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## Citizen Participation Certification for Community Development: A Reader on the Citizen Participation Process edited by Patricia Marshall

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# Book Review

CITIZEN PARTICIPATION CERTIFICATION FOR COMMUNITY DEVELOPMENT: A READER ON THE CITIZEN PARTICIPATION PROCESS. Edited by Patricia Marshall. Washington, D.C.: National Association of Housing and Redevelopment Officials, 1977. pp. 204. \$9.50.

*Reviewed by Melvyn R. Durchslag\**

Only thin smoke without flame  
From the heaps of couch grass;  
Yet this will go onward the same  
Though Dynasties pass.<sup>1</sup>

I have read this book before, five, maybe ten years ago. I read this book yesterday and will undoubtedly read it tomorrow, or maybe next week. And the court in *North City Area-Wide Council v. Romney* was at least right about one thing—"the end appears nowhere in sight."<sup>2</sup>

Before explaining my conclusion that the book is indeed "thin smoke without flame," some extended apologia is appropriate. The essence of democracy is the right of citizen participation. But ours is a "republican form of government"<sup>3</sup>—one in which participation is through elected representatives whose constituency extends beyond the individual. Apparently, however, we have never fully accepted our elected representatives' ability to make all our governmental decisions. Why this is true I leave to others, at least for the moment. But certainly it is not an outgrowth of "Watergate"; it is far more ingrained and complex than that. The fact remains, however, that we do not trust the decisionmaking of our government officials, particularly when those decisions, by their very nature, affect us specifically and in our individual capacities. Community development decisions are of that genre. They entail judgments about whose land will be appropriated and whose will not; who will receive rehabilitation loan funds and who will not;

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1. T. HARDY, "In Time of 'The Breaking of Nations,'" in *SELECTED POEMS OF THOMAS HARDY* 75 (J.C. Ransom ed. 1960).

2. 469 F.2d 1326, 1328 (3d Cir. 1972).

3. U.S. CONST., art. IV, § 4.

who will be displaced and who will not; who will receive tax abatements and who will not; whose property will suffer the environmental consequences of an adjacent public housing project and whose will not. Here we cry out for a participation different in kind and in scope from that demanded by other decisions.

But the fact brings us little closer to the reason. If it were clear why we demand direct public participation in community development decisions, it might be rather simple to devise an effective model. However, as Professor Judy Rosener's worthy contribution notes:

federal and state citizen participation mandates continue to proliferate, yet they remain vague and ambiguous. They contain few standards that indicate the form that participation should take or how to distinguish between the quantity and the quality of the participation that is required. There is confusion over how to involve citizens and how to measure the effectiveness of involvement assuming it can be generated.<sup>4</sup>

Yet her comment is incomplete. We generally do not require direct citizen participation in the day-to-day activities of a government; we elect *and pay* people to represent us. Indeed, a great deal of time, energy, and expense is spent to ensure that those who are elected in fact are representative of those who elect them.<sup>5</sup> We assume that if the process is pure, we can safely leave the day-to-day administration of government to others. Notwithstanding the Chief Justice,<sup>6</sup> this is true even under "town hall" systems, where citizen decisions are normally limited to budgetary and guideline decisions, leaving to elected and appointed representatives the tasks of implementation. While there is something in our collective psyche which mistrusts planning at the same time we crave it, we also generally trust to often highly paid professionals the responsibility of planning within the framework established by our elected representative bodies and of assisting those bodies to establish appropriate legislative guidelines for the future. Direct cit-

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4. Rosener, *Citizen Participation: Tying Strategy to Function*, in *CITIZEN PARTICIPATION CERTIFICATION FOR COMMUNITY DEVELOPMENT: A READER ON THE CITIZEN PARTICIPATION PROCESS 58* (1977) [hereinafter cited as *CITIZEN PARTICIPATION READER*]. See also Erber, *Conflicting Concepts of Citizen Participation*, in *id.* at 19-23.

5. See, e.g., *Avery v. Midland County*, 390 U.S. 474 (1968); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

6. See Chief Justice Burger's likening of voter approval of zoning changes to traditional New England "town hall" governments in *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 672-73 (1976).

izen participation is the exception, not the rule.<sup>7</sup> Thus, as a first step it would seem necessary to develop a rationale for that kind of participation. This is particularly true in the area of community development when individual responses to redevelopment plans are more likely than not to be based either on a "don't gore my ox" philosophy or its converse, "if X is going to benefit, I must as well."

Unfortunately, we are sorely short on guidance. Congress' first urban renewal legislation, the Housing Act of 1949,<sup>8</sup> contained only the requirement that "no land for any project to be assisted under this title shall be acquired by the local public agency except after public hearing. . . ."<sup>9</sup> One can search the committee reports in vain for a reason why this provision was inserted. All we have is a statement by Senator Cain, who offered the provision as a floor amendment, that "public hearings are as American as they can be."<sup>10</sup> As likely, the provision was designed to minimize the possibility of collusion between local government and those whose lands were to be acquired, thus protecting the integrity of the federal grant. Excepting the Model Cities legislation discussed below, the 1949 Act's public hearing requirement remained as the only statutory basis for direct public participation until the Housing and Community Development Act of 1974.<sup>11</sup> Citizen participation snuck in the back door after Congress enacted the "workable program" requirement in the Housing Act of 1954.<sup>12</sup> Why the then Housing and Home Finance Agency imposed by regulation<sup>13</sup> a citizen participation requirement under a statutory scheme which said nothing about it is a mystery. There

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7. Compare the statement by the United States Conference of Mayors reproduced in a minority report to the Economic Opportunity Act of 1964: "[A]ny Federal legislation that is to involve local citizen action . . . must clearly place responsibility for program development and execution with responsible local government . . ." H.R. REP. NO. 1458, 88th Cong., 2d Sess. 74, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2900, 2968.

8. Pub. L. No. 81-171, 63 Stat. 413 (current version at 42 U.S.C. §§ 1441-1490g (1976)).

9. *Id.*, 63 Stat. 417 (current version at 42 U.S.C. § 1445(d)(1976)).

10. 95 CONG. REC. 4864 (1949). Many disagreed; the amendment passed by only eight votes.

11. Pub. L. No. 93-383, 88 Stat. 633 (1974) (codified at 42 U.S.C. §§ 5301-5317 (1976)).

12. Ch. 649, § 303, 68 Stat. 590, 623 (1954) (current version at 42 U.S.C. § 1451(c) (1976)).

13. U.S. DEPT. OF HOUS. & URB. DEV., URBAN RENEWAL HANDBOOK, RHA 7294.1, ch. 1, at 2 (1968). Present regulations, promulgated pursuant to the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301-5317 (1976), can be found at 24 C.F.R. § 570.303 (1978).

is certainly nothing in the official legislative reports to indicate that Congress had in mind a condition of direct public participation when it required that a city develop a workable program.

The Demonstration Cities and Metropolitan Development Act of 1966<sup>14</sup> did require some direct community participation as a condition of the grant.<sup>15</sup> But about all one can derive from its legislative history is a statement indicating an *executive* purpose to "mobilize local leadership and private initiative so that citizens will determine the shape of their new city. . . ."<sup>16</sup> Like the citizen's participation component of the Economic Opportunity Act of 1964,<sup>17</sup> the statutory requirement of widespread community participation in Model Cities seems to have been made by agency staff (many of whom had recently moved from OEO) and more or less blindly accepted by Congress.<sup>18</sup>

In 1974, Congress finally codified what had been HUD's regulatory policy for twenty years. The Housing and Community Development Act of 1974 requires (1) that citizens be provided with adequate information concerning the amount of funds available and the range of activities that might be undertaken; (2) that public hearings be held to obtain the views of citizens; and (3) that citizens have an adequate opportunity to participate in the development of the application.<sup>19</sup> Again, however, the official reports reflect no rationale for the specific statutory provisions. The Senate report, which discusses the statutory provision, bypasses the rationale; having done that it necessarily bypasses the structure. "[A] number of methods could be utilized by localities in meeting

14. Pub. L. No. 89-754, 80 Stat. 1255 (current version at 42 U.S.C. §§ 3301-3374(k)(1976)).

15. By its terms, the statute merely provides that:

A comprehensive city demonstration program is eligible for assistance . . . only if

. . . .

. . . the program is of sufficient magnitude to . . . provide educational, health, and social services necessary to serve the poor and disadvantaged in the area, *widespread citizen participation* in the program, maximum opportunities for employing residents of the area in all phases of the program, and enlarged opportunities for work and training. . . .

42 U.S.C. § 3303(a)(2)(1976) (emphasis added).

16. H.R. REP. NO. 1931, 89th Cong., 2d Sess. 5, *reprinted in* [1966] U.S. CODE CONG. & AD. NEWS 3999, 4003. The legislative history also recognizes the ultimate authority of the city's elected officials by requiring that the city demonstration agency be a public body subject to the control of the local legislature. *Id.* at 4006.

17. Pub. L. No. 88-452, 78 Stat. 508 (1964) (current version at 42 U.S.C. §§ 2701-2981 (1976)).

18. Burke, *The Threat to Citizen Participation in Model Cities*, 56 CORNELL L. REV. 751, 756-61 (1971).

19. 42 U.S.C. § 5304(a)(6) (1976).

the requirements of the bill for adequate citizen participation . . . [but] . . . it would be unwise . . . to frame a single model for citizen participation . . . ."<sup>20</sup> The 1977 amendments are more specific, requiring that the city present a written citizens' participation plan, that citizens have an opportunity to submit comments to the application, and that citizens' comments on the implementation of the plan be included in HUD's review process.<sup>21</sup> Beyond that, however, the Act and its legislative history establish neither a rationale nor a model for citizen participation.

So we are back to space one, without a clear legislative rationale for direct citizen participation. It is possible, of course, to conjecture<sup>22</sup>—to conceive the rationale as being simply a matter of encouraging a greater information flow. That would seem implicit in HUD's regulations and in some authors' comments in the book.<sup>23</sup> The premise, I guess, is that the more information one has the better one is able to make decisions. That is a hard proposition to deny in the abstract, but there are some obvious limitations. First, the process of obtaining the information may be time consuming and at a point not worth its cost. Second, the greater the amount of information from divergent sources the more difficult it may be to divine a consensus. Third, the more personal the reactions to the plan, the less likely it is that those reactions are going to be valuable to the planning process. The last point has particular significance, for in any community development en-

20. S. REP. NO. 93-693, 93d Cong., 2d Sess. 57, reprinted in [1974] U.S. CODE CONG. & AD. NEWS 4273, 4326-27. Some say that was wise. See Erber, *supra* note 4, at 19.

21. Community Development Act of 1977, Pub. L. No. 95-128, 91 Stat. 1111, 1115 (1977) (amending 42 U.S.C. § 5304(a)(6) (1976)). The regulations require more specificity, but only because they set standards by which a city's citizen participation plan will be judged. 24 C.F.R. § 570.303(c) (1978). The standards, however, are general and relate more to who shall participate and over what time period than to the method by which participation should occur.

22. Many have. See, e.g., P. MOYNIHAN, MAXIMUM FEASIBLE MISUNDERSTANDING (1970); Levin, *HUD Programs and Citizen Participation: A Widespread Search for Involvement*, in PUBLIC PLANNING AND CONTROL OF URBAN AND LAND DEVELOPMENT 195 (D. Hagman ed. 1973); Babcock & Bosselman, *Citizen Participation: A Suburban Suggestion for the Central City*, 32 LAW & CONTEMP. PROB. 220 (1967); Berger & Cogen, *Responsive Urban Renewal: The Neighborhood Shapes the Plan*, 1968 URB. LAW. ANN. 75; Note, *Citizen Participation in Urban Renewal*, 66 COLUM. L. REV. 485 (1966); Comment, *Public Participation in Local Land Use Planning: Concepts, Mechanisms, State Guidelines and the Coastal Area Management Act*, 53 N.C.L. REV. 975 (1975).

23. See Hoover, *The Planning Balance Sheet as a Public Participation Tool*, in CITIZEN PARTICIPATION READER, *supra* note 4, at 127-33; Rosener, *Citizen Participation: Tying Strategy to Function*, in *id.* at 60-61; Webb & Hatry, *The Uses of Citizen Surveys*, in *id.* at 118-22; Yin, *Goals for Citizen Involvement: Some Possibilities and Some Evidence*, in *id.* at 50-52.

deavor some individuals will be better off and some worse off, irrespective of what we conceive to be the "public good."

More fundamentally, requirements of legislative approval<sup>24</sup> ought to raise some questions at least about why the *federal government* dictates a *local* governmental process by requiring that the information flow be directly from the citizens to the professionals responsible for preparing the plan. Why, for example, aren't legislative hearings sufficient, particularly given the recent proliferation of "Sunshine Laws?"<sup>25</sup> Certainly the oft cited phrase that those who are most affected by governmental decisions ought to have a voice in those decisions only begs the question. Maybe it is as Professor James Q. Wilson suggested—a matter of legislative competency.<sup>26</sup> While broad constituencies give legislators a citywide perspective, enabling them to make judgments about long-term benefits and costs, for the same reasons they may be peculiarly unable to translate those concepts into "specific threats and short-term costs."<sup>27</sup> Or maybe direct citizen participation is simply "good," thus making its absence "bad." In any event, the book, whether by design or accident, fails to inquire into, much less analyze, that basic question.

Reading the book, I felt like a conferee listening to one individual after another, in five minutes or less, expounding on what is wrong with existing systems of governmental decisionmaking, followed by more individuals, one after another, expostulating on what should be done about it, with little effort to relate the two to each other or to any agreed upon theory of citizen participation. In short, the book was boring, uninformative, and lacking in any hard analysis. On one hand, Ms. Sherry Arnstein offers a piece<sup>28</sup> preaching the same 1960's rhetoric about citizen participation which, more than anything else, led to the demise of Model Cities. At the other extreme, Dr. Anthony Downs suggests that citizen participation ought to have as its major function the attraction of private capital into the redevelopment process and as such ought

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24. See, e.g., 42 U.S.C. § 1455(a) (1976) (Urban Renewal); *id.* § 3303(a)(5) (Model Cities). While the Housing and Community Development Act of 1974 itself is silent on the issue, the regulations require approval by the local legislature. 24 C.F.R. § 570.307(b)(1978).

25. See, e.g., OHIO REV. CODE ANN. § 121.22 (Page 1978).

26. Wilson, *Planning and Politics: Citizen Participation in Urban Renewal*, in *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY* 414 (J.Q. Wilson ed. 1966).

27. *Id.*

28. Arnstein, *A Ladder of Citizen Participation*, in *CITIZEN PARTICIPATION READER*, *supra* note 4, at 40-49.

to encourage as much participation by the corporate community as possible,<sup>29</sup> maybe at the expense of neighborhood people. No attempt is made to resolve or, indeed, rationalize these two polar positions. Rather, the book jumps to a series of thoughts on the various approaches to citizen participation that have been or might be adopted. These range from Delphic methods<sup>30</sup> (which are really not citizen participation methods at all) to surveys,<sup>31</sup> to cable TV, tied to a computer or otherwise.<sup>32</sup> All of this takes about 130 pages but adds little more to the sum and substance of human knowledge than the table appended to Professor Rosener's article, listing on one page thirty-nine possible citizen participation techniques and rating them according to fourteen possible criteria.<sup>33</sup> In short, the book, like Congress, leaves the reader with his or her own reasons for direct citizen participation in community redevelopment programs. And without some resolution of that issue, all of the "how do you do *it*" material is essentially valueless—we are still at sea about what *it* is.

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29. Downs, *What Most Communities Are Now Doing About Citizen Participation in Community Development—And Why Some Changes Are Needed*, in *id.* at 30–39.

30. Northeastern Illinois Planning Commission, *The Delphi Process and Nominal Group Technique*, in *id.* at 124–26.

31. Webb & Hatry, *supra* note 23.

32. *A Look into the Future with Participatory Cable T.V.*, in CITIZEN PARTICIPATION READER, *supra* note 4, at 168–70; *The Potential of Computers in Participation Programs*, in *id.* at 171–75.

33. Rosener, *supra* note 4, at 66.