

**Public Participation and Shaping Urban Development:  
The Case of the Atlantic Yard and Nets Arena Project in  
Brooklyn**

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## Public Participation and Shaping Urban Development: The Case of New Atlantic Yard Nets Arena Project in Brooklyn

Communities throughout New York City are facing unprecedented development pressure as the city's population and economic growth continue. These pressures are exacerbated by environmental damages to neighborhoods in the past and by potential future stresses. Many communities lack the resources to hire the technical expertise necessary to influence development activities in their neighborhoods. They find themselves overwhelmed by the resources that developers can devote to developing plans and proposals.

Environmental impact assessments of proposed projects are required by law, and New York City provides significant opportunities for public participation in development processes. Developers have become expert at tapping into a network of expertise to project the impacts of their proposals. These analyses are typically technically competent and methodologically defensible, but frequently biased toward the positive impacts of development. The analysts are being paid by the developers and not by the community and emphasize the values that the developer seeks to maximize, such as the economic benefits of the project, rather than the impact of the project on the quality of community life. As a result, many development processes that could result in community improvement are halted as communities organize around an agenda of refusal. In other cases, developers are able to dominate the development process and force an ill conceived project on an uninvolved community. This paper will examine the case of a sports facility, housing and commercial development project development in New York City with the goal of understanding steps that could be taken to facilitate more constructive dialogue between developers and communities. In 2005 and 2006 three major development projects with sports facilities at their core were proposed in New York City: (1) The West Side of Manhattan Olympic-Jets Stadium; (2) The Nets arena and Atlantic Yard development in Brooklyn and (3) The construction of a new Yankee Stadium in the Bronx. We will analyze the Nets case in detail.

This paper provides background on New York City's land use development process requirements and then presents a case study of sports facility development processes in New York City. The paper:

- Discusses the issue of representation theory and linkage of the public to unelected leaders.
- Summarizes the land use review process and opportunities for citizen participation.
- Details the level, intensity and direction of community involvement in the case.
- Discusses additional processes that might encourage constructive community participation.

In an increasingly crowded and interdependent world, people have gotten more sensitive about land use development issues. The issue of environmental justice has reached the political agenda because rich people are better able to defend themselves against environmental insults than poor people. In the United States, local politics in many places has become the politics of land use and development. This paper will examine the issue in one city and raise issues that could be analyzed in other cities in the United States.

## Representation Theory and Community Based Political Demands about Development

While sports facility development requires the leadership of elected leaders, it tends to be dominated by unelected leaders such as New York City's Deputy Mayor for Economic Development, Dan Doctoroff. Citizens living near these proposed facilities rely on elected representatives and traditional routes to provide political input, but they also seek direct avenues of participation. This section of the paper analyzes the role of such participation in our system of representative governance here in the United States.

There are two key concepts of a collaborative process: communication of "system needs" (elite-to-mass communication) and articulation of mass needs and wants (representation). Representation is a complex and multidimensional phenomenon. Various scholars have seen fit to interpret it in strikingly different fashion. According to Charles A. Beard and John D. Lewis, the origin of representative government can be traced to Europe in the Middle Ages. Although the concept of representation was not "utterly foreign"<sup>1</sup> to ancient Greek and Roman politics, it was not an important concept in ancient political thought. The modern term is derived from the Latin *representare*, which means "to bring before one, to bring back, to exhibit, to show, to manifest, to display."<sup>2</sup> The term was not used in the modern sense of one human being acting in the place of another, rather it was used to indicate the actual presence of an object once absent, or "the embodiment of an abstraction in an object"<sup>3</sup> (as, for example, a concept illustrated in a work of art). According to Beard and Lewis: "No illustration of its (representation's) use in a political sense appears before the sixteenth century, at least in the record of the Oxford English dictionary."<sup>4</sup>

The concept of representation, therefore, is relatively new, dating back less than five hundred years. Its origins can be found in the pragmatic requirements of elite

<sup>1</sup> Charles A. Beard & John D. Lewis, "Representative Government In Evolution," *American Political Science Review*, 26 (April 1832), p. 230.

<sup>2</sup> *Ibid.*

<sup>3</sup> Hannah F. Pitkin, *The Concept of Representation* (Berkeley and Los Angeles, California: University of California Press, 1967), p. 3.

<sup>4</sup> Beard and Lewis, *op. cit.*, p 225. Pitkin (*Ibid.*) appears to place its first political use in the 13<sup>th</sup> and 14<sup>th</sup> centuries. Fairlie appears to agree with Beard and Lewis. See John A. Fairlie, "The Nature of Political Representation," *American Political Science Review*, 34 (April 1940), p. 238.

rule rather than due to any mass movement for popular voice in government. Beard and Lewis note that representative government: ...did not spring up because people suddenly decided to govern themselves, displayed the capacity, and set up parliaments. It was called into being by medieval monarchs who had established or maintained by the sword political power over wide territorial areas containing a large population... The monarchs who first called representatives of communities or estates to grant money and give counsel were not thinking of democracy; they were concerned primarily with the conservation of the peace and the administration of lucrative justice, and the replenishment of their royal treasuries. Even the most despotic medieval monarch could not tax and exploit his subjects without limits.<sup>5</sup>

Beard and Lewis document four phases of development of representative government in England. The first, described above, did not provide for representation of people, but of estates ("nobility, clergy, landed gentry, and burgesses of towns").<sup>6</sup> These early legislatures met to ratify the king's taxes and did not actually legislate in the modern sense.

During the second phase of development, the tax-approving assemblage gradually became a law-making body. The "estate representatives" eventually began to discuss common problems and grievances. When they came to agree on a preferred solution to the problem at hand, these representatives would draft a petition and present it to the king. If the monarch approved the petition, it became law. The king could not casually dismiss these petitions, "since the parliament held the purse strings."<sup>7</sup> The third phase culminated when the estate representatives achieved primacy over the monarch, thus forming the constitutional or limited monarchy. Finally, beginning around the time of the French Revolution, representative government began to take on its "mass" character. Beard and Lewis note that: "the economic estates that made themselves sovereign through representative institutions had not long enjoyed the fruits of their labors when rumblings were heard from below."<sup>8</sup> It was at this phase that the notion of popular sovereignty was introduced, stating that the people as a whole were the legitimate source of governmental power. The belief that each individual was entitled to take part in governmental decision making first began to gain currency during this era. Representation in this sense was merely a practical compromise settled on because the size of the modern state precluded direct democracy. The notion of representation that was articulated during this fourth phase is quite similar to an intuitive understanding of the modern concept of representation.

The connection between democracy and representation is one that contemporary scholars find quite natural. There are, however, non-democratic aspects to the

<sup>5</sup> Beard and Lewis, *op. cit.*, pp. 230-231.

<sup>6</sup> *Ibid.*, p. 231.

<sup>7</sup> *Ibid.*, p. 232.

<sup>8</sup> *Ibid.*, p. 233.

historic and modern concepts of representation. In fact, as a move away from direct democracy, representation can be seen as intrinsically antidemocratic. Rousseau, for example, saw representation as impossible and maintained that the general will (or public interest) could only be articulated via mass direct democracy.<sup>9</sup> Despite numerous advocates, the democratic principles of the French Revolution have never been entirely accepted. As noted earlier, however, there are a variety of definitions of the concept of representation; we now turn to an examination of them.

Hannah Pitkin has observed that representation "...is a highly complex concept that has not changed much since the seventeenth century." Pitkin goes on to offer the following definition: "...representation means, as the words etymological origins indicate, representation, making present again... Representation, taken generally, means the making present in some sense of something which is nevertheless not present literally, or in fact."<sup>10</sup>

Over sixty-five years ago (1940) John A. Fairlie set forth a similar, but somewhat more elaborate definition of representation: "Etymologically, the literal meaning of represent is to 'present again,' and from this it has come to mean to appear in place of another. In this secondary sense, a representative has been defined as an agent, deputy, or substitute, who supplies the place of another or others."<sup>11</sup> Fairlie indicates the broad range of phenomena subsumed under the rubric of representation. A representative may be selected by an actor to act in his (her) place with limited authority to act, or with the authority to act with some measure of discretion—without clear instructions.

Representation is not simply a political concept; it is utilized in art, law, theater, education, language, and other contexts. These other uses are important, but for this analysis its meaning as a political concept is critical. Its political meaning should always imply some sort of power relationship between the represented and the representative. *The legitimacy of the representative's power in this relationship as we understand it today derives from the representative's accountability to those being represented.* The power relationship may be explicit or implicit, mutual, exclusive, or possibly a variable subject to fluctuation over time.

To Thomas Hobbes, representation is the mechanism by which individuals escape the ungoverned state of nature, that theoretical hell on earth where life is nasty, short, and brutish. As a result of the social contract, each individual gives up his (her) right of self-government to a sovereign power in order to escape the state of nature. This sovereign represents the individual in the sense that the individual accepts the decisions of the sovereign as if they are the individual's

<sup>9</sup> J. J. Rousseau, "The Social Contract" (in Hannah Pitkin (Ed.) *Representation*, (New York: Atherton Press, 1969).

<sup>10</sup> *Ibid.*, p. 8. Emphasis in the original.

<sup>11</sup> Fairlie, *op. cit.*, p. 236.

own decisions, as binding decisions. According to Pitkin: "The content of the social contract by which men found the state is precisely the establishment of a representative—a sovereign who will make the multitude into a single body by ruling it and representing its authority."<sup>12</sup>

The Hobbesian concept of representation is the authorization of a sovereign to act in place of each individual member of society. Representation, in this view, "is authority, the right to make commitments and incur consequences for another."<sup>13</sup> The representative acts and the represented is bound by these decisions and is responsible for their consequences as if they themselves had been the actor.

In the contemporary view, the representative is given the authority to act in place of the represented. There is an aspect of the modern sense of representation in which the decision maker (or representative) is legitimately permitted discretion when making decisions. The representative is permitted to act without instructions when he (she) is unsure of his (her) constituents' opinion, (or no opinions exist), and in certain situations is accorded legitimate authority to act contrary to the opinions of his (her) constituents on matters of conscience. The modern view maintains, however, that constituents have the right to hold the representative accountable for his (her) actions and revoke the grant of authority entrusted to the representative while the Hobbesian view permits no such revocation of authority.

This view of representation totally distributes decision-making power to the representative. The acts of the representative or sovereign are not subject to challenge, for to challenge the sovereign is to risk ending civil government and re-entering the barbaric state of nature. The representative decides and the represented bear the consequences of the decision. The representative has freedom to act and is responsible for protecting the security of the state. The citizens are expected to obey the edicts of the decision maker/representative, and live with the consequences of those decisions. The represented do not have any leverage over the representative, and the balance of power is overwhelmingly skewed toward the representative.

To Hobbes, representation is seen as authorization, the formal arrangements that precede and initiate the activities of representation.<sup>14</sup> A view of representation that is the complete opposite of authorization is presented by scholars Pitkin has termed "accountability theorists." This view defines representation as the formal arrangements that follow and potentially terminate representative activity, as "accountability," the holding to account of the representative for his actions.<sup>15</sup> Accountability is not simply intended as a means

<sup>12</sup> Hannah Pitkin, "The Concept of Representation" (in Pitkin (Ed.) *Representation*, New York: Atherton Press, 1969) p. 8.

<sup>13</sup> *Ibid.*

<sup>14</sup> Pitkin, 1967. *op. cit.*, p. 11.

<sup>15</sup> *Ibid.*

of punishing representatives for taking wrong positions, but as a stimulus for eliciting from representatives behavior that is responsive to the needs of the represented.

The accountability view of representation leaves a measure of power in the hands of the represented. According to this view, at some point a day of reckoning comes to pass, and the nonresponsive representative can be removed from office. Hence, the power relationship can be described as follows: in the short run, the representative is in the dominant position, but due to their ultimate veto, the represented have the last word and in the long run hold greater power. Clearly, the represented hold greater power in this view of representation than in the authorization view. Nonetheless, the public's leverage is periodic and latent rather than continuous and present. This concept does not specify that the representative's role is continuous responsiveness to the represented, although logically, it involves some attention and concern for responsiveness.

During the American Revolution, John Adams argued that a representative legislature "should be an exact portrait, in miniature of the people at large, as it should think, feel, reason and act like them." According to Adams, in "a representative assembly...the perfection of the portrait consists in its likeness."<sup>16</sup> Representatives should be as similar as possible to the represented. In attitude and social origin, representatives should mirror the public. Much of the literature in "representative" bureaucracy appears based on this conception of representation. Norton Long argued that the unelected federal bureaucracy was more "representative" than elected legislators because the social and economic status (SES) level of the bureaucracy was closer to the national average than that of elected officials.<sup>17</sup> In the 1970's, Kenneth J. Meir utilized both attitudinal and SES measures to compare bureaucracy with the broad public. In so doing, Meir accepted the view of representation as description, but argued for more complete measurement (both demographic and attitudinal) prior to conducting government-mass comparisons.<sup>18</sup>

Representation is thus simply reproducing the views of the public and incorporating these views into the decision making process. Similarly, advocates of proportional representation schemes are actually advocates of descriptive representation. Proportional representation is simply a form of sampling.

The aspect of representation that involves providing information about the views and attitudes of the represented can also be categorized as descriptive representation. In addition, those theorists who see representative government

<sup>16</sup> Adams, quoted in Pitkin, *Ibid.*, pp. 60-61.

<sup>17</sup> Norton Long, "Bureaucracy and constitutionalism" *American Political Science Review*, 46 (September 1952), pp. 808-818.

<sup>18</sup> Kenneth J. Meir, "Representative Bureaucracy: An Empirical Analysis," *American Political Science Review*, 64 (June 1975), pp. 526-542. Also see V. Subramanian, "Representative Bureaucracy: A Reassessment" (*American Political Science Review*, 61, December 1967), pp. 1010-1019.

as a practical substitute for direct democracy are arguing for a form of descriptive representation. If the representative body is a surrogate for the population as a whole, it follows that it should be as nearly like the population as possible.

Descriptive representation does not require or imply public control of the activities of representatives. The represented have no leverage over the representatives. All that is required is that representatives have attitudes and attributes that are similar to those of the public. The type of elite-mass linkage mechanism resulting from descriptive representation would be what Norman Luttbeg has termed "non-coercive" linkage. No one forces the representative to represent the public; the representative does it "naturally."

Symbolic representation is perhaps one of the more abstract and difficult-to-grasp aspects of representation. While descriptive representation defines representation as a reasonable facsimile, or a mirror image, symbolic representation need not involve a representational likeness. Examples of representative symbols include a nation's flag or its head of state (representing the nation's unity), a corporate logo (representing the image of the company) and the "ban the bomb" or peace symbol (representing pacifism).

In Pitkin's view, representation ought to be seen as the activity of representatives.<sup>19</sup> In the final analysis, representation is the result of human activities or behavior. There are three general modes of representative behavior: (1) The representative as an independent actor, or "trustee" of the public welfare; (2) the representative as an instructed actor, a delegate, strictly following the dictates of the represented population; and (3) the representative as a responsive actor, balancing system needs with the preferences of the population—a role we have termed responsive stewardship. It is important to note that both elected and unelected decision makers can be representatives. Their style of decision making will determine whether they are in fact representatives, and will indicate their representational type.

#### **Representation As Responsive Stewardship: A Composite Definition of Representation**

Having presented a number of aspects of the meaning of representation, we will attempt to integrate the useful elements of each partial definition of representation into an overarching definition of representation.

Each separate meaning of representation taps a key component of the overarching definition being set forth:

- **Representation as authority.** The representative must be capable of acting with authority and must be part of a representative system that actually governs.

<sup>19</sup> Pitkin, 1967, *op. cit.*, p. 112.

Establishing an elaborate representational system to connect citizens to a powerless institution is a meaningless charade.

- **Representation as accountability.** The represented should have a formal mechanism for removing unresponsive representatives. If responsiveness is to be assured, such a device should be available. Mechanisms should be established that require representatives to periodically submit themselves to the judgment of the represented. This presents problems for administrative accountability and even more problems for contractor accountability.
- **Representation as description.** In order to facilitate responsiveness, the representatives must share, or the representative system should at least promote, understanding of the attitudes and attributes of the represented.
- **Representation as symbolism.** A sense of citizen efficacy is a likely precondition for a responsive political system. The literature of political participation indicates that politically efficacious citizens are more likely to participate than citizens who believe they cannot affect governmental decisions. Efficacy is related to the citizenry's feeling that they own their government and that they belong to, or are citizens of, a nation. Hence, there may be a significant connection between symbolic representation and political responsiveness.
- **Representation as the activity of representatives.** Representation is the result of human behavior. As noted earlier, the "mandate vs. independence" controversy illustrates two extreme behavior patterns open to the representative: To act as a mandated delegate, only act following the receipt of strict instructions from the represented, and to act as an independent trustee, act according to the representative's personal notion of public interest. A third pattern of behavior, lying somewhere between these two extremes is representative activity that pursues responsive stewardship.
- **The Activity of Responsive Stewardship.** Responsive stewardship is a representative role that considers each aspect of representation as legitimate in varying degrees, and that attempts to balance the various elements in order to establish a meaningful link between citizens and government. This notion of responsive stewardship is strongly influenced by the incisive analyses of Hannah Pitkin. Although representation is a set of individual behaviors, it is only given political meaning when those individual acts are part of, and structured by, a representative system. We are concerned, therefore, with a system of representation, a style of governance that strives to respond to the wishes of its citizens while simultaneously providing effective governance. Effective governance is that condition that exists when government is able to provide for the long-term and short-term welfare of the mass of citizens. A responsive political system is one that gives citizens what they want.

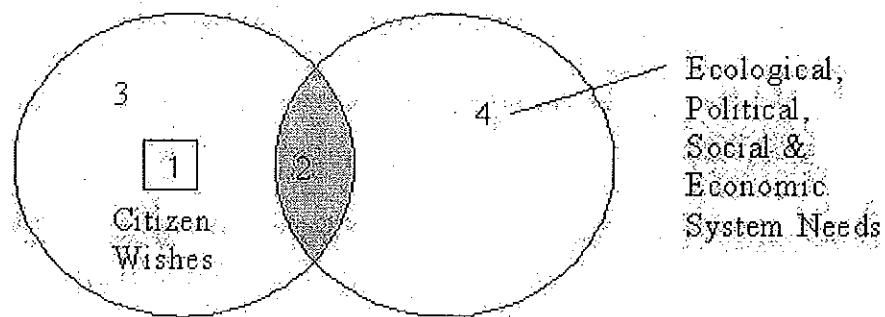
Following Pitkin, we maintain that a representative system is not simply a system that provides citizens with the policies they desire. The views of citizens must be represented to something. That something is an authoritative decision making process. Representation divorced from power is meaningless. Responsiveness is an aspect of representation; it is not, however, the entire concept.

The question then arises: What standards can be utilized to judge the responsiveness of the representative system and thereby judge a key factor contributing to the representativeness of that system? Exhibit 1 illustrates the broad outline of a set of criteria for judging the responsiveness of the representative system.

The two circles in Exhibit 1 are meant to symbolize two concepts: citizen wishes, and system needs. The Exhibit is divided into four category zones. In Zone 4 are those needs toward which citizens have formed no clear attitudes.

### Exhibit 1

#### Criteria for Judging the Responsiveness of the Representative System



Citizen wishes, then, are divided into three categories: (1) Those wishes that are detrimental to the needs of the social, ecological, political and/or economic system (Zone 1); (2) Those wishes in harmony with system-maintenance requirements (Zone 2); and (3) Those wishes irrelevant to relatively inconsequential vis-à-vis system needs (Zone 3). An effective system of governance will naturally attempt to maximize responsiveness to Zone 2 issues. This is simply a case of enlightened self-interest.

Wishes fulfilled in Zone 2 may provide little indication of the responsiveness of the representative system. These system needs and citizen wishes ought to be fulfilled in the interest of stewardship. It is unfair to judge the responsiveness of the representative system on issues in Zone 1, because wishes of this type conflict with the stewardship function of the representative system and should not be fulfilled. The least biased test of responsiveness is to judge the representative system's capability on matters where citizen preferences are relatively irrelevant to system needs. It should be expected that, at times, it will be difficult to assess whether a public's wish is detrimental to life-support requirements. Analysis will

need to explore the general thrust of a particular issue and try to keep in mind the limitations inherent in our categorization scheme. Despite these difficulties, such a categorization of citizen wishes is essential if responsiveness is to be meaningfully evaluated. An example of a wish that is detrimental to long-term systems maintenance would be the desire Americans appear to have for large gas-guzzling automobiles. Such a wish need not be responded to by a representative government because it endangers ecosystem and economic system maintenance. An example of a wish that may be irrelevant to system survival might be citizen life-style preferences (e.g. collective vs. individual, extended family vs. nuclear family, urban vs. rural living, etc.). Those preferences affect the character of society, but need not affect its survival.

Normally, when government responds to the citizenry, it is reacting to the exercise or fear of the exercise of citizen power. For representative government, responsiveness and the authority to assure stewardship are equally critical, and achieving the balance that brings about the maximum responsiveness while simultaneously assuring stewardship is the main difficulty encountered when attempting to maintain a healthy representative system. The balance necessary is essentially a balance of power between the elite and the masses, hence our earlier concern with the power relationship lurking beneath the surface in each definition of representation. It is possible that the representative system may be overly responsive or overly rigid. System maintenance involves system change, but there is always the danger that a society's elite will confuse system maintenance with system stagnation. Due to the ever-present tendency of elites to slip into system threatening conservatism, the public will often need power to force government to respond to their demands.<sup>20</sup> Yet government must somehow maintain enough power to respond to those demands effectively. Power then is a necessary condition of responsiveness; citizen power to make demands, and government power to respond to those demands.

In addition, the representative system must include adequate mechanisms of demand articulation. Such mechanisms are necessary but not sufficient conditions of political responsiveness. For purposes of this analysis, the mechanisms of demand articulation can be seen as the rough equivalent of the linkage mechanisms identified in the work of Norman Luttbeg.<sup>21</sup> According to Luttbeg: "Any means by which political leaders act in accordance with the wants, needs, and demands of the public in policy-making is political linkage".<sup>22</sup> Luttbeg notes that "this definition avoids the limiting idea that linkage is either just communication between the representative and the represented or compliance by representatives to public opinion forced on them by public participation".<sup>23</sup>

<sup>20</sup> This is a situation where an elite is so resistant to change that the social system itself cannot be maintained.

<sup>21</sup> See Norman Luttbeg (ed.), *Public Opinion and Public Policy* (Revised Edition, Homewood, Illinois: The Dorsey Press, 1974).

<sup>22</sup> *Ibid.*, p. 3

<sup>23</sup> *Ibid.*

Luttbeg sees two basic modes of citizen demand articulation: passive and active. Passive demand articulation generally falls under Luttbeg's category of "non-coercive linkage". Active demand articulation is usually a coercive-style linkage, in Luttbeg's parlance. Luttbeg focuses on the issue of citizen leverage vis-à-vis the representative, sharing our concern for this critical power relationship. In essence, there are two ways that governments receive messages pertaining to citizen demands. Government can pick up the messages painlessly either because representative decision makers share the beliefs of the public (Luttbeg's "sharing" model), or because they believe they ought to reflect the beliefs of the public (Luttbeg's "role playing" model). The second way government receives messages is somewhat more "painful". Citizens force government to listen to their views.

Luttbeg identifies three of these "coercive" models of political linkage. They are as follows:

- The Rational Activist Model,
- The Political Parties Model, and
- The Pressure Groups Model.

Citizen-government linkage is a prerequisite of responsiveness, which in turn is a central component of the concept of representation. Linkage mechanisms range from coercive to noncoercive. Each type of mechanism is helpful if representation is to occur, but a key requirement for a responsive political system is the presence of on-going and organized coercive mechanisms that articulate mass demands. There are two polar types of organization imaginable: (1) Mass-based political parties, and (2) interest-based voluntary organizations (interest groups). Group and pluralist theorists have claimed that most significant interests in society are represented in decision making by organized interest groups.

However, a second stream of theorists has disputed the claim that mass representation can be achieved through interest groups.<sup>24</sup> In The Semi-Sovereign People, E. E. Schattschneider notes that "there is a great wealth of data supporting the proposition that participation in private associations exhibits a class bias... The data raise a serious question about the validity of the proposition that special interest groups are a universal form of political organizations reflecting all interests".<sup>25</sup> Schattschneider then analyzes and compares the party and group pressure models of political linkage. According to Schattschneider, "The basic issue between the two patterns of organization is one of size and scope of conflict; pressure groups are small scale organizations

<sup>24</sup> See E. E. Schattschneider, The Semi-Sovereign People (Hinsdale, Illinois: The Dryden Press, 1960), Roger Cobb and Charles Elder, Participation in American Politics: The Dynamics of Agenda Building (Baltimore, Maryland: Johns Hopkins University Press, 1972) and Peter Bachrach and Morton Baratz, "Decision and Non-Decisions: An Analytic Framework" American Political Science Review, 57 (September 1963), pp. 632-42.

<sup>25</sup> Schattschneider, Ibdi., p. 34.

while political parties are very large scale organizations. One need not be surprised, therefore, that the partisans of large scale and small scale organizations differ passionately, because the outcome of the political game depends on the scale on which it is played."<sup>26</sup>

Pressure politics is oriented toward achieving the aims of special interests. Party politics, on the other hand, is oriented toward securing the common interest. Both have specific biases in the approach to resolving conflict. Pressure politics attempts to privatize conflict and reduce the scope of its contagion. To Schattschneider, conflict is the essence of politics. In The Semi-Sovereign People he states that: "...the outcome of all conflict is determined by the scope of its contagion."<sup>27</sup> A look at political literature shows that there has indeed been a long-standing struggle between conflicting tendencies toward privatization and socialization of conflict.<sup>28</sup> (and) Control of the scale of conflict has always been a prime instrument of political strategy.<sup>29</sup> The role of community based interest groups in this political process in the United States is one that requires additional study. Whatever the composition of these groups, they make an effort to represent the interests of less powerful people living within specific neighborhoods.

A major arena of conflict in politics is the political agenda-setting process.<sup>30</sup> Demand articulation is a central component of this process. The two different modes of coercive organized linkage exhibits strikingly different tendencies regarding which (or whose) demands are articulated. The pressure system of organized interest groups pursuing special interests is a demand articulation system heavily skewed toward the "have" elements of American society. As Schattschneider proclaimed in his now famous statement, "The flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper class accent. Probably about 90% of the people can't get in the pressure system."<sup>31</sup> The question today, with community based interest groups and low cost communication via the internet, is: Could Schattschneider's formulation require revision? We do not address that here, and leave it to future research.

The representative system's ability to respond to the wishes of the public can be seriously compromised by reliance on any exclusionary method of demand articulation. For this reason, the status of a society's party politics, or more generally, the status of mass based groups organized to pursue the common interest is a key determinant of a political system's responsiveness. In today's political process the role of money in political campaigns may very well have compromised the ability of electoral politics to be truly representative.

<sup>26</sup> Ibid., p. 20.

<sup>27</sup> Ibid., p. 2.

<sup>28</sup> Ibid., p. 7.

<sup>29</sup> Ibid.

<sup>30</sup> See Cobb & Elder, op. cit.

<sup>31</sup> Schattschneider, op. cit., p. 35.

The second aspect of the multidimensional conception of representation is stewardship. Stewardship, or the survival of society, is the central purpose of government. Although scholars concerned with effective decision making in government have pointed out the dangers of too much citizen voice in governance, students of representation have paid less attention to the need for effective governance as prerequisite for meaningful representation.

We take the perspective that responsiveness is only one aspect of representational activity, and that a second aspect is the ability of representative policy makers to deliver policy outputs and outcomes responsive to public demands. When analyzing a representative system, it is important to first identify the authoritative decision makers in a political system and then assess the responsiveness of these decision makers to the wishes of the public. Much of the study of representation has focused on the responsiveness of legislatures. Yet important policy decisions are made every day in the executive branch, particularly its unelected bureaucratic component. In the case of local level development decisions, many of the key decisions in New York City are made by unelected leaders. Linkage to "what" is a central and often unexamined question in the literature of representation. Decision making studies and representation studies emerge from different streams of literature and the two phenomena are studied simultaneously only rarely. In order to understand the politics of land use development in New York, it is necessary to view it within the framework provided by representation theory.

With this broad conceptual view of representation in place, we are ready to discuss the case of local level land development in New York City.

### **Community Politics in New York City**

As New York City has been completely developed, and in some neighborhoods redeveloped, more than once, the politics of land use has become increasingly contentious. While institutions such as Columbia University, and the sports franchise detailed in this paper are attempting large-scale developments in New York City, even smaller scale projects are facing routine and increased opposition by interest groups and local community organizations.

The era of development as self-justifying is long gone, even in parts of the United States that are not as built up as New York City. Housing developers are well aware of the importance of politics on the land use development process.

This anti-development fervor is further reinforced by the geographic emphasis of representation in the United States. At-large voting legislators are seen as a violation of the one-person, one vote ruling by the United States Supreme Court. When this is added to single member districts and winner-take-all elections, the need for a high level of responsiveness to local interests is reinforced by the political structure. A developer may have financial resources that can be helpful to a local elected leader, but if the development being pushed elicits local

community opposition, the local elected leader will have little choice but to side with anti-development forces. This sometimes puts the local leader at odds with city-wide or state-wide elected officials. Additionally, we note a nationwide trend to design land use development processes that attempt to prevent development.

Moreover, the Supreme Court's June, 2005 decision in allowing the City of New London, Connecticut to use the power of eminent domain to take private homes for an economic development project has caused a nation-wide backlash against large-scale projects such as stadiums. According to NY Times reporter John M. Broder:

In a rare display of unanimity that cuts across partisan and geographic lines, lawmakers in virtually every statehouse across the country are advancing bills and constitutional amendments to limit use of the government's power of eminent domain to seize private property for economic development purposes... The reaction from the states was swift and heated. Within weeks of the court's decision, Texas, Alabama and Delaware passed bills by overwhelming bipartisan margins limiting the right of local governments to seize property and turn it over to private developers. Since then, lawmakers in three dozen other states have proposed similar restrictions and more are on the way, according to experts who track the issue.<sup>32</sup>

This anti-development reaction indicates that the sanctity of private property is a stronger political force than those promoting local economic land use development. We see evidence of this in New York's three recent stadium controversies, and a clear sense that the city's representative political institutions are struggling to deal with these strongly held but conflicting values.

### **Normal Land Use Development in New York City: The Uniform Land Use Review Procedure (ULURP)**

Exhibit 2 provides a summary of the steps involved in typical land use development projects in New York City. The "ULURP" process provides extensive opportunities for participation in project review by elected leaders, the general public, and interest groups. The ULURP process begins with a review by the city's Department of City Planning and then requires consideration by the local Community Board. New York City is divided into 59 Community Board Districts. Each Board includes up to 50 members appointed by the Borough President, with half of those nominated by the City Council Members who represent the community district. The Community Board must hold a public hearing on the project and then submit a recommendation to the City Planning Commission, which must also hold a hearing and then submit their decision to

<sup>32</sup> Broder, "States Curbing Right to Seize Private Homes", NY Times, February 21, 2006



the City Council. The Council and the Mayor then review the project. The City Council has the option of also holding a public hearing. This process is time consuming, but provides a set of predictable and transparent steps for project review. A number of state agencies have the authority to develop land without being subject to the ULURP process.

### A Basketball Arena Grows in Brooklyn

In mid-2003, Forest City Ratner Inc. (led by real estate developer Bruce Ratner) announced its plan to buy and then move the New Jersey Nets basketball franchise to Brooklyn, vowing to give the borough its first major professional sports team since the Brooklyn Dodgers left for Los Angeles after the 1957 baseball season.

The Ratner Plan envisions an extensive 22-acre development, which would include the nation's most expensive NBA arena, 17 buildings from 19 to 58 stories tall, and nine million square feet of new office and residential space.

Proponents say the Ratner Plan will bring back a long-lost sports pride to Brooklyn and will also be an economic boon for the borough by injecting jobs and cash inflow into Brooklyn's economy. Opponents say Forest City Ratner's real motive is not basketball and economic development but the opportunity to build a massive and lucrative housing development while circumventing the city's standard land-use review process. Opponents also claim that the social costs of the Ratner project (i.e. increased traffic, loss of green-space and the disproportional size of the project) far outweigh the economic benefits.

The opposition to the Forest City Ratner development is made up of community organizations and a few non-profit public advocacy groups located and operating in and around the Brooklyn area in which the project is to be constructed. While some of these organizations fit into the more extreme and thus highly intractable anti-development category, some are more moderate. The "not in my back-yard" response to urban development initiatives is normal and particularly pronounced in New York City. One organization that was formed to fight the Nets development was the organization "Develop Don't Destroy Brooklyn." The organization sued Forest Ratner last year to prevent the company from tearing down a stretch of five Brooklyn buildings that they believe are too

## Exhibit 2 : Uniform Land Use Review Procedure<sup>33</sup>

### STEP I – Department of City Planning (no specific time limit)

- Receives application and related documents
- Department of City Planning is responsible to forward the application and documents within 5 days to: a) Community Board b) Borough President c) City Council
- Certifies the application as complete

### STEP II – Community Board (60 Days, Total 60 Days)

- Notifies Public
- Holds Public Hearing
- Submits recommendation to City Planning Commission and Borough President/ Borough Board
- Can waive rights on franchise RFP's and leases

### STEP III – Borough President (and) Borough Board (30 Days, Total 90 Days)

- Borough President submits recommendation to the City Planning Commission or waives right to do so
- Borough Board (if project affects more than 1 Community Board) may hold a public hearing and submit recommendation to the City Planning Commission or waive their right to do so

### STEP IV – City Planning Commission (60 Days, Total 150 Days)

- Holds public hearing
- Approves, modifies or disapproves application
- Files approvals and approvals with modifications with the City Council
- Disapprovals are final, except for zoning map changes, special permits, and urban renewal plans

### CITY COUNCIL & MAYORAL REVIEW (Charter Section 197-d)

#### Powers of the City Council (50 Days):

- 1) Can review application, hold a public hearing, and vote to approve, approve with modification, or disapprove
- 2) Refers any proposed modifications to City Planning Commission for an additional 15 day review
- 3) If Council does not act (or does not assume jurisdiction on items it must elect to review), City Planning Commission decision is final

#### Powers of the Mayor (5 Days):

- 1) Reviews application
- 2) May veto Council action
- 3) If Council does not act (or does not assume jurisdiction on items it must elect to review), may veto City Planning Commission decision
- 4) **City Council (10 Days, final opportunity to affect the procedure)**
  1. May override Mayor's veto by 2/3 vote

<sup>33</sup> New York City Department of City Planning, "The Uniform Land Use Review Procedure" <http://www.nyc.gov/html/dcp/pdf/luproc/lur.pdf>

### If City Planning Commission APPROVES Application:

**Automatic Review by City Council**  
Action requires majority vote by City Council, then goes to the Mayor

1. Zoning map changes
2. Zoning text changes (non ULURP)
3. Housing and urban renewal plans
4. Disposition of residential buildings (except to non-profit companies for low-income housing)

• **"TRIPLE NO" – Automatic Review by Council**  
Action requires majority vote by City Council, then goes to the Mayor

1. City Board recommended disapproval (NO #1)
2. Borough President recommended disapproval (NO #2)
3. City Planning Commission approved or approved with modification
4. Borough President files objection with Council and City Planning Commission within 5 days of receipt of CPC's approval (NO #3)

• **City Council may Elect to Review:**  
Must assume jurisdiction within 20 days. Action requires majority vote

1. City Map Changes
2. Map of subdivisions or platings
3. City Planning Commission special permits
4. Revocable consents, franchise RFP's, and major concessions
5. Non-City public improvements
6. Landfills
7. Disposition of commercial or vacant property
8. Disposition of residential buildings to nonprofit companies for low income housing
9. Acquisition of real property
10. Site selection

### If City Planning Commission DISAPPROVES Application, All Items are **DEFEATED** Except:

Action requires 2/3 vote. Action is FINAL (50 Days \*does not include 15 day review for proposed modifications)

1. SPECIAL PERMITS, if Mayor certifies as necessary
2. ZONING MAP and TEXT CHANGES, if Mayor certifies as necessary

Action requires 3/4 vote. Action is FINAL. Law and timetable to be revised.

1. URBAN RENEWAL PLANS, Per State Law

valuable in historical significance to tear down. In the suit, the organization contended that there had been no independent engineering review to confirm Forest City Ratner's analysis that the buildings present an imminent safety hazard. The Empire State Development Corp., which is in charge of reviewing the \$3.5 billion Atlantic Yards proposal that includes the arena, was named in the suit along with Forest City Ratner. The suit is still pending.

A number of elected officials oppose the project. Councilwoman Letticia James has been particularly vociferous in her opposition to the project. Other local elected officials opposed the project as well. The project, as of September 16, 2005, included 7,300 residential units (4,500 rental apartments, half "affordable," plus 2800 market-rate condos). Critics argued that some of the promises made by the project's developers have been broken. For instance, the six acres of landscaped "public" space will continue to be owned by the developer. A park on the arena's roof was originally promised to be public, but in plans disseminated in the fall 2005, it was termed a private facility. In early 2005, supporters of the project argued that 50% of the 4,500 apartments would be low-income. In late 2005, the number of apartments was raised to 7,300, and the definition of "moderate income" was set at \$109,000 per year. The average income in Brooklyn is \$35,000, and 900 apartments will be available for residents who make less than that. Of those 900, many will not be on the main Atlantic Yards site, thus segregating the new residents by income. City Councilmember Charles Barron has asserted that the project will be "instant gentrification."

While opposition was intense, the developer worked with local community organizations and clergy and promised local employment and a large number of subsidized housing units. This enabled them to generate substantial elite and community support. The project's key supporters included:

- Mayor Michael Bloomberg
- Governor George Pataki
- Rev. Al Sharpton
- ACORN – The Association of Community Organizations for Reform Now, the advocacy group that has fought previous Forest City projects, which this time struck a deal to include a significant amount of moderate- and low-cost housing in the project.
- The Downtown Brooklyn Neighborhood Alliance, founded by Rev. Herbert Daughtry, pastor of the House of the Lord Churches on Atlantic Avenue.
- Brooklyn United for Innovative Local Development (BUILD), which critics say was literally founded by Forest Ratner to cheerlead for the project. The group formed just days after the

project was approved, and subsequently received a \$100,000 donation from Forest Ratner.

- New York State Association of Minority Contractors
- Working Families Party

However, as mentioned above, in late 2005 some of his support was threatened when a revised project plan reduced the amount of residential development in the plan and replaced it with increased commercial space.

It is clear that the developer understood the political nature of the process of building a project in New York City. He worked hard to develop alliances and adapt the project plan to meet community needs. To some degree this process was undermined by the changing economics of the project, which resulted in changes in the mix of commercial and residential property.

Another factor that resulted in increased opposition to the project was the effort to use New York State authority to avoid the city's regular land use review process. According to project opponent Tom Angotti:

The Atlantic Yards project was born two years ago when Forest City Ratner, one of the nation's largest developers with a virtual monopoly on downtown expansion, proposed what now appears to be the largest-ever project in the borough. The latest version of its project includes a professional basketball arena, 7,300 units of housing, and over 600,000 square feet of office space. The developer then got Governor George Pataki, Mayor Michael Bloomberg, and Brooklyn Borough President Marty Markowitz to voice full public support for the proposal. Then the governor unleashed the State of New York's Empire State Development Corporation, which he controls, to place at the developer's disposition the government's powers of eminent domain so that privately-owned land on the site could be assembled.

With the Empire State Development Corporation at the head of the pack, Forest City Ratner could also avoid going through the city's Uniform Land Use Review Process (nicknamed, ULURP), which would force it to face votes by the local community boards, borough president, City Planning Commission, and City Council. The developer needed to get the right to build over the rail yards owned by the Metropolitan Transit Authority, but since this is a state-run agency controlled by the governor, a hastily-planned Request for Proposals was put together so the developer could be guaranteed the rail yards. And \$200 million in public subsidies were thrown in to sweeten the deal.<sup>34</sup>

<sup>34</sup> Tom Agnotti, "Atlantic Yards: Through the Looking Glass", Gotham Gazette, November 15, 2005

According to Agnotti, public opposition began to mobilize when the Empire State Development Corporation began its environmental impact assessment of the project. While the design of world class architect Frank Gehry was striking, even project cheerleader Brooklyn Borough President Markowitz came to believe that the project was too big. While the project is still very much alive, it is clear that the proposal will be modified before it is accepted. As Agnotti notes:

On October 18, over 800 people packed an auditorium in downtown Brooklyn to tell the Empire State Development Corporation about all the potential impacts that the developer's plan could have -- many more than the agency had proposed to study. This hearing was a crucial turning point for two reasons. First, it tarnished the image of inevitability and consensus that the developer had cultivated around the project... Secondly, it pointed out the need for careful, detailed planning for development of the Atlantic Yards site so that it would knit that development into the fabric of Fort Greene, Prospect Heights, Park Slope, Clinton Hill and other neighborhoods.<sup>35</sup>

At this writing, the planning process is well underway, and the final result is uncertain. What is not in doubt is that the representative institutions and stakeholders of local government—ad hoc interest groups, economic interests and elected leaders—are now fully engaged in a visible and contentious public debate.

### **The Brooklyn Nets, Atlantic Yards and Representative Democracy in Brooklyn**

The issue of land use and development has become increasingly contentious throughout the United States. Development was once seen as self-justifying. Today it is the subject of an intense effort by our political process to respond to a public that is increasingly opposed to changes in neighborhoods. The housing industry has grown and become more corporate and professional, in part to deal with the increasingly complex regulatory environment and political opposition to housing. The complexity of development has driven small local developers out of business in favor of larger developers with the capacity to deal with local rules and politics. In a New York Times Magazine article in 2005, Jon Gertner interviewed housing developer Bob Toll of Toll Brothers, one of the nation's largest housing developers. Toll noted that NIMBY was now simply part of the cost of doing business:

Toll Brothers is a creature of this revolution. "We intended always to expand out of the Philadelphia suburbs and into New Jersey and into New York and Connecticut and Rhode Island and Massachusetts," Toll said. He never imagined, however, that he would be able to expand nationwide

<sup>35</sup> Agnotti: Ibid.

as quickly as he has. In his early days, he told me, if he wanted to build a few hundred homes in Pennsylvania, he could get a parcel of land through the approval process in a year or two. Now it's up to five years. He estimates that New York, California and Massachusetts take a similar amount of time. Even Florida and Virginia -- traditionally easy places to build -- can require a year or two. "This business was made for us to a large extent by Nimby politics," Toll said, referring to Not in My Backyard objections. "I don't denigrate Nimby, by the way. I just deal with it. It is. It's human nature. You don't want to see anything built behind where you live.

His experience with Nimby opposition, Toll added, leads him to believe that the political resistance to land development around the country will get more intense in the coming years.<sup>36</sup>

This drive for more controlled development must be expressed in the face of the economic power of developers. In the case of the Atlantic Yard and Nets Arena project in Brooklyn, we see a powerful and politically connected developer lining up the Mayor, Governor and Borough President as well as community based interest groups such as ACORN and political leaders such as Al Sharpton. A number of representative issues are raised by this development case:

- What is "responsive stewardship" in this case? The economic status-quo is far from perfect, and the jobs created by economic development can lift people out of poverty. Descriptive representation of those living in close proximity to the site might call for anti-development policy, but would the community's long term economic health be impaired by an anti-development reputation? Would this economic policy cause the long term impairment of the government's capacity to govern and provide stewardship?
- What is the geographic area that should be represented in decision making process? What is the unit to be described? The area actually being developed? The immediate neighborhood surrounding the development? The borough of Brooklyn? The city of New York? The region?
- Can developers, local governments, and the local community develop new institutions and procedures that permit development and representation of local interests and concerns?

We conclude this paper by discussing this last point, the type of representative and participatory institutions that could be used to bring public voice into the decision making process. In many cases developers of large-scale projects such as the Atlantic Yards project do not believe it can survive normal local review processes. In the case of the West Side Jets stadium and the Nets arena,

<sup>36</sup> Jon Gertner, "Chasing Ground" NY Times Magazine, October 16, 2005

developers and their governmental allies attempted to circumvent ULURP by using state level authorities to circumvent local processes. This is of course the practice invented by Robert Moses as he remade the map of New York City in the early and mid twentieth century. As Robert Caro described the Moses approach in his classic, The Power Broker:

Operating through an authority, Moses could keep the public from finding out what he was doing...using the wealth of his public authorities to unite behind his aims banks, labor unions, contractors, bond underwriters, insurance firms, the great retail stores, real estate manipulators...he made the economic forces, not democratic forces the forces that counted in New York. The problem of constructing large scale public works in a crowded urban setting, where such works impinge on the lives of or displace thousands of voters, is one which democracy has not yet solved.<sup>37</sup>

We believe that development politics in the twenty first century makes this practice counterproductive.

What is missing in the current environment is commitment to the process and a willingness to abide by its results. Those who do not get their way resort to law suits, demonstrations, and political threats to get their way. The time it takes to complete the process is unpredictable and there is a well founded suspicion that the money to be made in development leads to a corrupt and often closed decision process. On the part of developers, they are risking capital on land and design work and are subject to being held up by anyone capable of delaying or disrupting construction.

What is needed is a mature and disciplined review process that provides developers and communities with the opportunity to have their interests represented. We need a decision making process that allows for creative problem solving, compromise and the ability to protect fundamental needs and interests. The current process assumes a zero sum game and is designed to encourage contending parties to get their way through the exercise of raw power. An optimal process would provide an opportunity for a fair airing of views and objective analysis of the costs and benefits of specific projects. It would be mandatory for all projects, with no exceptions. It is not clear that such a process is feasible, although from our perspective it would be desirable.

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<sup>37</sup> Robert A. Caro, The Power Broker, New York: Knopf Press, 1974. pp.16, 18, 21.