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# The New Governance: Practices and Processes for Stakeholder and Citizen Participation in the Work of Government

*Leaders in public affairs identify tools and instruments for the new governance through networks of public, private, and nonprofit organizations. We argue the new governance also involves people—the tool makers and tool users—and the processes through which they participate in the work of government. Practitioners are using new quasi-legislative and quasi-judicial governance processes, including deliberative democracy, e-democracy, public conversations, participatory budgeting, citizen juries, study circles, collaborative policy making, and alternative dispute resolution, to permit citizens and stakeholders to actively participate in the work of government. We assess the existing legal infrastructure authorizing public managers to use new governance processes and discuss a selection of quasi-legislative and quasi-judicial new governance processes in international, federal, state, and local public institutions. We conclude that public administration needs to address these processes in teaching and research to help the public sector develop and use informed best practices.*

Leaders in public affairs education say that the watchword for the next millennium is *governance*. They identify horizontal networks of public, private, and nonprofit organizations as the new structures of governance as opposed to hierarchical organizational decision making. We argue here that there is another face of the new governance, one that involves the citizenry—the tool makers and tool users—and the processes through which they participate in the work of government.

Practice is leading theory in developing processes for the new governance. As they meet their obligations to execute our public laws, public agencies engage in activities that range from the legislative or quasi-legislative to the judicial or quasi-judicial. Quasi-legislative processes in the new governance include deliberative democracy, e-democracy, public conversations, participatory budgeting, citizen juries, study circles, collaborative policy making, and other forms of deliberation and dialogue among groups of

stakeholders or citizens. Quasi-judicial processes include alternative dispute resolution such as mediation, facilitation, early neutral assessment, and arbitration. These new

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processes are increasingly important to the operation of international, national, state, and local public institutions. The academic field of public administration, however, is lagging behind practitioners in the attention paid to these practices. This deficit can be found both in public administration research and teaching.

Both quasi-legislative and quasi-judicial new governance processes require analogous skills from public administrators, including convening, conflict assessment, negotiation, active listening and reframing, facilitation, and consensus building. Scholars seem to agree that public managers need skills in collaboration, negotiation, and facilitation; what has not been addressed as clearly is how public managers might use these skills. Under what circumstances, at what point in the policy-making, implementation, or enforcement process, and with whom do managers negotiate? How does one best coordinate multiple players and stakeholders in indirect government and networks? How and when does a public manager attempt to engage the public and how broadly? Which forms of citizen or stakeholder engagement are most effective? To understand the new governance, we cannot simply examine tools; we must understand the role of humankind—the citizens, stakeholders, and public administrators who are the tool makers and tool users. To move toward answering these and other important questions, we also must understand the legal framework that supports the new governance processes.

In this article, we maintain that the new governance involves not simply tools but also practices and processes for people to participate in the work of government. With many others, we argue that public managers ought to facilitate greater citizen engagement in the work of government. We assess the existing legal infrastructure authorizing public managers to use new governance processes. We then catalogue a selection of quasi-legislative and quasi-judicial new governance processes in international, federal, state, and local public institutions. We assert that the field of public administration needs to address new governance processes in both teaching and research to help the public sector develop and use informed best practices. We conclude that governance is not simply about elected representatives making value, policy, and tool choices that agencies implement, whether through older, vertical command-and-control or newer, horizontal networked structures; it is crucially about the processes that public managers, citizens, and stakeholders use in determining what shape policy, its implementation, and its enforcement will take.

## The New Governance

The concept of governance has been explored in many academic fields, including political science, public administration, policy making, planning, and sociology (Kooiman

1993; Lynn and Ingraham 2004; March and Olsen 1995; Peters 1996; Rhodes 1997; Rosenau and Czempiel 1992). Although both share goal-oriented activities, *governance* and *government* are not synonymous terms. Government occurs when those with legally and formally derived authority and policing power execute and implement activities; governance refers to the creation, execution, and implementation of activities backed by the shared goals of citizens and organizations, who may or may not have formal authority and policing power (Rosenau 1992). As an activity, governance seeks to share power in decision making, encourage citizen autonomy and independence, and provide a process for developing the common good through civic engagement (Jun 2002).

Although governance has been in the academy's vocabulary for quite some time, recently it has taken on increased importance. Fredrickson has observed that public administration is moving "toward theories of cooperation, networking, governance, and institution building and maintenance" in response to the "declining relationship between jurisdiction and public management" in a "fragmented and disarticulated state" (1999, 702). Frederickson emphasizes institutionalism, public-sector network theory, and governance theory as relevant to the future of public administration research. He defines institutionalism as pertaining to "social constructs of rules, roles, norms, and the expectations that constrain individual and group choice and behavior" (703); public-sector network theory as pertaining to "structures of interdependence" that have "formal and informal linkages that include exchange or reciprocal relations, common interests, and bonds of shared beliefs and professional perspectives" (704–5); and governance theory as occurring at the institutional, organizational or managerial, and technical or work levels, including formal and informal rules, hierarchies, and procedures and influenced by administrative law, principal–agent theory, transaction-cost analysis, leadership theory, and others (705–6).

Kettl observes that the forces transforming governance are "the diffusion of administrative action, the multiplication of administrative partners, and the proliferation of political influence outside government's circles" (2002, 159). Kettl also points to the need for improved skills in negotiation and coordination (163). While understanding the use of hierarchy and authority, public administrators also must manage complex networks, rely more on interpersonal and interorganizational processes, use information technology and performance management effectively, provide transparency, build human capital in terms of negotiation and coordination skills, provide channels for citizens to participate, and supply bottom-up accountability to the public (2002, 169–70).

Network theory also clearly suggests a greater need for negotiation skills (for a review, see Berry et al. 2004).

Agranoff and McGuire have documented the emergence of networks for collaborative management, which they define as “the process of facilitating and operating in multi-organizational arrangements to solve problems that cannot be solved, or solved easily, by single organizations” (2003, 4). They distinguish collaborative from cooperative: Although both entail working jointly to solve a problem, cooperation has an additional dimension of helpfulness and the absence of hostility. They argue that there are abundant collaborative mechanisms available, that their use varies across cities based on structural and administrative considerations and economic and political imperatives, and, finally, that there is a wide variety of collaborative arrangements in practice. Agranoff (2003) suggests that managers operate somewhat differently in networks than in traditional hierarchical organizations because networks are self-organizing, members come to the table voluntarily, and members come from different organizational cultures. Their decision processes may vary from adopting an agenda to taking some action, but “[the] decision comes as a result of *shared learning* experiences in which the product is the creative solution that emanates from the discussion.... [D]ecisions that create winners and losers, most zero-sum situations, discourage involvement and *contribution*. These concerns make clear why so few of the networks make many hard and fast core policy/program decisions. It is also clear that consensus is the mode of agreement” (21).

In *The Tools of Government: A Guide to the New Governance*, Salamon defines the new governance as a framework recognizing “the collaborative nature of modern efforts to meet human needs, the widespread use of tools of action that engage complex networks of public and private actors, and the resulting need for a different style of public management, and a different type of public sector, emphasizing collaboration and enablement rather than hierarchy and control” (2002, vii). Salamon uses the term “governance” at the suggestion of Fredrickson (1997), who includes within it the processes for policy formation and implementation, not only Salamon’s tools and technology for government. Salamon observes that public management is necessary even when indirect tools replace direct command-and-control approaches. He acknowledges that public management for the new governance requires a new emphasis on certain skills: negotiation and persuasion, collaboration, and enablement, which includes activation, orchestration, and modulation skills. Activation is obtaining the participation of networks. Orchestration is persuading the players to collaborate. Modulation is providing enough incentive to elicit cooperative behavior without giving away the store. However, the processes through which human tool makers, tool users, and public managers might exercise these skills are not clear.

## The Role of the Public and Stakeholders in the New Governance

Frederickson (1991) identifies five theories of the public for public administration: the public as interest group (pluralist), consumer (public choice), represented voter (legislative), client, and citizen. Direct individual citizen participation in governance as we contemplate it here does not appear to be included in any of these other than the public as citizen, although earlier works in which Frederickson and others participated (such as the Minnowbrook conference of 1969) did discuss this possibility (Marini 1971). Much of the literature of the last 20 years that views the citizen as client also seems to view the public as passive, existing on the receiving end of services or representation. As Radin and Cooper put it, the client conception is, at best, “a benign form of paternalism” (1989, 167).

Frederickson (1991) argues that a general theory of the public must be based on four requisite elements: the Constitution, an enhanced notion of the virtuous citizen, systems and procedures for responding to the collective and inchoate publics, and benevolence or public service in the greater good. The virtuous citizen is one who understands the founding documents (the Constitution), believes in American regime values as natural rights, takes individual moral responsibility, and exercises civility, including forbearance and tolerance in discourse.

Stivers (1991) points out that the text of the Constitution does not contemplate direct participation by citizens, but the founding conversation between federalists and antifederalists did. For the new nation to succeed, the antifederalists sought to foster citizen virtue through the “close links between the government and its people” that were thought to create an informed citizenry. Contemporary commentary, however, suggests there are costs, inefficiencies, and a loss of effectiveness associated with direct citizen participation. Stivers argues for a commonsense definition of effectiveness that encompasses “two-way mechanisms of responsiveness and accountability between public administrators and citizens” (421).

Smith and Ingram (2002) address the importance of stakeholder and citizen participation in Salamon’s new governance. They observe that tool choice is a developmental activity, and they call for the expansion of citizen participation or engagement (the “franchise”) and the scope and authenticity of democracy. They do not, however, identify what forms participation might take.

Scholars have called for public administration as a field to recognize an enhanced role for the public in the governance process (Radin and Cooper 1989; Ventriss 2002). A group of authors associated with the Blacksburg Manifesto point to the central obligations of public administrators who sit in the midst of a three-way constitutional conflict in

our representative form of governance. They argue there are flaws in representation such that affording citizens an independent voice will both enhance the legitimacy of decision making and improve trust and perceptions of government (Wamsley et al. 1990). Indeed, public administrators have a unique opportunity to become the direct conduit for the public's voice in policy making, implementation, and enforcement by "establishing and maintaining horizontal relationships of authority with [their] fellow citizens, seeking 'power with' rather than 'power over' the citizenry" (Cooper 1984, 143).

Although public administration as a field has explored deepening the role of the citizen in governance, scholars in political science, law, political philosophy, and sociology also have engaged in a discussion about the role of the citizen in a healthy democracy (APSA 2004; Dryzek and List 2003; Gutmann and Thompson 1996; Macedo 1999; Polletta 2002). A number of these scholars have argued that citizen deliberation, as either a means or an end in itself, will strengthen democracy. The APSA report recommends that we encourage citizens to participate in decisions that affect their lives and that we need new governance institutions, particularly at the local level, to facilitate this (103).

In sum, there have been repeated calls to public administration as a field to both fulfill its obligations in democracy and to pursue its self-interest by finding new ways to listen to the public's voice through stakeholder and individual citizen participation in governance. We need, however, more guidance on how, when, and with whom to engage. Box (2001) cautions us that citizens who choose to participate may be a small percentage looking to shape public action for private purposes. This caution raises numerous questions. How can public administrators fulfill mandates to engage citizens and stakeholders in ways that enhance the legitimacy of governance? What are the forms and best practices for citizens and stakeholders to participate in the new governance?

Some information about addressing these challenges can be found in work on alternative dispute resolution (ADR), though ADR has largely been ignored in mainstream public administration. The next sections of this article will show that a legal infrastructure for these processes already exists at all levels of government. Moreover, new governance processes or mechanisms can be understood as quasi-legislative and quasi-judicial within that legal infrastructure. Information about these processes may begin to provide guidance in answering these questions for public managers.

## Public and Administrative Law and New Governance Processes

The Constitution itself is silent on the processes for governance. However, the legal infrastructure for new governance processes already exists at the federal level, and it is developing rapidly at the state and local levels of government. Administrative agencies are sometimes thought of as a fourth branch of government in which judicial, legislative, and executive functions from the other three are collapsed (Rosenbloom 2003). They have substantial discretion to choose among different governance processes under the Administrative Procedure Act (APA; 5 U.S.C. §§551 *et seq.*; Rosenbloom 2003, 6–7). This federal statutory framework also helps to clarify certain fundamental connections to governance that unify quasi-legislative and quasi-judicial fields of practice, which have evolved independently in a variety of contexts but require public administrators to use certain shared skill sets.

### The Administrative Procedure Act and Its Amendments

The APA was a substantial breakthrough in the public's right to know about and participate in the processes of governance in federal administrative agencies. It encompasses formal and informal agency action (Rosenbloom 2003). Formal agency action can take the form of rulemaking or adjudication. In rulemaking, agencies create general rules of prospective application. Rulemaking generally involves published notice and an opportunity for members of the public to comment, although generally not through an oral evidentiary hearing (Cooper 2000; Kerwin 1999; Rosenbloom 2003; Rosenbloom and O'Leary 1997). In adjudication, an agency determines individual rights through a retrospective examination of evidence and facts; formal adjudication under the APA involves an adjudicatory hearing before an administrative law judge with many of the requisites of procedural due process, such as notice and the right to confront and cross-examine witnesses, present evidence and argument, and receive a written decision stating reasons. Informal agency action, rulemaking, and adjudication together provide for agency action across the entire policy cycle, from policy making and implementation to enforcement. Their nexus with the policy cycle connects these processes to each other and to governance.

The APA fundamentally altered the relation of citizens and stakeholders to the governance activities of administrative agencies. Its requirement of publication made the work of government more transparent. Through public notice and comment in rulemaking, it created an explicit and legitimate voice for citizens. Through adjudication, it assured stakeholders they would have a voice and be heard before government substantially interfered with their in-

terests in life, liberty, or property. However, these more traditional governance processes also limit the participation of individuals, organizations, and groups. An agency may choose to conduct a public hearing only after it has already made basic decisions about a policy proposal (Thomas 1995, 115). An administrative law judge may limit what witnesses want to say because some of it may be inadmissible as evidence (Cooper 2000, 211).

Relatively recent amendments to the APA substantially expanded the forms and opportunities for participation. After the U.S. Environmental Protection Agency and Army Corps of Engineers (among other agencies) engaged in experiments with alternative processes for a decade or more, Congress passed twin amendments to the APA and then made them permanent in 1996. These were the Negotiated Rulemaking Act of 1996 (NRA; 5 U.S.C. §§561, *et seq.*) and the Administrative Dispute Resolution Act of 1996 (ADRA; 5 U.S.C. §§571, *et seq.*). Since Congress passed these statutes, there has been dramatic growth in the use of new governance processes in the federal government (Senger 2003; see also [www.adr.gov](http://www.adr.gov), the gateway for all information on ADR in the federal government).

Administrative agencies function in certain ways that are analogous to each of the three branches of government. We use the term *quasi-legislative* to identify agency actions that are synoptic, prospective, and general in application and that set standards, guidelines, expectations, or rules and regulations for behavior. Traditional rulemaking can meet these criteria, particularly for substantive or legislative rules (Rosenbloom 2003, 59). The NRA addresses one quasi-legislative new governance process, regulatory negotiation, in which an agency convenes a group of 25 or fewer stakeholders to negotiate the text of a proposed draft rule or regulation for subsequent public notice and comment (Kerwin 1997). However, the ADRA also contemplates quasi-legislative processes when it authorizes agencies to use alternative dispute resolution (Bingham 1997; Breger, Schatz, and Laufer 2001). Environmental governance makes extensive use of quasi-legislative new governance processes such as mediation, facilitation, consensus building, and collaborative policy making to make, implement, and enforce environmental policy (Durant, Fiorino, and O'Leary 2004; O'Leary and Bingham 2003). Democratic processes entailing dialogue and deliberation among citizens also usually represent quasi-legislative activity. These processes can help a community to envision its future growth and development (Myers and Kitsuse 2000), help citizens to clarify their own policy preferences, help citizens to engage in civil and rational discourse on the best policy choice, or bring citizens and stakeholders to consensus on policy proposals (McAfee 2004).

The term *quasi-judicial* usually refers to agency action that is retrospective, fact based, and determines the rights

or obligations of selected citizens or stakeholders rather than those of the general public. This includes the entire range from informal adjudication of the kind that a school principal engages in when he or she disciplines a student to formal adjudication under the APA triggering the 10 due process procedures (including notice, right to present evidence, confrontation and cross-examination of witnesses, oral argument, legal counsel, written decision stating reasons) enunciated in the landmark Supreme Court decision *Goldberg v. Kelly* (397 U.S. 254 [1970]). Under the ADRA, quasi-judicial new governance processes include mediation, facilitation, minitrials, summary jury trials, fact finding, and binding and nonbinding arbitration (Bingham 1997; Bingham and Wise 1996).

Conflict among interested parties occurs in almost all public decision making, policy making, implementation, and enforcement. By moving away from interest group competition toward consensus building, these new governance processes serve as mechanisms for cooperation and coordination among diverse and often rival participants in the policy process. As a result, these processes may increase the likelihood of a stable agreement and may contribute positively to participants' sense of justice, fairness, and the perceived legitimacy of the institutions involved.

## **The Model State Administrative Procedures Act and the State Legal Infrastructure for New Governance Processes**

Consistent with federalism, these legislative innovations in the federal APA have no application to state or local agencies. Each state adopts its own framework for state administrative procedure. The Model State Administrative Procedure Act (MSAPA, 1981) reproduced in Carter and Harrington (2000, 609–27) is silent on ADR and negotiated rulemaking. However, in states that have adopted it, administrators usually have implicit authority to use these processes through their power to enter into contracts. Moreover, most states have adopted the MSAPA's general provisions authorizing informal disposition or settlement of cases (§1-106; Carter and Harrington 2000, 610), allowing agencies to establish advisory committees (§3-101; Carter and Harrington 2000, 613), and requiring agencies to adopt rules for informal procedures available to the public (§2-104; Carter and Harrington 2000, 612). All of these provisions provide authority for the kinds of informal, consensus-oriented processes that characterize the new governance.

In the absence of express statutory authorization, binding arbitration, a form of private judging, may raise concerns about the unconstitutional delegation of agency regulatory power to private decision makers (Bingham 1997).

However, generally none of the other new governance processes pose this problem because they are all predicated on agency agreement to the process and to any binding outcome. Moreover, as long as agencies subsequently follow other, more formal procedures for notice and comment to adopt negotiated draft regulations, there is no inherent conflict between traditional rulemaking and negotiated rulemaking, even in the absence of express statutory authority. In addition, the new Uniform Mediation Act (see [www.mediate.com/articles/umafinalstyled.cfm](http://www.mediate.com/articles/umafinalstyled.cfm)) provides express authority for government use of mediation in section 2(6). A number of states have already adopted this uniform act (for example, Illinois).

Many states expressly authorize all state agencies to use new governance processes, either through amendments to their state APAs or by executive order (such as Massachusetts). As of this writing, there are six comprehensive state offices of dispute resolution, 38 offices focusing on courts, and 34 offices in universities and nonprofits (see [www.policyconsensus.org](http://www.policyconsensus.org)). State legislation on ADR and negotiated rulemaking ranges from the short and broad to the long and specific. For example, New Mexico simply authorizes agencies to use ADR, whereas Texas and Florida have legislation analogous to the federal ADRA and NRA. More common is a general authorization as part of a state administrative procedure act. Indiana authorizes state agencies to use mediation, provided that mediators have the same training as mediators for state courts. New Jersey adopted dispute resolution and negotiated rulemaking through the attorney general's power to adopt additional administrative procedures, and these provisions appear in the state administrative code.

In addition to these general authorizations, there are myriad specific legislative authorizations for certain state agencies to use particular processes for certain substantive policy work. For example, mediation is a common method for addressing conflicts arising out of special education placements and programs at the state level. State environmental agencies may have the power to use mediation for particular land-use disputes, such as deciding on sites for landfills. Despite their variation in means, the end is the same. States increasingly are authorizing and encouraging state and local governments to use both quasi-legislative and quasi-judicial alternative governance processes.

## The New Governance in Practice

Although scholars have studied the transformation of governance through globalization, devolution, and networks, and they have argued for a greater role in governance for the public, practitioners have developed a rich diversity of processes that use negotiation, mediation, facilitation, citizen and stakeholder engagement, delibera-

tion, collaboration, and consensus building within the statutory frameworks reviewed here. This is the other face of the new governance. These processes are in widespread use at the international, national, state, and local levels of governance and in intersectoral networks crossing jurisdictions. They encompass uses in all major policy areas.

Quasi-legislative new governance processes include deliberative democracy, e-democracy, public conversations, participatory budgeting, citizen juries, study circles, collaborative policy making, and other forms of deliberation and dialogue among groups of stakeholders or citizens. They also can occur in focus groups, roundtables, new forms of town meetings, choice work dialogues, cooperative management bodies, and other partnership arrangements.

These processes vary on a number of salient dimensions, including the degree to which they include the general public, occur in a public space, foster genuine deliberation, foster relational or rational discourse, are empowered by government, and have a tangible outcome (Fung 2003a, 2003b; Fung and Wright 2001; Ryfe 2002; Torres 2003; Williamson 2004). For example, they may include selected stakeholders with communities of interest or place deliberating in a private, confidential forum, or they may involve a cross-section of the electorate in a mass public process (Williamson 2004). Smaller, more informal processes, such as public conversations or study circles, may focus on relational communication and storytelling exchange to build trust, whereas larger public processes may involve a predetermined structure and favor logical, rational discourse over relationship building (Ryfe 2002). The processes may seek deliberation as an end in itself or aim to provide specific policy recommendations to government (Torres 2003).

Their object may vary with their point of connection to the policy process (Fung 2005). For example, Kettering's National Issues Forum model helps citizens to clarify their own preferences through informed deliberation in small groups on specific action choices related to a public policy issue (McAfee 2004). In contrast, deliberative polling assists elected decision makers in fulfilling their representative function by informing them what the policy preferences of a representative sample of the general public would be if they had sufficient information and time to deliberate on the issue (Ackerman and Fishkin 2004). AmericaSpeaks's 21st Century Town Meeting also uses a large, representative sample of citizens (and sometimes illegal aliens), but its function is somewhat different. Participants in this forum develop policy choices through their deliberations rather than choosing from predetermined ones ([www.americaspeaks.org](http://www.americaspeaks.org)).

Quasi-judicial new governance processes include mediation, facilitation, minitrials, summary jury trials, fact finding, and binding and nonbinding arbitration (for a

review of the domestic field and applied literature on conflict resolution processes in employment, education, family, environment, courts, criminal justice, and community contexts, see Jones 2004). In mediation, an impartial third party with no stake in the outcome assists the parties in negotiating a voluntary resolution or settlement (Moore 2003). In facilitation, an impartial third party assists multiple stakeholders in a group or groups in deliberating and negotiating an agreement or outcome (Gray 1989; Schwartz 2002). Minitrials involve an abbreviated presentation of evidence and argument to the disputants' senior decision makers, who then attempt to negotiate a settlement. Summary jury trials involve presenting an abbreviated case to a mock jury for its deliberation and fact finding. Fact finding involves an impartial third party who conducts an informal hearing, collects evidence, and issues a decision on that evidence, which the parties use as the basis for further negotiation. Forms of arbitration are essentially private judging (Bingham 1997). All of these processes provide new ways for citizens and stakeholders to participate in agency action—for example, its effort to enforce public law.

These quasi-legislative and quasi-judicial processes

share deep commonalities not only with each other, but also with the new governance. Conflict is intrinsic to policy and decision making; as the number of participants in decision making increases, so too does the number of positions, interests, values, and points of view. All of these processes enhance the individual exercise of voice, empower citizens and stakeholders in ways that are different from traditional governance processes, and focus on interests rather than rights. All of these processes seek to involve citizens and stakeholders in dialogue about conflict. And all of them connect people to the policy process, whether “upstream” in policy making, “midstream” in policy implementation, or “downstream” in policy enforcement.

During deliberation in quasi-legislative processes, participants consider multiple points of view, think critically about problems and potential solutions, and, in certain processes, try to render collective decisions that best meet the public good. Most facilitated deliberations require a public space and entail interest-based negotiation, consensus building, active listening, and conflict-resolution skills to be successful and productive. Conflict-resolution skills, practices, and processes can contribute to the quality of deliberation by assisting participants in expressing their

**Table 1 Examples of Emerging New Governance Processes**

<b>International</b>	<p><b>Quasi-legislative processes:</b></p> <ul style="list-style-type: none"> <li>• See generally Bingham and Prell (2002)</li> <li>• North American Free Trade Agreement negotiations</li> <li>• European Union Human Rights Convention negotiations</li> </ul> <p><b>Quasi-judicial processes:</b></p> <ul style="list-style-type: none"> <li>• South Africa Truth and Reconciliation Commission hearings (Gibson and Gouws 2003)</li> </ul>
<b>Federal</b>	<p><b>Quasi-legislative processes:</b></p> <ul style="list-style-type: none"> <li>• See generally Ackerman and Fishkin (2004); Breger, Schatz, and Laufer (2001); Federal Interagency ADR Working Group (<a href="http://www.adr.gov">www.adr.gov</a>); Senger (2003)</li> <li>• Negotiated rulemaking (Coglianese 2003; Dalton 2001; Harter and Pou 2001; Kerwin 1997)</li> <li>• AmericaSpeaks, Americans Discuss Social Security discourse (see <a href="http://www.americaspeaks.org">www.americaspeaks.org</a>); Ryfe 2002)</li> </ul> <p><b>Quasi-judicial processes:</b></p> <ul style="list-style-type: none"> <li>• See generally Bingham and Wise (1996); Senger (2003); GAO (1995, 1997)</li> <li>• Canadian employment dispute resolution (Zweibel, Macfarlane, and Manwaring 2001)</li> <li>• U.S. Postal Service REDRESS mediations (Bingham 2003)</li> </ul> <p><b>Mixed quasi-legislative and quasi-judicial processes:</b></p> <ul style="list-style-type: none"> <li>• Conflict resolution activities of the U.S. Institute for Environmental Conflict Resolution (see <a href="http://www.ecr.gov">www.ecr.gov</a>; O'Leary and Bingham 2003)</li> </ul>
<b>State</b>	<p><b>Quasi-legislative processes:</b></p> <ul style="list-style-type: none"> <li>• Florida, Idaho, Maine, and Texas negotiated rulemaking, regulatory negotiation or consensus-based rules</li> <li>• Massachusetts, Ohio, Oregon, and Washington watershed management planning using dispute resolution professionals (Leach and Sabatier 2003)</li> </ul> <p><b>Quasi-judicial processes:</b></p> <ul style="list-style-type: none"> <li>• California (Lipsky, Seeber, and Fincher 2003), New York (Seeber et al. 2001), North Carolina worker compensation processes (Clarke 1997).</li> <li>• Ohio (Hebert 1999) and South Carolina (Youngblood, Trevino, and Favia 1992) wrongful discharge processes</li> <li>• Kansas (Varma and Stallworth 2002) and Massachusetts (Kochan et al. 2002; Lipsky, Seeber, and Fincher 2003) discrimination complaint processes</li> </ul>
<b>Local</b>	<p><b>Quasi-legislative processes:</b></p> <ul style="list-style-type: none"> <li>• See generally Berry, Portney, and Thomson (1993); Agranoff and McGuire (2003)</li> <li>• Los Angeles Neighborhood Participation Project (<a href="http://www.usc.edu/sppd/npp">www.usc.edu/sppd/npp</a>)</li> <li>• New England Town Meetings (Williamson 2004)</li> <li>• AmericaSpeaks Listening to the City forum to discuss proposals to redevelop Ground Zero (<a href="http://www.americaspeaks.org">www.americaspeaks.org</a>)</li> <li>• Kettering National Issues Forum (Ryfe 2002)</li> <li>• District of Columbia participatory budgeting (<a href="http://www.americaspeaks.org">www.americaspeaks.org</a>)</li> </ul> <p><b>Quasi-judicial processes:</b></p> <ul style="list-style-type: none"> <li>• Community mediation (<a href="http://www.nafcm.org">www.nafcm.org</a>)</li> <li>• Victim-offender reconciliation programs (<a href="http://www.voma.org">www.voma.org</a>)</li> </ul>

preferences and reconciling differences in them. So, too, there is deliberation during quasi-judicial conflict-resolution processes such as mediation and facilitation in policy implementation and enforcement as participants exchange viewpoints, rational arguments, and personal narratives to explain their positions and interests. Table 1 provides examples of how new governance processes are emerging in each level or sector of governance.

One area where new governance processes have taken a particularly strong hold is in environmental policy. This makes sense because the ideals of public participation have long been central to the environmental movement. Public participation in environmental governance may have its roots in the United States, but over the last two decades, it has branched out across the world. Focus groups, policy dialogues, multistakeholder forums, roundtables, cooperative management bodies, and environmental partnerships of all kinds have evolved at levels from the international to the local, and include participants from government, civil society, the private sector, and the general public (O'Leary, Nabatchi, and Bingham, 2005; Durant, Fiorino, and O'Leary 2004).

New governance processes have been used in efforts to forge an international consensus on environmental policy. In numerous international conferences, nations have negotiated a variety of conventions, protocols, declarations, agreements, and other texts providing substantive guidance on the obligations of nations in relation to the environment. For example, the Rio Earth Summit held in Brazil in 1992 focused primarily on the environment and issues related to sustainable development. In total, 172 governments participated in the conference, along with more than 2,400 representatives of nongovernmental organizations (NGOs). While the Earth Summit produced several documents, Agenda 21 is perhaps the best known. Agenda 21, adopted by more than 170 governments worldwide, is a comprehensive plan of action for sustainable development. The goal was for Agenda 21 to be taken up globally, then nationally and locally, by organizations of the United Nations, governments, and major groups in every area in which humans affect the environment (UNDSEA 2004). In this sense, Agenda 21, along with other international environmental agreements, represent a quasi-legislative effort at environmental governance.

One major problem in international environmental law is the lack of a single entity with jurisdictional authority to engage in monitoring and enforcement. For this reason, many international environmental agreements provide enforcement mechanisms requiring the use of dispute-resolution processes, generally moving from consensual negotiation to mediation with the assistance of a third-party neutral, to a quasi-judicial binding or advisory arbitration process before a named forum or before other arbitrators

to be designated by the disputants (Bingham and Prell 2002). These enforcement mechanisms represent governance processes at the quasi-judicial end of the spectrum.

These examples illustrate the broad use of quasi-legislative and quasi-judicial new governance processes across every level and sector of government and governance. These processes are becoming increasingly important methods for addressing policy formulation, implementation, and enforcement.

## A Research Agenda for New Governance Processes

There is a developing body of literature on negotiation, dispute resolution, collaboration, environmental conflict resolution, consensus building, and deliberative democracy to which a diverse array of scholars from many different disciplines are making substantial contributions; their work has been published in journals in public affairs, political science, public policy, planning, sociology, social psychology, economics, conflict resolution, and law, among others. Advocates argue that new governance processes promote increased collaboration among government, business, civil society, and citizens; enhance democratic decision making; and foster decisional legitimacy, consensus, citizen engagement, public dialogue, reasoned debate, higher decision quality, and fairness among an active and informed citizenry. They contend that these processes promote individual liberty while maintaining accountability for collective decisions; advance political equality while educating citizens; foster a better understanding of competing interests while contributing to citizens' moral development; and orient an atomized citizenry toward the collective good.

A legal framework supporting the use of quasi-legislative and quasi-judicial new governance processes exists at the federal level and is rapidly developing at the state and local levels. Nevertheless, there are many major unanswered or underresearched questions involving these new governance processes. Do new governance processes achieve these objectives? If so, how? If not, why? Starting points for research and theory development include the following:

- Choice of process: What factors should inform public administrators' strategic choices among the wide array of processes? What criteria do public administrators need to consider? Which processes should be used, to what end, and under what circumstances for effective and constructive outcomes?
- Timeliness: At what point(s) during the public policy cycle are new governance processes best used and most effective? How do the processes differ in terms of participation, representation, outcomes, and effectiveness when used at various stages of the policy cycle?



- **Quality of process:** Are the processes genuinely deliberative, consensus building, interest based, transformative, or otherwise empowering? What constitutes true dialogue? Are there various levels of the criterion of interest? What factors affect the quality of the process? How do variations in the structure or design of a process affect its outcomes? What are the experiences of participants before, during, and after the process? How does scale affect process?
- **Equality and representation:** To what degree do participants have true equality in terms of knowledge, participation, power, and authority during the processes? What factors affect the decisions of individuals to participate? How does this affect representation, diversity, and inclusion? Who loses in these processes? How do these processes affect the discretion, power, and control of administrators and other public decision makers?
- **Connections to the policy cycle:** How do processes differ based on where they occur in the policy cycle and the goals for their use? Are they most effective in helping citizens to clarify preferences early in policy development, in choosing among concrete policy options later, or in enforcing policy after choices are made? How does context shape process? Which processes fit best at various stages of the policy cycle?
- **Impact:** What are the policy outcomes from these processes? Are outcomes substantively different? Do these processes enhance democratic accountability, deliberative capacity, civic learning, individual empowerment, personal efficacy, conflict-management skills, or citizen participation? How do these processes affect participants' perceptions about the legitimacy of policy, the policy cycle, and government?
- **Implementation:** How, and how effectively are decisions from these processes translated into real action? Are outcomes stable and sustainable over time? How, and how effectively do deliberative, citizen, or stakeholder bodies or participants monitor the implementation of decisions?
- **Institutionalization:** Given the many years of practice, why are these processes not used more frequently? What steps need to be taken to institutionalize these processes?

This is undoubtedly an incomplete list of research questions. Apart from the need for a better understanding of these processes for its own sake, there is the question of how to guide the developing practice of new governance processes. Anecdotal evidence and idealism together give rise to claims that research and policy analysis may or may not support in part or in full. Critical to the evolution of these processes is a partnership between practice and research based on theory. The academy can and should play a key role. A growing number of scholars are joining the call for more work on these critical research questions (see the Collaborative Democracy Network, [www.csus.edu/ccp/](http://www.csus.edu/ccp/)

and its call to scholars, early drafts of which we helped to prepare). The academy can inform work on the ground, and practice can ground the work of the academy. In the absence of field and applied research, these practices may fail to achieve their full potential for changing the role of citizens and stakeholders in governance.

## A Call for Curriculum Development

At best, public administration programs provide their students with instruction in negotiation skills and, to a lesser extent, alternative dispute resolution. Traditional public participation may be covered in a separate course or as part of courses on public and administrative law. There is no systematic incorporation of information about quasi-legislative and quasi-judicial new governance processes across the curriculum. However, practice is ahead of research and theory. Government agencies are hiring consultants to teach them how to do governance. Public administrators are thinking creatively about how to engage the public in deliberative democracy and collaborative decision making. Schools of public administration and public affairs owe it to future public managers and administrators to provide better training in these processes. These skills are essential to effective functioning in the new horizontal and networked governance structures.

## Conclusion

What we have not addressed here is why these new governance processes are emerging *now*. We like to think they are a natural, evolutionary human response to complexity. Policy preferences, implementation, and enforcement cannot be adequately represented by simple binary machine and computer metaphors. There are contexts in which right or wrong do not yield an answer because the question is *how*. Public affairs education needs to do more to prepare public administrators for this complexity. These new governance processes can help them build partnerships with citizens and stakeholders to do the work of government. There is surely enough to go around.

Citizens can and must play an important role in public policy and decision making. Citizens have the right to decide what is important to them and how they can best achieve their objectives. Existing quasi-legislative and quasi-judicial new governance processes provide ways to engage individual citizens, the public, and organized stakeholders in the work of government. Public administration practitioners and scholars must reengage the public in governance, recognize the special duty we have to citizens, and move our research and teaching agendas in a direction that supports these new governance processes to address the fundamental imperatives of democracy.

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