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SHIFTING THE LOCUS OF POWER IN PUBLIC ENGAGEMENT: THE REVOLUTION WILL NOT BE FUNDED BY THE NON-PROFIT INDUSTRIAL COMPLEX

Kenneth H. Fox[†] and Rashad Turner[††]

I.   DIVERSE EXPERTISE ON PUBLIC ENGAGEMENT FROM SYMPOSIUM THEME LEADERS

The opening plenary of Hamline University School of Law Dispute Resolution Institute's 2015 symposium, "An Intentional Conversation About Public Engagement and Decision-Making: Moving from Dysfunction and Polarization to Dialogue and Understanding," sought to frame a deep and engaged discussion of the most challenging questions and concerns about public

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engagement.[1] The opening session's theme leaders approached the conversation from very different backgrounds: a former majority leader of the Minnesota Senate, a county commissioner, the state commissioner of Human Rights, the executive director of the Minnesota Council on Latino Affairs, a columnist from the *Star Tribune*, the senior vice president of the Public Conversations Project of Boston, and the leader of Black Lives Matter—Saint Paul. Each theme leader raised unique questions and concerns about the challenges of public engagement from their different standpoints.[2]

The theme leaders posed important questions to the authors and the audience on how to reach out, include, and insure the involvement of a broad range of communities and constituencies in the public process. We heard about the importance of designing processes that are accessible to the diverse needs and life situations of citizens from very different economic, social, racial, ethnic, and identity situations. We also heard about the importance of processes that encourage and support broad and diverse participation. Finally, we were challenged to remember the importance of processes that assure that decision-makers hear, understand, and seriously consider the many voices brought together around public issues.

II.   PUBLIC ENGAGEMENT SCHOLARSHIP SUPPORTS THE THEME LEADERS' MESSAGES

Not only were we impressed with the different and important questions we heard from the theme leaders, but we were also struck by the degree to which their concerns mirror the scholarship. For instance, Gene Rowe and Lynn Frewer articulate a sophisticated framework to differentiate the many variables related to public

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1.   *See generally* DISPUTE RESOL. INST., Symposium, *An Intentional Conversation About Public Engagement and Decision-Making: Moving from Dysfunction and Polarization to Dialogue and Understanding*, MITCHELL HAMLINE SCH. L. (Oct. 23–24, 2015), http://open.mitchellhamline.edu/dri_symposia/2015/. The symposium was held on October 22–24, 2015.

2.   As used in this essay, we define public engagement as being related to "public participation," which Rowe and Frewer define as "the practice of involving members of the public in the agenda-setting, decision-making, and policy-forming activities of organizations/institutions responsible for policy development." Gene Rowe & Lynn J. Frewer, *A Typology of Public Engagement Mechanisms*, 30 SCI. TECH. & HUM. VALUES 251, 253 (2005).

engagement.[3] They distinguish three conceptions of "engagement": (1) "public communication," where information flows from the process sponsor to the public;[4] (2) "public consultation," where information flows from representatives of the public to the process sponsor; and (3) "public participation," where information flows in both directions between the process sponsor and the public.[5]

They summarize the scholarship of others, who have categorized public engagement, based on the degree to which various publics have been "empowered,"[6] the objectives of the public engagement process,[7] and a range of functional attributes.[8] Rowe and Frewer define variables that contribute to an "effective" public engagement process, focusing on concerns for "fairness," and on the "competence" or "efficiency" of the process.[9] Finally, Rowe and Frewer articulate variables that can be used to compare engagement mechanisms. These include variables associated with: "maximizing relevant participants,"[10] "maximizing relevant information from public participants,"[11] "maximizing relevant information from sponsors,"[12] "maximizing the effective transfer of information to, and its processing by, recipients,"[13] and "maximizing the aggregation of relevant information."[14]

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3. *See, e.g., id.* (containing a comprehensive review of public engagement process mechanisms).

4. Rowe and Frewer use the term "sponsor" to describe the public body that is seeking input from the public. *See id.* at 254.

5. *Id.* at 254–55.

6. *Id.* at 260 (citing S. R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 215, 215–24 (1969)).

7. *Id.* (citing J.J. Glass, *Citizen Participation in Planning: The Relationship Between Objectives and Techniques*, 452 J. AM. PLANNING ASS'N 180, 180–89 (1979)).

8. Examples of these techniques include, "'solicit impacted groups,' 'disseminate information,' 'resolve conflict,' and 'facilitate advocacy,' among others." *Id.* at 261 (citing J. Rosener, *A Cafeteria of Techniques and Critiques*, PUB. MGMT., Dec. 1975, at 16–19).

9. *Id.* at 262.

10. *Id.* at 264.

11. *Id.* at 268.

12. *Id.* at 270.

13. *Id.* at 271.

14. *Id.* at 273.

III. RECOGNIZE ASSUMPTIONS IN ORDER TO CHALLENGE
THE STATUS QUO

While we appreciated the theme leaders' messages and the concurring scholarship, we strongly felt that the symposium discussion left a fundamental and essential structural assumption largely unexamined: that public engagement processes are to be initiated and led by the same organization or institution that is ultimately responsible for making the policy decision. While this assumption makes intuitive sense, failing to acknowledge this assumption obscures our ability to examine the impact of this taken-for-granted *locus of power.* In this essay, we examine this question of the locus of power from two perspectives. First, we examine the importance of *who* initiates and frames the public engagement. Second, we examine the subtle dynamics and pressures that can sometimes influence *how* public issues become framed, even when the locus of power arises from within the community. Fox approaches these questions from the standpoint of a white, cisgender male lawyer and academic who has represented government bodies and agencies in public engagement processes and private clients seeking changes to public policy. Turner approaches these questions from the standpoint of an African American, cisgender male graduate student and leader of Black Lives Matter—Saint Paul.

IV. WHO INITIATES PUBLIC ENGAGEMENT?

From our experience, public engagement occurs at the invitation of a decision-making body that has the authority and responsibility to make and implement the policy question(s) subject to public engagement.[15] These decision-making bodies are considered the sponsoring institution. Examples include (1) local government bodies seeking input on planning and zoning decisions, (2) school boards determining how to allocate budgets across schools and grades, (3) administrative agencies developing rules that will govern policies and procedures impacting specific public activities, and (4) police departments seeking ways to strengthen relationships with those they serve. In each of these

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15.   Fox previously practiced land use, development, and local government law in Oregon, representing governmental bodies and agencies in a variety of contexts, including public engagement processes.

examples, the power to engage has been conferred upon an organization or institution that, in turn, reaches out to seek some form of input or participation from various publics who may have a stake in its decision. This process empowers the sponsor to determine and frame what will be discussed, by whom, in what way, and when.

Robert Entman defines a "frame" in public discourse as "selecting and highlighting some facets of events or issues, and making connections among them so as to promote a particular interpretation, evaluation, and/or solution."[16] We suggest that when public engagement begins with the institution "framing" the focus of the discourse, that no matter how carefully or well-intentioned, the direction of that discourse is set in a way that pre-filters and pre-shapes public perception.[17]

We further suggest that such framing also reflects the social and cultural underpinnings of the framer—the sponsoring institution.[18] For marginalized communities that do not share the same social and cultural underpinnings as the sponsor, the process of public engagement, instead of drawing them into a meaningful process, can actually further alienate the marginalized community. Therefore, careful sponsor-driven process design and framing, while essential, is not always sufficient. Institutions must also recognize the need to partially surrender, if not relinquish outright, the locus of power to marginalized communities so that the impacted community can frame—or re-frame—the public discourse in a way that is more socially and culturally relevant and meaningful to that community.

Our suggestion that the locus of power be shared, if not shifted, is not new. For example, public planning has used the "participatory design" process for some time.[19] Participatory design

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16.   ROBERT M. ENTMAN, PROJECTIONS OF POWER: FRAMING NEWS, PUBLIC OPINION, AND U.S. FOREIGN POLICY 5 (2004).

17.   *See* Deborah Tannen, *What's in a Frame?: Surface Evidence for Underlying Expectations, in* FRAMING IN DISCOURSE 14–54, 53 (Deborah Tannen ed., 1993) (referring to this "framing" phenomenon as setting "structures of expectations which help us process and comprehend stories").

18.   *See id.* at 18 (describing framing as a psychological concept that helps shape how an utterance is interpreted). According to Tannen, one must understand what "frame" a person is operating within "[i]n order to interpret utterances in accordance with the way in which they were intended." *Id.*

19.   *See, e.g.,* Kristen R. Moore & Timothy J. Elliott, *From Participatory Design to Listening Infrastructure: A Case of Urban Planning and Participation*, 30 J. BUS. TECH.

"approaches projects through the co-creation of ideas and a flattened, rather than hierarchical, decision-making process."[20] Specifically, the participatory design process allows for the use of tacit knowledge.[21] Tacit knowledge is "'knowledge by doing' that often is rendered invisible by traditional research methods."[22] Tacit knowledge offers valuable benefits:

> [T]hese types of qualitative data can provide more complete views of participants' concerns and serve as a gauge of community priorities, especially from populations whose ideas can be overpowered in large-group settings and through traditional data collection methods. Put another way, if the participatory process aimed to listen . . . then the choice to collect only certain kinds of knowledge silence[s] or dismisse[s] particular citizen concerns and privilege[s] others.[23]

The public engagement processes should neither silence nor privilege any citizen or group. While in our experience many public engagement processes work well for most citizens for most issues (particularly for those communities who share the same "normative" social, linguistic, cultural, and experiential foundation as the sponsoring institution), they do not work for everyone. There remain communities whose experience of systemic marginalization and of being "silenced" presents unique barriers to meaningful participation in public discourse. This is particularly true when that discourse has been framed in a way that does not recognize or incorporate their lived experience.

Thus, the very process of initiating discourse by a sponsoring institution can create a paradoxical effect: the act of reaching out for public involvement reminds the public of where the decision-making power really rests. When a decision-making body invites participation in an important decision, those who have been invited know that the invitation can be withdrawn at any instant and that their continued participation is on the decision-maker's terms. Taken one step further, marginalized communities, whose experience is of being invisible and silenced, might not recognize,

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COMM. 59, 61 (2016).

    20.   *Id.* at 60.

    21.   *Id.*

    22.   *Id.* (quoting Clay Spinuzzi, *Towards Integrating Our Research Scope: A Sociocultural Field Methodology*, 16 J. BUS. TECH. COMM. 3, 16 (2002)).

    23.   *Id.* at 61.

let alone accept, that they are welcome to participate in public discourse. Moreover, even if they are "welcome," the normative process might not permit a full examination of the underlying conditions that led to marginalization in the first place.[24]

V.   THE ROLE OF COMMUNITY-BASED ADVOCACY ORGANIZATIONS

In public engagement situations like what we describe here, community-based advocacy organizations play an essential role in helping citizens find, articulate, and make their voice heard. Advocacy organizations assert their influence so as to shift the locus of power toward the marginalized community; specifically, they re-frame the discourse into one that is more relevant and meaningful for those who have experienced marginalization and silence.

Thus, rather than being disruptors of process, we argue that such advocacy organizations are important contributors to a broader, more open, and more diverse process of civic engagement. Rather than being destructive interlopers, such organizations are opening the possibility for deeper dialogue and important insights into the experiences, thoughts, and concerns of often marginalized citizens. Such organizations should be seen as an important social vehicle by which to expand civic engagement and to strengthen civil society. Moreover, sponsoring institutions should recognize the need to share the power of framing public engagement by welcoming and encouraging full participation by advocacy groups.

By way of example, consider Black Lives Matter. Black Lives Matter is a part of the new civil rights movement. It is a chapter-based national organization working to validate black life and to address the powerlessness experienced by the black community,

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24.   By way of analogy, one researcher found that social justice organizations that sought to diversify their leadership often found tension and resistance to that diversification from the new members who sought to change the very structure that invited them to join the organization in the first place. To use a metaphor, diverse members were welcome into the organization's "house" so long as they did not try to make any deep change to it—rendering the new leaders as mere "guests" in their own organization. In the same way, when structures and processes of public engagement are set by the dominant community, marginalized citizens are rendered "mere guests" in a public discourse of which they cannot fully feel a part. *See* Maryrose K. Dolezal, Critical Multicultural Change (June 2007) (unpublished M.A. thesis, Hamline University) (on file with Kenneth H. Fox).

among other goals.[25] Because advocacy groups for marginalized communities, such as Black Lives Matter, grow out of the very communities they organize, they can speak from lived experiences that differ profoundly from the experiences of the dominant community. While these differences can be experienced by the dominant community as disruptive, they actually offer the unique opportunity for sponsors and marginalized communities to work together, as partners, to (re)frame public discourse in ways that speak to, and genuinely engage, otherwise invisible communities.

VI. EVEN COMMUNITY-BASED ORGANIZATIONS RISK WEAKENED ENGAGEMENT

Citizen advocacy groups like Black Lives Matter play an important role in shifting the locus of power in public discourse from sponsoring institutions to marginalized communities.[26] Such a shift creates space for marginalized communities to use their voices to initiate and help frame the public discourse that impacts them. At the same time, we argue that there exists yet another subtler way by which even advocacy groups risk being silenced or co-opted—ironically through the very funding processes that enable many advocacy groups to thrive. Some describe this influence as being a result of the "non-profit industrial complex."[27]

Some community advocacy groups are loose, grassroots coalitions that grow directly from the community they support—for example, the Black Lives Matter groups.[28] These organizations are often:

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25. *See About the Black Lives Matter Network*, BLACK LIVES MATTER, http://blacklivesmatter.com/about/ (last visited Aug. 11, 2016) (describing the Black Lives Matter network).

26. As one commentator noted, "[i]n this period of power politics, nothing counts but pressure, more pressure, and still more pressure, through the tactic and strategy of broad, organized, aggressive mass action . . . ." Lerone Bennett, Jr., *Great Moments in Black History: The Day They Didn't March*, EBONY, Feb. 1977, at 128.

27. *See, e.g.*, INSIGHT! WOMEN OF COLOR AGAINST VIOLENCE, THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX (INCITE! Women of Color Against Violence ed., 2009) (containing a collection of essays describing and exposing the non-profit industrial complex and its oppression of dissent). The authors wish to acknowledge INCITE! for inspiring the important ideas in this article.

28. Jelani Cobb, *The Matter of Black Lives*, NEW YORKER (Mar. 14, 2016), http://www.newyorker.com/magazine/2016/03/14/where-is-black-lives-matter-headed.

> [C]entered on racial and economic justice that are small, have few or no paid staff, prioritize people of color leadership, often operate collectively, are often membership based, and believe in being accountable to local directly affected populations rather than having their goals and strategies determined by philanthropists' preferences. These organizations and formations tend to be focused on root causes of harm and violence, analyzing colonialism, white supremacy, capitalism, and ableism in order to look at and address specific problems or locations.[29]

It appears likely that these grassroots groups can accurately reflect the needs, concerns, and lived experiences of the communities they represent.[30] As a result, these groups may be effective advocates in framing public discourse in meaningful ways.[31]

Other advocacy groups grow and evolve into nonprofit organizations with budgets, overhead, and the need to sustain themselves with outside resources. It is necessary here to strike a cautionary note for organizations that sustain themselves by looking beyond the communities they serve. Organizations can become like:

> [O]rganizations that are funded and staffed, run by professionals (often lawyers), focused on litigation and policy reform, disproportionately white led, overseen by boards of directors populated by philanthropists and other members of elite sectors, and primarily proposing reforms that line up with and legitimize systems of harm and violence by making slight surface reforms.[32]

Those familiar with successful community engagement know that nonprofit organizations are often cheered as leaders in advocacy for social justice and racial equity. However, historically, society rulers have used nonprofits to benefit their personal interests, to enhance their public image, and to endorse their individual agendas.[33] The influences of funding and society rulers

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29. Dean Spade, *Being Together, After Nonprofitization*, 41 WOMEN'S STUD. Q. 247, 248 (2013).

30. Marc Pilisuk et al., *Coming Together for Action: The Challenge of Contemporary Grassroots Community Organizing*, 52 J. SOC. ISSUES 15, 15–37 (1996).

31. *Id.*

32. Spade, *supra* note 29, at 248.

33. *See* Richard P. Nathan, *The "Nonprofitization Movement" As a Form of*

thus causes "nonprofitization:" advocacy groups that think first in terms of their continued viability as a nonprofit instead of in terms of representing their constituents.

The number of 501(c) nonprofits in the 1960s was roughly 3,500.[34] By 2011, over two million nonprofits were at work, with "public charities" having assets over two trillion dollars.[35] While the increase included a strong focus on racial equity and social justice issues, this spike must be viewed critically with a focus on the bigger picture of the rapid growth of the nonprofit system to truly understand that it is a tactic of the capitalistic ideology of the United States.[36]

Capitalistic ideology has slowed social justice action since the civil rights movement.[37] The brother of capitalism in the United States is white supremacy, and the tactics used by capitalism and white supremacy to stifle community movements come in the form of monetary opportunities to communities, which have been plagued by oppression for centuries.[38] The communities which usually need the most advocacy and resources tend to have been oppressed and subjected to discrimination based on ethnicity, gender, sexual preference, ableism, and for being part of many other underserved and underappreciated groups.[39]

Through nonprofitization, there is a risk that when corporate businesses fund social justice movements, the funding can destroy those movements, usually by producing a divide within the affected communities.[40] Unfortunately, "[c]oncentration of leadership,

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Devolution, 14–15 (1996), *reprinted in* DWIGHT F. BURLINGAME ET AL., CAPACITY FOR CHANGE? THE NONPROFIT WORLD IN THE AGE OF DEVOLUTION (1996).

34.   Myrl Beam, *At the Limits of "By and For": Space, Struggle, and the Nonprofitization of Queer Youth*, S&F ONLINE, Spring 2016, at 1, http://sfonline .barnard.edu/navigating-neoliberalism-in-the-academy-nonprofits-and-beyond /myrl-beam-at-the-limits-of-by-and-for-space-struggle-and-the-nonprofitization-of- queer-youth/#.

35.   *Id.*

36.   Spade, *supra* note 29, at 248.

37.   *See* Dylan Rodríguez, *The Political Logic of the Non-Profit Industrial Complex*, S&F ONLINE, Spring 2016, at 1, http://sfonline.barnard.edu/navigating- neoliberalism-in-the-academy-nonprofits-and-beyond/dylan-rodriguez-the-political- logic-of-the-non-profit-industrial-complex/.

38.   *See* Jennifer Ceema Samimi, *Funding America's Nonprofits: The Non-profit Industrial Complex's Hold on Social Justice*, 1 COLUM. SOC. WORK REV. 17, 18 (2010), http:/hdl.handle.net/10022/AC:P:19018.

39.   *See* Rodríguez, *supra* note 37, at 1.

40.   Spade, *supra* note 29, at 247–48.

elitism, lack of accountability, and lack of transparency in social movement formations has worsened in the past four decades as hierarchical and staffed nonprofits have become the most dominant form for social justice work in the United States."[41]

When nonprofitization occurs, such organizations risk losing focus on—and remaining true to—the communities they strive to serve. This can interfere with their ability to frame public discourse in a way that fully and accurately serves their constituent communities.

VII. CONCLUSION

The locus of power in public engagement profoundly influences the framing of public discourse and shapes the interpretation and evaluation of public issues and of what solutions appear viable. As a result, sponsoring institutions must remain open to shifting and sharing that power with diverse communities. In particular, sponsoring institutions must remain open to marginalized communities and the advocacy groups the help amplify their voices, framing the discourse in ways that are meaningful to themselves and to the advocacy groups that seek a place at the table. In turn, advocacy groups must remain vigilant of their own motives, of the funding sources that can influence their priorities, and of how truly they reflect and represent the experiences, needs, and priorities of the communities they seek to serve.

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41.   *Id.* at 247.

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