach to engage citizens in the allocation of scarce financial resources.

One World Bank official has defined participatory budgeting (PB) broadly as, “The use of information by the public to affect revenue and expenditure decision-making.<sup>41</sup>” More specifically, participatory budgeting is a process in which citizens debate, analyze, prioritize, and propose public expenditures and investments to a municipal authority. To date, most experiments in PB have been conducted at the city level, with a few successes being ‘scaled up,’ as in the Brazilian example below, which has spread to affect budget processes in six other Brazilian states. In some cases, the PB process can also include public monitoring and evaluation of budget implementation. Stakeholders usually include the general public, particularly the poor and vulnerable groups, and organized civil society.

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<sup>41</sup> Vergara, Victor. WBI internal document (May 15, 2002)

The scholars Laura Baures and Magui Moreno Torres (World Bank) have identified three distinct stages of public expenditure management during which participatory budgeting can be applied<sup>42</sup>:

- *Budget formulation and analysis.* Citizens participate in allocating budgets according to priorities they have identified in participatory poverty diagnostics; formulate alternate budgets; or assess proposed allocations in relation to a government's policy commitments and stated concerns and objectives.
- *Expenditure monitoring and tracking.* Citizens track whether public spending is consistent with allocations made in the budget and track the flow of funds to the agencies responsible for the delivery of goods and services.
- *Monitoring of public service delivery.* Citizens monitor the quality of goods and services provided by government in relation to expenditures made for these goods and services, a process similar to citizen report cards or scorecards.

**Example 2: Orçamento Participativo (OP); Porto Alegre, Brazil**

In the case of the city Porto Alegre, the capital of Brazil's southernmost state, Rio Grande do Sul,<sup>43</sup> citizens play an active role in formulating the city budget during a year long process of structured deliberation. Since 1989, a substantial proportion of Porto Alegre's 1.3 million habitants have participated in the municipal budget process, which has both inspired other Brazilian states to do the same, as well as won the recognition of the United Nations as one of the 40 best practices of urban public management. Every year, approximately 50,000 area residents participate in the year-long budget process which has, since instituted in 1989, determined the investment of over \$1.6 billion Reals (about US\$480 million), a significant amount of which has directly benefited the poor.<sup>44</sup>

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<sup>42</sup> Excerpted from the World Bank participation guide, "Tools and Practices"  
<http://www.worldbank.org/poverty/empowerment/toolsprac/tool06.htm>

<sup>43</sup> Porto Alegre is also the home of the "City Congress," a city-wide public process that solicits citizen involvement in long-term city planning, with three goals: the redistribution of income, development of consensus in key areas of public policy, and the development of a city plan that is favored by the city's residents.

<sup>44</sup> When this author visited Porto Alegre in January, 2003 I had the opportunity to visit several projects identified by citizens and funded by the city. These include a waste recycling and composting site, a water treatment facility (funded in part by the World Bank), a community health clinic, youth community center, and very low income housing units. This author was impressed that, in addition to filling a need identified by the community, most projects required the participation of residents in the operation of the facility. For example,

The participatory budget, as enacted in Porto Alegre, evolves through two general phases: preparatory meetings and deliberative meetings. During the first phase of the PB, meetings occur in the city regions—of which there are 16, a division that occurred on the early years of the PB based on geographic, social and community organization criteria—where critical issues and themes are developed for the regional plenary and thematic meetings<sup>45</sup>. A second round of meetings during the first phase occurs also at the regional level, as large plenary meetings attended by the Mayor. At these ‘regional and thematic plenary’ meetings citizens elect their delegates to the city-wide meetings in phase two—the Municipal Assembly—and decide upon the primary themes the delegates will present.

Two critical meetings take place during phase two of the budget process. First, delegates from the regions present their themes and topics to the Mayor, ranked in order of importance. These items include public works projects and services chosen by the population to be implemented in the coming year. Between this first meeting of phase two, and the second, the government has the responsibility to analyze the recommendations and prepare a report back to the citizens on the technical and financial feasibility of their demands. During this time, a budget matrix is prepared, listing expenditure items, cost, and revenue streams. In the final meeting of the budget process (October to December) delegates have the opportunity to review the government’s analyses, confer and vote upon a final version of the Plan of Investments and Services.

Among the anticipated benefits of participatory budgeting is the assumption that “Increased citizen participation in budgeting can lead to the formulation of and investment in pro-poor policies, greater societal consensus, and support for difficult policy reforms. Experiences with participatory budgeting have shown positive links between participation, sound macroeconomic policies, and more effective government.”<sup>46</sup>

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the recycling and composting plant provided jobs for low-wage workers while the very low income housing units allowed most formerly homeless residents to purchase their homes for very low monthly payments.

<sup>45</sup> In order to encourage the participation of citizens linked to movements and civil society organizations, the PB established ‘thematic plenaries,’ organized around the following themes: City organization and Urban and Environmental Development; Circulation and Transportation; Health and Welfare; Education, Sports and Leisure; Culture; and Economic Development and Taxation.

<sup>46</sup> Baures, Laura and Torres, Magui Moreno.

<http://www.worldbank.org/poverty/empowerment/toolsprac/tool06.htm>

In addition to the Porto Alegre and wider Brazilian experience, participatory budgeting processes have been utilized in a number of different countries, including Ireland, Canada, India, Uganda, Brazil, and South Africa.

### **3. Environmental Regulation**

Numerous federal agencies have used multi-stakeholder and consensus processes to involve sectors of the public in resource management decisions. The efforts can be traced as far back as the Bureau of Land Management's call for public input in "Citizen Participation in Decision-making: A Challenge for Public Land Managers" (*Journal of Range Management*, 1973). In the document, the authors identify a growing demand for participation in government decision-making "throughout society". Subsequent work in this field has resulted in the creation of numerous "public participation" offices in a range of state and federal agencies involved in natural resource management. However, the definition and quality of citizen involvement is not subject to a common test, and the institutional capacity to make good use of information received from the public is anemic.

Rulemaking is an example of a process commonly used in environmental regulation. Rulemaking is a procedure through which federal agencies translate broad congressional legislation into specific regulations and generally takes place under requirements of the Administrative Procedure Act, which states "the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation."<sup>47</sup> The agency must respond to any substantive input. These requirements make rulemaking an attractive prospect for deliberative democrats, though few examples beyond the negotiated rule-making process exist.

One recent example of the failure of the rulemaking process to facilitate and make use of meaningful public input into the process is a public comment period initiated by the US Interior Department on the question of snowmobile access to Yellowstone National Park. Despite the receipt of more than 360,000 email comments *and* letters—80 percent supporting a ban on snowmobiles in the park—the Park Service has actually raised the limit on seasonal snowmobile access, opening Yellowstone to greater traffic in the coming years. This is no doubt frustrating for many citizens who sent in comments and

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<sup>47</sup> Administrative Procedures Act, Title 5 USC§551-59

can lead to increased feelings of alienation from government agencies. For the agency, in addition to any political issues—and the fact that rulemaking is not a vote—the dilemma is that the comment period has been neither mandated nor structured to serve as a survey of public opinion; for example, mail-in campaigns do not necessarily present a representative picture of the public opinion. In this situation a structured, deliberative forum could be of much greater value to the agency as well as more rewarding for the public.

At present, the government portal [regulations.gov](http://www.regulations.gov) has taken rulemaking online, and civil society groups like Information Renaissance<sup>48</sup> are making significant efforts toward suggesting ways to facilitate public involvement in rulemaking and to increase its deliberative aspects. It is hoped that in the future the deliberative comment processes will become a more inclusive and substantive part of the rule- and decision-making structure of Federal agencies.

***Example 3: Citizens Jury on Global Climate Change; Baltimore, MD***

A more deliberative example of federal agency efforts to involve the public in policy consultation is a May, 2002 U.S. Environmental Protection Agency, Global Programs Division partnership with the Jefferson Center to conduct a Citizens Jury<sup>49</sup> on Climate Change.<sup>50</sup> In this deliberation, 18 citizens representative of the population within a 35-mile radius of Baltimore, MD (which includes five states and the District of Columbia) were selected from a pool of 496 potential jurors to participate in a 5-day process that included expert witness testimony, citizen deliberation, and a report to the USEPA.<sup>51</sup> For purposes of fairness, accuracy, and legitimacy, the project was overseen by an Advisory Panel composed of 13 individuals highly knowledgeable about the issues surrounding global climate change. This group helped the Jury organizers identify key topics related to climate change, development of the agenda, and witness selection.

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<sup>48</sup> <http://www.info-ren.org>

<sup>49</sup> Citizens juries have developed autonomously in the United States and in Europe, most prominently the U.K. While there are some similarities between the two methodologies, a Citizens Jury refers specifically to the form developed by Ned Crosby and the Jefferson Center. The Citizens Jury process has been used in the United States since 1974.

<sup>50</sup> March 18-22, Baltimore, MD.

<sup>51</sup> The Jury pool was developed by telephone surveys of a randomly generated list of 963 names, 496 of whom were willing to be considered for a jury position.

According to the Jefferson Center, the Global Programs Division of the USEPA “Provides information to the public on environmental issues of global climate change and stratospheric ozone depletion. By observing how informed citizens absorbed information and developed the recommendations of [the] report, EPA hopes that [the] project will allow governmental agencies, business interests, and environmental groups interested in the topic of climate change to improve their science and communication materials.”<sup>52</sup>

The members of the Citizens Jury on Climate Change were asked to respond to three overarching “Charge” questions:

- What potential impact of global climate change (positive or negative) are most notable or of most concern?
- Is it likely or unlikely that global climate change will have significant impacts for human and/or natural systems?
- In your opinion, what steps, if any, should be taken to address climate change?

In addition to carefully prepared background materials, jurors were aided in their deliberations by “hearings” over three days that included the following elements: Scientific, Technology, and Economic Issues; Potential Impacts; Uncertainty; Mitigation and Adaption [Adoption? Adaptation?]Strategies; and Advocate Visions. The Jury’s findings were summarized by hand vote and in individual written surveys.

One weakness of this effort—and many other attempts to involve citizens in discussion of important policy matters—from a deliberative democracy standpoint is the failure to connect the outcomes of citizen deliberation to policy outcomes. In effect, as this case demonstrates, useful tools for citizen deliberation risk limitation, by agency intent, to “studies” of how better to communicate complex policy choices to the public at large. By contrast, such experiments are significant insofar as they demonstrate increased awareness within government of the substantive value of deliberative forms of citizen engagement. As these methods gain adherents within government, it is hoped that they will build capacity and credibility for more “empowered” forms of citizen involvement.<sup>53</sup>

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<sup>52</sup> Jefferson Center (2002), page1.

<sup>53</sup> Use of the term “empowered” is drawn from the definition developed by the scholars Archon Fung and Erik Olin Wright, in *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*. They define empowered as “[tying] action to discussion.” (Manuscript, 2001).

#### **4. Technology Assessment**

Citizen participation in the assessment of new technologies is a crucial, emerging area for work in the twenty-first century. The rate of technological change is accelerating, introducing new technologies into almost every facet of life, but also is increasingly controlled by private interests. Without much public debate—and even less oversight or autonomy—myriad technologies are working their way into Americans’ daily lives. For example, genetically modified organisms are increasingly a part of our food, cosmetics, and medical supply. Pathogens introduced through chemical and biological innovation in numerous sectors make their way into water, air, and soil systems. Proposals for alternative energies come and go. And computer automation continues to transform the way producers, retailers, and customers interact, with little public concern for the social trade-offs.

While many would aver that questions of technological innovation and its impact on society, economy, and the environment are too complex to put before average citizens for their consideration, proponents rebut such assertions in two ways. First, advocates draw attention to growing examples of successful citizen involvement in technology policy that are taking place in Europe, developing nations, and the U.S. A good example is the recent national “debate” in the UK on the use of genetically modified foods, which is expected to inform a report to various government agencies, among them the Food Standards Agency, the Department for Environment, Food and Rural Affairs (DEFRA), and the Parliamentary Office of Science and Technology.<sup>54</sup> Furthermore—and perhaps more compelling—deliberative democrats point to the central fact that most experts cannot reliably predict the impact and associated risk of many emerging technologies—the data doesn’t exist upon which to build reliable simulations and models. In such cases, the questions of technology policy often come down to questions of values and choices, risks and thresholds. In such areas, the public is quite able to learn the issues and make sound judgment.

#### ***Example 4: Citizens Forum on Genetically Modified Foods; NC State University***

In the US, one example of deliberative citizen engagement in technology policy issues grew out of a concern that, “the most pressing public policy issues we face today so often involve science and technology, and that average citizens often feel uninformed

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<sup>54</sup> A resulting decision in favor of GMO introduction has sparked widespread protest among civil society groups in the UK. For more information on these developments, visit: <http://www.foodfuture.org.uk/> and <http://www.organicconsumers.org/ge/ukuproar030804.cfm>

and ill prepared to contribute to finding solutions to those problems.”<sup>55</sup> The 2001 Citizens’ Technology Forum on Genetically Modified Foods—convened by the National Science Foundation and the Kenan Institute for Engineering, Technology, and Science—took place in the Summer and Fall of 2001 on the campus of North Carolina State University. The purpose of the study was as much to learn about how citizens deliberate complex scientific issues as to inform any interested federal agencies of “the informed” views of the public toward GMOs.

Organizers of the Forum chose to model their forum on the Danish Consensus Conference<sup>56</sup> model, with three primary questions in mind:<sup>57</sup>

- Would a consensus conference enhance the general public’s ability to influence technology policy-making?
- How would the exercise of striving to reach consensus on a complex issue affect the participants’ sense of trust in experts?
- How would an exercise in reaching a public consensus on a public policy issue involving technology differ from other instances—such as juries—when people attempt to come to a common judgment.

In addition to the traditional Danish Consensus Conference, the researchers at NCSU devised an analogous forum that would be conducted online, to provide a basis for comparative research on the differences in process and outcomes resulting from the two structures. To control the experiment, both forums addressed the same subject and involved the same experts; the primary difference was that in one group, deliberators would be together in the same room, while the online group would never encounter one another face-to-face. Prior to this experiment, only one Consensus Conference had ever been conducted in the U.S. (that on telecommunication mentioned earlier) and never had one been organized online. To conduct its online forum, organizers chose to use [www.facilitate.com](http://www.facilitate.com) for its “array of functions and controls” for their purposes. (Greater attention will be paid to the potential of the Internet and online environments for

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<sup>55</sup> Hamlett, Patrick; Miller, Carolyn; Macoubrie, Jane. “A Report on the 2001 North Carolina Citizens’ Technology Forum on Genetically Modified Foods,” (NCSU, 2001): page 1.

<sup>56</sup> <http://www.tekno.dk/subpage.php3?survey=16&language=uk>

<sup>57</sup> *Ibid.*, page 2

enhancing deliberative citizen engagement in policy-making in a later section of this report on the EPA Public Involvement Policy.)

The 2001 Citizens' Technology Forum was advised by an "oversight committee" responsible for the preparation of background materials and the selection of panelists. The committee was composed of interested professionals in the field, including a geneticist, a chemist, two science historians, a sociologist and a rhetorician.<sup>58</sup> Participants for the citizen panels were recruited through local newspaper ads, attracting 162 respondents. From this pool, 45 participants were selected, divided among the face-to-face group, the online group, and a control group for purposes of comparison. Overall, participants were selected to represent the demographic characteristics of the Research Triangle area in four ways: gender, age, ethnicity and education.

Prior to staging the Forum, organizers recruited a panel of experts that included geneticists, agronomists, biologists, a patent attorney, and a representative of an unidentified "activist group." Organizers also developed background materials drawn from government, university research reports, corporations, and activist groups. The oversight committee reviewed the background materials to ensure that they were accurate and free from bias. Finally, citizen panelists were administered a questionnaire that allowed researchers to understand how much participants learned and how their attitudes changed as a result of their deliberations.

The face-to-face forum took place over a total of seven days, spread between weekends in July, August, and September. Similar to other Danish-style consensus conferences, participants spent the first two weekends in "prep school," becoming acquainted with one another, the Forum process, and the issues. These prep sessions were managed by a professional facilitator, although it was the participants who "controlled the agenda and their [the?] issues that are examined."<sup>59</sup> By the end of their first two encounters, participants had drawn up a list of five issues important to them, and a list of five specific questions for the expert panel.

During the first day and a half of the actual "conference," experts spent their time responding to the specific questions panelists posed. During the second and third days,

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<sup>58</sup> Ibid., page 3.

<sup>59</sup> Ibid., page 4.

experts and panelists engaged in an open give and take, where panelists asked follow-on questions and were able to more deeply explore areas of specific concern. The remainder of the final day was spent in deliberation, with the assistance of the facilitator, during which panelists developed their report to government decision-makers.

Many of the findings of the Forum's consensus document reflect areas of concern for the broader public.<sup>60</sup> Forum organizers believe this correspondence, and the willingness of ordinary citizens to participate in such forums, should "reinforce for the sponsors of genetically modified foods and for governmental decision-makers just how important these concerns are to citizens." Perhaps with increased backing from agencies like the National Science Foundation, citizens' technology forums will hold greater promise as a mechanism for securing deliberative citizen involvement in technology policy.

### ***5. Policy Formulation***

While citizen deliberation in national-level agenda setting and policy formulation remains the most static arena, several policy frameworks exist through which to introduce—and strengthen—a deliberative interpretation of citizen participation in setting the national policy agenda and policy formulation. Most government agencies remain stuck within bureaucratic traditions inherited since the Federal Advisory Committee Act ("FACA") was passed in 1972 to govern the establishment of Executive Branch advisory committees, commissions, task forces, etc.

The growing voice of deliberative democrats, as well as the powerful chorus of civic renewal engagement advocates combined with the efforts of leading federal agencies like the U.S. Environmental Protection Agency have created the opportunity for a much richer conversation and increased opportunities for experimentation. Today there are several notable examples of initiatives within government to *formally seek*, even to *institutionalize* deliberative citizen engagement in policy-making. These efforts feature precedent-setting legislation in Congress, new advisory agencies, or institutional innovations within existing federal agencies.

#### ***Example 5: USEPA Public Involvement Policy***

In June, 2001 the United States Environmental Agency ("USEPA") convened "Public Involvement in EPA Decisions," a national online conversation intended to inform the

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<sup>60</sup> NCSU, 2001; page 6.

EPA's efforts to better involve the public in the agency's decisions. The new policy, entered into the Federal Register in June of this year, supplements existing EPA regulations that prescribe public participation requirements, attempting to expand the set of known process options available to EPA personnel, "particularly in environmental permitting and enforcement activities."<sup>61</sup>

To date, the EPA's Public Involvement Policy remains the federal government's most significant effort to create an enabling policy framework for the involvement of citizens in the policy formulation, one that suggests that the agency "...Strive to achieve public involvement that is commensurate with the potential impact of the activity."<sup>62</sup>

The EPA has identified 5 essential purposes for the new policy, which are:

1. Improve the acceptability, efficiency, feasibility and durability of the Agency's decisions.
2. Reaffirm EPA's commitment to early and meaningful public involvement.
3. Ensure that EPA makes its decisions considering the interests and concerns of affected people and entities.
4. Promote the use of a wide variety of techniques to create early and, when appropriate, continuing opportunities for public involvement in Agency decisions.
5. Establish clear and effective guidance for conducting public involvement activities.<sup>63</sup>

To the extent that EPA will be able to assess outcomes relative to the purposes of the policy, for example improving "the durability of decisions" through public involvement, will prove tremendously valuable to the field, which still lacks measurement instruments and empirical evidence to substantiate many of its broad claims around policy outcomes. It is unclear, at present, what resources, if any, the EPA will have to put toward such evaluation activities.

While one drawback of the EPA's involvement policy (for deliberative democrats) is that the policy does not make use of the term "deliberation" (instead relying upon the more process-neutral term "consultation"), the policy does state 11 goals for public

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<sup>61</sup> USEPA, "Public Involvement Policy of the U.S. Environmental Protection Agency" (Washington, D.C.: U.S. Environmental Protection Agency, Office of Policy, Economics, and Innovation, 2003): Page 2

<sup>62</sup> USEPA (2003): Page 7

<sup>63</sup> USEPA (2003): Page 2

involvement programs, goals that stack up nicely alongside the principal rationales for deliberation. For example, one goal is to foster, "...A spirit of mutual trust, confidence, and openness between the Agency and the public."<sup>64</sup> This neatly summarizes one of the pillars of the "social capital" rationale, which is to build civic trust throughout society. A second example is the policy's efforts to provide for input activities that "Learn from individuals and organizations representing various public sectors and the information they are uniquely able to provide."<sup>65</sup> Here the "substantive" rationale for public deliberation is clearly reinforced. What is interesting about the new involvement policy is that it positions that agency, through its programs, to "Use public input to develop options that facilitate resolution of differing points of view."<sup>66</sup>

The EPA's public involvement policy represents at least three important activities that should serve as a template for other federal agencies as they re-assess their public involvement guidelines. The first is the implementation of a broad effort to include the public at the front-end end of the policy discussion (the EPA's internet-based, "Dialogue on Public Involvement in EPA Decisions"<sup>67</sup>). Second, the EPA's involvement policy is broadly inclusive, balancing access requirements of citizens, states, tribes, local governments and other actors to its programs. Third, the EPA's involvement policy seeks to reconcile the existing statutory environment with the new aims and methods of an enhanced, expanded involvement policy. Importantly, the new involvement policy looks laterally to existing EPA program objectives and guidelines, for example its Environmental Justice (or "EJ") programs, and seeks to ensure complementarity.

***Example 6: Health Care that Works for All Americans Act (S.581)***

There are few better examples of the federal government—in this case, the United States Senate—seeking to formally bring citizens into the policymaking process than the process described in S.581 (formerly S.3063), better known as the "Health Care that Works for All Americans Act of 2002" introduced by Senators Ron Wyden (D-OR) and Orrin Hatch (R-UT). S.581, now contained as a title provision in the Medicare Reform Act of 2003, is an attempt to "break through" the log jam that is the national health care debate by involving "ordinary" Americans in a national conversation on health care, the formulation of a health care agenda by a health care "working group" and provide for a vote in

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid. Page 3

<sup>67</sup> Online at <http://www.network-democracy.org/epa-pip>

Congress on the recommendations of the working group, ostensibly the recommendations of the American people.

There are three key elements to the bill: the establishment of the Citizens' Health Care Working Group; Hearings, Community Meetings across the country, and Public Comment; and bill introduction, committee consideration and discharge, floor debate, and a vote.

The Citizens' Health Care Working Group will be composed of 24 members, drawn from many sectors, including the general public (e.g. a citizen with no health coverage, a citizen over 65), academia (e.g. an economist, health policy researcher, medical school representative), insurance providers, state health officials, employers (national and state) and health care providers. No more than 115 days after the appointment of the Health Care Working Group, the Working Group is to begin Congressional hearings that will examine, among other things, the capacity of public and private health care systems to expand coverage options; the cost of health care and the effectiveness of health care provided at all stages of disease, *but in particular the cost of services at the end of life*; innovative state strategies used to expand health care coverage and lower health care costs; and community solutions to health care coverage access.

Findings of the Health Care Working Group are to be summarized in a "Health Report to the American People," drafted in "accessible language," and distributed to citizens across the country. This report will provide a common basis for the essential "gem" of this proposal, which are nation-wide, community-based discussions about existing health coverage and reform options.

Community meetings are stipulated to begin around the nation one year after the enactment of the Health Care that Works for All Americans Act. There is no specific number of meetings to be held, but simply sufficient to achieve representation of geographic differences, diverse populations, and urban/rural balance. The Act does require that meetings be facilitated, at least one member of the Working Group be present, and recommends the use of interactive technology and other means to encourage public participation. The community meetings are to last 180 days.

Finally, the Act provides for a public comment period not later than 180 days after the community meetings have concluded. This comment period will be based on an interim set of recommendations developed by the Working Group and drawn from community input, to improve and strengthen the health care system. The public comment period is to last 90 days.

Based on the recommendations of the Health Care Working Group, submitted (with any legislative language recommended) to Congress and the President, the House Committee on Ways and Means, the Committee on Energy and Finance and the Committee on Education and the Workforce and the Senate Committee on Finance and the Committee on Health, Labor, and Pensions must draft legislative language (based on the recommendations of the Working Group) and submit this as a bill in the House for (by the Majority and Minority leaders) and Senate (by the Majority and Minority leaders) no later than 10 days after receipt of the language from Committee.

The language in the bill or implementing legislation will be referred to the appropriate committee in the House and Senate and must be discharged within 150 days of submission for debate on the floor (during which the usual rule apply) and then voted upon by the full House and Senate. . It is expected that this vote will provide a measure of accountability, at least responsiveness, on the part of legislators to the thought, effort, and concern carried by the American public, paving the way for substantive reform in health care coverage. If passed (a companion bill remains to be drafted and introduced in the House), not only will S.581 bring citizens into a critical national debate in a meaningful well, but could set a precedent for the way future legislation is drafted on crucial, if contentious, public policy matters.

***Example 7: The United States Consensus Council Act (S.908)***

A third promising development in the way the federal government conducts its policymaking business is the authorization of the United States Consensus Council Act of 2003 (S.908). This bill establishes a permanent not-for-profit entity, the United States Consensus Council ("USCC"), with the purpose of promoting consensus-based solutions to a wide range of important national public policy issues. In June this year, the bill was approved unanimously by the Governmental Affairs Oversight Committee and awaits a floor vote toward the end of September.

The agenda of the USCC is set by members of Congress and its bi-partisan, 12-member board composed of appointees from both branches of government. In general, the U.S. Consensus Council would contribute to, "resolving differences on contentious policy issues, preventing polarization on emerging policy issues, and addressing issues of complexity that involve multiple parties and perspectives."<sup>68</sup> The USCC's role in such situations would be to design and implement processes that build consensus around acceptable policy on a contentious issue. Meeting with key stakeholders over a period of time, the USCC would craft a set of policy recommendations that are favorable to all parties and forward this policy advice to the appropriate legislative or administrative body.

What is unclear in this process is the extent to which the U.S. Consensus Council will enlarge public participation in policy making, or serve existing large interests and advocacy groups already prominent in Washington policy-making networks. While the Consensus Council has a commitment to marginalized stakeholders it is unclear how these voices will be brought to bear on the issues the Council chooses to undertake, and whether they have sufficient clout in the first place to render obstacles that require intervention by the Council.<sup>69</sup> According to legislation, the Council will select issues based on the criteria of "degree of congressional interest in the issue, as well as issue complexity, cost, ripeness, likelihood of participation by key stakeholders, and any other relevant indices that may assist the Council in determining whether to enter into a particular consensus process."<sup>70</sup>

Even though it seems likely that the U.S. Consensus Council will utilize well-established multi-stakeholder, dispute resolution and consensus building processes—as well as develop its own methods to resolve policy disputes among government, corporate, and public interest actors—existing legislative language might allow more broad forms of public participation in two ways.<sup>71</sup>

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<sup>68</sup> S.908.RS United States Consensus Council Act of 2003. Report No. 108-110 (April 11, 2003): page 3.

<sup>69</sup> <http://www.usconsensuscouncil.org/>

<sup>70</sup> <sup>70</sup> S.908.RS United States Consensus Council Act of 2003. Report No. 108-110 (April 11, 2003): page 8.

<sup>71</sup> <sup>71</sup> Ibid., page 5.

The first is by defining the general interest citizen as a 'stakeholder', enabling their participation in "collaborative" and consensus-building processes referred to in the bill. Second is by developing or adopting existing methods that rely in substantial part upon broad citizen participation to be effective (including many, if not all, of the deliberative methods described in this report). Despite its potentially specialized involvement process, the bill remains important for its recognition of a need for new processes of consensus building, collaboration, and deliberation within the area of policy formulation; such an institution may ease the application of broader, citizen-based policy exercises in the legislative branch down the road.

***Example 8: Vaccine Policy Analysis Collaborative ("VPACE"); USCDC***

The National Vaccine Advisory Committee (NVAC), an advisory committee to the Assistant Secretary for Health in the Department of Health and Human Services, is currently reviewing the need for and the design of a new mechanism to increase public involvement in some vaccine policy decisions.

The proposed mechanism evolved from a sabbatical assignment requested within the National Immunization Program at the Centers for Disease Control amidst some concern around the lack of trust in CDC research being exhibited by some segments of the public. Furthermore, the immunization program risks becoming a victim of its own success as immunization levels have reached record highs and disease levels have plummeted or disappeared altogether: in these circumstances, citizens are less aware of the benefits of vaccination, can become more distrustful of vaccines because of the potential risks, and can become less likely to be vaccinated.

Early conclusions suggested that one way to reduce risk would be to create opportunities for the public and government officials to work together in identifying and analyzing options for some vaccine policy related questions. Such collaboration would simultaneously help to better inform government decisions and be trust-enhancing over time.

The development of this mechanism, known as the Vaccine Policy Analysis Collaborative (VPACE), was made possible by the work of a 40 member Wingspread Public Engagement Planning Group comprised of representatives of all of the key stakeholder

groups in vaccine decision-making, including health professionals, government agencies, industry, and representatives from three publics—the supportive public, the critical public, and the neutral public. The Wingspread group took its name from the Frank Lloyd Wright home converted into a conference center in Racine Wisconsin where the group first met to launch its collaborative effort.

VPACE is currently proposed as a three year demonstration project designed to conduct dialogue and collaborative deliberations on selected vaccine issues with representatives of both the general public and stakeholder groups. This effort intends to address specifically the subset of vaccine policy decisions in which both science and public values are in play. For these types of decisions, the relevance and benefit of public consultation are unquestionable, but still routinely lacking. VPACE was designed to provide a built-in real-world link to government decision making which is often missing in other public engagement models. This was assured by having the government rather than the VPACE group identify in advance the pending decisions which could benefit from public input. Also, a key feature of the new mechanism is that the government will provide feedback to the participants on the final decision taken and the principal reasons for the decision.

As a government sponsored mechanism, VPACE is designed to obtain public consultation without running afoul of the requirements of the Federal Advisory Committee Act by being constituted as a workgroup of an existing federal advisory committee. This structure will provide the needed flexibility for the group to operate while at the same time retain linkage to the official decision making structure. To maintain independence and freedom from undue influences of any group, the workgroup will do its fact-finding and information development under the auspices of a neutral third party organization such as the Institute of Medicine.

A report on the analyses and findings of the group will be written by VPACE members and will be directed to the National Vaccine Advisory Committee and the relevant federal agency or agencies which requested the consultation. The report will describe options with a discussion of pro and con considerations. The VPACE reports will not, the current proposal emphasizes, make recommendations nor any kind of statement about preferred options. According to the Wingspread document, “the role of VPACE will be to serve as a

conduit for meaningful and usable public input, which informs and adds value, but does not supplement, the work of existing committees.”

The ultimate purpose of this effort is to create an ongoing mechanism that can help to produce substantively better and more supportable decisions over the long term future of the immunization program in the United States, and at the same time create a less adversarial, less litigious, and more collaborative climate in which new immunization related issues are considered and implemented in the United States.

## **CONCLUSION**

Deliberative forms of citizen participation offer new methods for the public to interact, constructively, with government. In moving forward, what can be done to encourage deliberative forms of citizen participation in agency decision-making? Three recommendations include:

- *Involve citizens at the front end.* One of the fastest ways to alienate a population that cares about the future of their community or country is to suggest an agenda in which important decisions already seem to have been decided or that doesn't reflect their values and sense of priorities.

Speaking of economic development, the legal scholar Audrey McFarlane explains that community participation in, for example, agenda-setting, “necessarily raises the question of whether the goals are up for discussion. We must be willing to allow community participants to broaden the definition of economic development beyond business incentives and job training to include other human needs and services as defined by the community.”<sup>72</sup> The emphasis on economic development aside, the principle that citizens should have a say in setting the policy agenda, the parameters that define “what’s on and off the table,” and even question the present goals of the program is excellent.

- *Connect participation to action.* Provisions for deliberation must contain the means for “empowered” participation, involvement that impacts institutional decision-making and strengthens accountability. In today’s general climate of political mistrust, even apathy, citizens are not inclined to expend much energy

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<sup>72</sup> In McFarlane 2000/2001: 930.

on “rubber stamping” and simply “going through the motions” of participation. Citizens want a real shot at influencing the decisions that mean something to them.

- *Develop tools to measure value.* Deliberative democrats have limited tools with which to measure the quality, impact, and effects of deliberation. This is especially true when questions about the economic, political, and civic value, or contribution, of deliberation are raised. Federal agencies are especially well positioned to collect and evaluate, if not an historical analysis, data about the benefits of participation over the obstacles presented by traditional, often antagonistic processes. Collaboration with deliberative practitioners will yield valuable information about the short- and long-term benefits (or lack thereof) of deliberative forms of citizen participation, and the circumstances in which it is most beneficial.
- *Provide means for sustained involvement.* While one-shot deliberative efforts can be powerful catalysts for community change, citizen participation ultimately needs to be connected to processes that monitor and evaluate implementation. While numerous cities have been experimenting with “scorecards,” “benchmarking” and other monitoring schemes, without an enforcement mechanism, such efforts at community involvement will do little if policy outcomes are steered off course, or partners back out of their commitments. Thus mechanisms for ongoing involvement in a self-correcting implementation processes must be set up to ensure that the vision, motivation, and ends of citizen participation are not lost.
- *Create a mechanism for building, collecting, and sharing knowledge.* Federal agencies, while accountable for different outcomes, often rely upon similar tools and processes for public participation. There is a range of public participation practices employed across federal agencies, with little shared knowledge of “best practices” and the tools for measuring success. Opening channels for interagency collaboration (as well as learning from international experiences with deliberative forms of citizen engagement) and developing systems for collecting and sharing knowledge, can improve multiple dimensions of agency performance.

In the end, at present, there is no legally protected space for public deliberation as an instrument of policy-making. While there are limited—if growing—opportunities for public participation, the goals of these activities are not clearly and consistently defined (much less applied), nor do common tests of “good practice” exist. Thus leaders in government must be found who will work to create opportunities for deliberation as part of an unabashed effort to kindle the fires of a truly democratic nation.

Observing the kinetic spirit that characterized American life during the late 18th century, Alexis de Tocqueville wrote:

Democracy does not give the people the most skillful government, but it produces what the ablest governments are frequently unable to create; namely an all-pervading and restless activity, a super-abundant force, and an energy which is inseparable from it, and which may, however unfavorable circumstances may be, produce wonders.<sup>73</sup>

This paper is a call for the “restless activity”, the hum of democratic activity exemplified by deliberative citizen participation efforts. Federal officials are encouraged to begin a dialogue across agencies that will both question and bolster public participation practices in government. Ultimately this paper invites federal officials to make a lasting contribution to the legacy of American democracy by engaging the community deliberative democracy practitioners in a growing swell of experiments that redefine “public involvement.”

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<sup>73</sup> In McFarlane 2000/2001: 910.