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Teaching Democracy Through Practice: Collaborative Governance on Campus

Lisa Blomgren Amsler and Elise Boruvka***

The Missouri School of Law Center for the Study of Dispute Resolution held a Symposium in Fall 2017 entitled “The First Amendment on Campus.” At the time, violent conflict had been erupting as marchers advocating white supremacy engaged in hate speech near college and university campuses. Participants in the Symposium sought to balance free speech and academic freedom with civility and respect for diverse viewpoints, while insuring safety in a learning community. The Symposium has made many important contributions to understanding how the field of dispute resolution can address this growing source of conflict.

Nancy Thomas, Director of the Institute for Democracy and Higher Education at Tufts University, has observed that the public square has devolved into a place of hateful rhetoric, extreme polarization, and ineffective policymaking. Not only politicians, but everyday Americans are more divided on social identity and political ideology. Higher education is caught in the middle. Critics accuse it of housing politically correct liberals who suppress more conservative perspectives. They also criticize students’ disruption of controversial speakers and intolerance of people with whom they disagree. Yet repeated, targeted demeaning sexist or racist remarks on a university campus can create unacceptable toxic and unequal learning environments and expose institutions to liability. Colleges and universities are places of learning. This requires a vigorous and open exchange of ideas across differences and a sense of belonging for all members of the campus community.

It also requires that colleges and universities serve as laboratories for students to learn the civic skills they need to participate effectively in democracy. In their current administrative structure, institutions of higher education serve customers, the students who pay for a product—a degree or credential. We propose re-envisioning the role of colleges and universities. They exist as communities—not businesses. They are similar to towns and cities, in which students, faculty, and staff are all citizens. Their duty includes teaching democracy and participatory skills. They can achieve this through implementing collaborative governance on campus.

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In this analysis, we first review how we got here. Second, we address how colleges and universities have come to resemble communities with municipal services. Third, we briefly review how educational institutions have taught students civic skills essential to a democracy over the past century. Fourth, we touch on democratic engagement in higher education. Fifth, we argue that the civic and diversity movements have operated in parallel universes on campuses with a negative effect on the diversity movement. We are now seeing that the result of this national polarization (not that higher education is entirely to blame) over race, whiteness, immigration, and what it means to be American, is a serious threat to democracy. Higher education needs to address this effect as part of its civic mission, not just its social justice mission.

Finally, we suggest that higher education should practice what it preaches. Instead of limited civic curriculum and instruction in civic skills, we should build actual democratic structures that empower students to participate in governance on campus as citizens and the public do in local government. We propose bringing collaborative governance on campus by introducing students' voices across the policy continuum of legislative, executive, and judicial functions in governing and managing higher education institutions.

I. HOW DID WE GET HERE?

Immediately after World War II, Milton Friedman, American economist and Nobel Prize winner, instigated a wholesale strategy of political economic theory to undo the New Deal. Aided by an economic school of thought coming out of the University of Chicago, his adherents successfully lobbied to change law and policy based on Friedman's arguments in favor of: 1) an individual's freedom of choice to maximize utility; 2) measuring a nation's success by its national wealth, based on utility its individual members value; and 3) limited government to establish and protect free markets as the best means possible for rational, self-interested individuals to maximize aggregate wealth.¹ This frame does not include the interests of society as a collective entity, in the commons, or public good; it excludes anything not reducible to economic value.

Frances Moore Lappé confronted Friedman on a stage before an audience of UC Berkeley students years ago.² She suggested that his unregulated free market system concentrates wealth in a few hands, shrinking the number of people who have the economic power to exercise freedom of choice to maximize utility that its individual members themselves value. Therefore, government must regulate the market and decentralize power to distribute that freedom of choice most broadly in order to maximize utility.³

However, adherents of Friedman's economic philosophy dominated public policy in legislatures; public agencies began using the theory of the New Public

1. For a brief history, see President Larry Kramer's Memorandum to the William and Flora Hewlett Foundation Board of Directors, WILLIAM & FLORA HEWLETT FOUND. (Apr. 2018) <https://hewlett.org/wp-content/uploads/2018/04/Beyond-Neoliberalism-Public-Board-Memo.pdf>. The Hewlett Foundation funded the field of conflict resolution for 18 years (1986-2004).

2. FRANCES MOORE LAPPÉ & ADAM EICHEN, *DARING DEMOCRACY: IGNITING POWER, MEANING, AND CONNECTION FOR THE AMERICA WE WANT*, 153 (2017). Lappé also authored *DIET FOR A SMALL PLANET* (1971).

3. *Id.* at 15.

Management, through which administrative agencies were reoriented to operate like businesses.⁴ In New Public Management, agencies responded to economic incentives and pressures to achieve economic efficiency, charging fees to generate revenue to support operations, and privatizing public operations by increasingly contracting agency work out to the private sector. Agencies also defined, measured, and reported agency success primarily in terms of quantitative variables and data related to economic efficiency. Institutions of higher education are also organizations, many of them state or public universities. Higher education also adopted the New Public Management.⁵ Under this management approach, students became more like customers, consumers of a credential valued in terms of its economic worth in increments of future salary.

In the 1970's, soon-to-be Supreme Court Associate Justice Lewis Powell led the U.S. Chamber of Commerce to move from being a bipartisan policy group to a sharply right-wing lobbying entity working to change the laws to favor corporate influence and power.⁶ It also actively and successfully sought Supreme Court appointees to support this agenda.⁷ By changing the rules, this movement has created (or recreated) the Gilded Age's extreme income inequality in the U.S., and by regulating capitalism less, allowed the few to accumulate the great majority of wealth generated.⁸ It also sought to delegitimize and effectively demonize government (as in claims of a "deep state").⁹ Political scientists have proven that the current average U.S. citizen has no impact on what Congress adopts as policy; elites and corporate interest groups have all the influence.¹⁰

Institutions of higher education now face a larger and more comprehensive assault by extremists on the political right wing. Increasingly, conservative politicians have attacked the value and legitimacy of higher education, claiming it inculcates liberal values, discriminates against conservative scholars, and does not train students for jobs in the new economy.¹¹ Politicians and captains of industry such as the Koch brothers¹² attack science and deny the existence of anthropogenic climate change, while funding an insurgency within the academy, placing professors and fellows they hand pick and whose research they support in

4. See generally Christopher Hood, *A Public Management for All Seasons?*, 69 PUB. ADMIN. 3 (1991); see also Christopher Hood, *The "New Public Management" in the 1980s: Variations on a Theme*, 20 ACCT., ORGS. & SOC'Y 93 (1995); Christopher Pollitt, Karen Bathgate, Janice Caulfield, Amanda Smullen & Colin Talbot, *Agency Fever? Analysis of an International Policy Fashion*, 3 J. COMP. POL'Y ANALYSIS: RES. & PRAC. 271 (2001).

5. Bruno Broucker & Kurt De Wit, *The New Public Management in Higher Education*, in THE PALGRAVE INTERNATIONAL HANDBOOK OF HIGHER EDUCATION POLICY AND GOVERNANCE 57-75 (Jeroen Huisman et al. eds., 2015).

6. LAPPÉ & EICHEN, *supra* note 2, at 29.

7. *Id.* at 31-33.

8. PETER H. LINDERT & JEFFREY G. WILLIAMSON, *UNEQUAL GAINS: AMERICAN GROWTH AND INEQUALITY SINCE 1700* 136 (2016).

9. *Id.* at 46-49.

10. Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSP. ON POL. 564, 565 (2014).

11. Shaun R. Harper, "How Higher Education is Bad for America," FORTUNE (July 13, 2017), <http://fortune.com/2017/07/13/republicans-conservatives-think-college-is-bad-against-higher-education/>.

12. JANE MAYER, *DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT* 133 (2016).

positions to influence scholarship and teaching.¹³ A president elected by a minority of the voters challenges the rule of law and attacks the U.S. Department of Justice (DOJ) over its investigations, even as the DOJ obtains convictions, guilty pleas, and resignations from members of his campaign and administration.¹⁴ He attacks the media and journalists (even the *New York Times*, the newspaper of record), calling them purveyors of “fake news” while his own for-profit Trump University is ordered to pay a \$25 million settlement to students for defrauding them.¹⁵ Historically, the U.S. thrived in part due to its commitment to free public education and subsidized public higher education. President Trump’s U.S. Department of Education Secretary, Betsy DeVos, a leading supporter of charter schools that arguably undermine financial support for K-12 public education,¹⁶ recently sought to eliminate rules aimed at protecting students against fraud by for-profit higher educational institutions in encouraging them to finance their education through high-interest student loans.¹⁷ At the same time, the escalating cost of higher education and inequalities both in admissions and ability to pay have drawn criticism from the left.¹⁸ In the face of these developments, what role should higher education play?

We argue all of these developments are related as part of a larger historical context. They reflect a systematic effort to infect all institutions in the U.S. with a single limited set of values: fierce individualism powered solely by the profit motive in a radical free market that permits ever more extreme income inequality—what Lappé names “brutal capitalism.”¹⁹ Higher education historically has very different values than the marketplace. Drawn from philosophy, religion, and ethics, these include shared learning in search of truth and wisdom in a civil and open community, with the goal that graduates may contribute to a fair and just society.

In a memo to the William and Flora Hewlett Foundation’s Board of Directors in which he described how Milton Friedman’s ideas took over public policy, President Larry Kramer recently issued a call for action:

We can agree, as I think we must, that unbridled market competition is not going to solve these problems and may be making them worse. We can also agree that 20th century models of public management are equally unsatisfactory, not to mention politically infeasible. So, what does an alternative vision of political economy look like? How should

13. See NAOMI ORESKES & ERIK M. CONWAY, *MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS OBSCURED THE TRUTH ON ISSUES FROM TOBACCO SMOKE TO GLOBAL WARMING* (2010).

14. See generally BOB WOODWARD, *FEAR: TRUMP IN THE WHITE HOUSE* (2018).

15. Josh Hafner, “Judge Finalizes \$25 Million Trump University Settlement for Students of ‘Sham University,’” USA TODAY (Apr. 10, 2018), <https://www.usatoday.com/story/news/politics/onpolitics/2018/04/10/trump-university-settlement-judge-finalized/502387002/>.

16. HENRY M. LEVIN, “PRIVATIZING EDUCATION: CAN THE MARKETPLACE DELIVER CHOICE, EFFICIENCY, EQUITY, AND SOCIAL COHESION?” (2018).

17. Erica L. Green, “DeVos to Eliminate Rules Aimed at Abuses by For-Profit Colleges,” N.Y. TIMES (July 26, 2018), <https://www.nytimes.com/2018/07/26/us/politics/betsy-devos-for-profit-colleges.html>.

18. Josh Freedman, “Why American Colleges are Becoming a Force for Inequality,” ATLANTIC (May 16, 2013), <https://www.theatlantic.com/business/archive/2013/05/why-american-colleges-are-becoming-a-force-for-inequality/275923/>.

19. LAPPÉ & EICHEN, *supra* note 2, at 29.

government and markets interact in today's economy to produce prosperity with a fair distribution of wealth and opportunities? What are the appropriate terms of a 21st-century social contract? These are questions that still need to be answered.²⁰

Kramer has laid down the gauntlet. We need to take up his challenge. How do we move higher education beyond Milton Friedman?

Current leading philosophers write and teach about the role of justice in shaping society. Amartya Sen argues for defining justice in terms of “the lives that people manage—or do not manage—to live,” or as “a realized actuality.”²¹ He rejects defining justice as the design of supposedly ideal social arrangements and institutions like those shaped by Friedman's theories. Michael Sandel describes three historic approaches to justice: 1) maximizing utility or welfare (utilitarian, or the greatest happiness for the greatest number); 2) respecting freedom of choice, either libertarian (the actual choices people make in a free market) or liberal egalitarian (hypothetical choices people would make in an original position of equality); and 3) *cultivating virtue and reasoning about the common good* (which he advocates).²² Both scholars have conceptions of justice that incorporate the people's voice, as in democracy.

How does this apply to the role of institutions of higher education in society? Scholars of higher education suggest we have developed a “winner-take-all” system that enforces dramatic inequality in both economic and social capital.²³ In 1970, 10% of all Americans distributed across the nation had a college education. Today almost a third of Americans have degrees, but they are distributed unevenly across the country as degree holders participate in what some call the Big Sort.²⁴ People move to urban areas and communities where there are others who have similar demographics and education levels. This contributes to more adversarial—and regional—politics. To counter pockets of homogeneity and strengthen the public's capacity for democratic self-governance, scholars argue a liberal arts education is critical; the liberal tradition cultivates a broader, more expansive view of America.²⁵ It supports shared discourse.

This article does not provide a comprehensive review of the literature related to how we got here; suffice it to say evidence points to higher education's responsibility and potential capacity to help get us out of this mess.

20. Larry Kramer, Memorandum to the William and Flora Hewlett Foundation Board of Directors regarding Beyond Neoliberalism: Rethinking Political Economy, WILLIAM & FLORA HEWLETT FOUND. 20 (Apr. 2018), <https://hewlett.org/wp-content/uploads/2018/04/Beyond-Neoliberalism-Public-Board-Memo.pdf>.

21. AMARTYA SEN, *THE IDEA OF JUSTICE* 18 (2009).

22. MICHAEL J. SANDEL, *JUSTICE: WHAT'S THE RIGHT THING TO DO?* 260 (2009). Sandel concludes, “A just society can't be achieved simply by maximizing utility or by securing freedom of choice. To achieve a just society, we must reason together about the meaning of the good life, and to create a public culture hospitable to the disagreements that will inevitably arise.” *Id.* at 261.

23. See WILLIAM EGGINTON, *THE SPLINTERING OF THE AMERICAN MIND: IDENTITY POLITICS, INEQUALITY, AND COMMUNITY ON TODAY'S COLLEGE CAMPUSES* (2018).

24. BILL BISHOP, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART* (2009).

25. EGGINTON, *supra* note 23.

II. NOT “TOWN AND GOWN”: GOWN IS A TOWN

Institutions of higher education, particularly those with larger campuses and student bodies, serve functions that often mirror those of cities or towns.²⁶ Universities have experienced an evolution of their responsibilities and mission that has grown to incorporate the welfare and care of the student populace as well as a social responsibility for training students to become knowledgeable citizens. Nowadays, larger universities host a plethora of services beyond research and teaching, including policing,²⁷ housing, transportation,²⁸ managing land use, medical services, libraries, and museums.²⁹ When the students, faculty, and staff come to campus, the services they expect and receive are very similar to those a city government provides to its citizens. Beyond the services, though, universities also administer democratic mechanisms for the administrative processes essential to the institution’s functioning.

Viewing universities as similar to cities is not new to higher education research but rarely explicitly stated. This perspective is apparent as higher education institutions apply concepts and ideals from public sector reforms in order to manage and govern their institutions.³⁰ As reforms have come about in the public sector (e.g., New Public Management and New Public Governance), higher education institutions have incorporated related reform concepts into their administrations and practices.³¹ In turn, these have affected the ways universities

26. The author finds that larger research universities tend to be more like governments in their application of democratic governance than smaller liberal arts or special-curriculum colleges. Scott E. Masten, *Authority and Commitment: Why Universities, Like Legislatures, are Not Organized as Firms*, 15 J. ECON. & MGMT. STRATEGY 649, 650 (2006).

27. See, e.g., John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 AMER. J. POLICE 85 (1992); DIANE C. BORDNER & DAVID M. PETERSEN, *CAMPUS POLICING: THE NATURE OF UNIVERSITY POLICE WORK* (1983).

28. Donald C. Shoup, *Parking on a Smart Campus: Lessons for Universities and Cities*, UC BERKELEY 117 (Mar. 1, 2005).

<https://cloudfront.escholarship.org/dist/prd/content/qt0xf327dk/qt0xf327dk.pdf?t=mc3c1g>.

29. Indiana University, as an example, offers all of these services to students, faculty, and staff. For example, the IU Real Estate Department takes care of housing and land management for the university. *Rental Housing for Full-Time Students, Faculty, and Staff*, IND. U. BLOOMINGTON, <https://www.realestate.indiana.edu/index.cfm?> (last visited Nov. 23, 2018). The university in Bloomington also hosts medical services for students and faculty at the IU Health Center. *Health Center*, IND. U. BLOOMINGTON, <https://healthcenter.indiana.edu/> (last visited Nov. 23, 2018).

30. See, e.g., Kerry J. Kennedy, *Higher Education Governance as a Key Policy Issue in the 21st Century*, 2 EDUC. RES. FOR POL’Y & PRAC. 55 (2003); David Chan & Ka-Ho Mok, *Educational Reforms and Coping Strategies Under the Tidal Wave of Marketisation: A Comparative Study of Hong Kong and the Mainland*, 37 COMP. EDUC. 21 (2001) (discussing reforms in China); William Melody, *Universities and Public Policy*, in *THE POSTMODERN UNIVERSITY* 72 (Anthony Smith & Frank Webster eds., 1997) (regarding university reforms in the UK).

31. See, e.g., Catherine Paradeise et al., *A Comparative Approach to Higher Education Reforms in Western European Countries*, in *UNIVERSITY GOVERNANCE: WESTERN EUROPEAN COMPARATIVE PERSPECTIVES* 197-225 (Catherine Paradeise et al. eds., 2009). An example of New Public Management reforms within higher education institutions has been an increased emphasis on performance measurement. See, e.g., Mark Taylor, *Shared Governance in the Modern University*, 67 HIGHER EDUC. Q. 80 (2012); Ewan Ferlie, Christine Musselin, & Gianluca Andresani, *The ‘Steering’ of Higher Education Systems: A Public Management Perspective*, 56 HIGHER EDUC. Q. 325 (2008); Sowaribi Tolofari, *New Public Management and Education*, 3 POL’Y FUTURES EDUCATION 75 (2005).

have expressed and pursued governance.³² One reaction came as a push for “shared governance” which takes the form of shared accountability and decision making between the governing body, chief executive, and the academic community, diffusing governance responsibilities.³³

The following section looks at how the mission of universities has expanded and how this leads to universities resembling small cities, complete with governance structures.

A. Functions and Services

Higher education institutions, particularly public universities, have expanded their services and operations to meet the demands of student population growth starting in the 1950s³⁴ to such an extent that they now resemble small cities. University administrators are not only responsible for driving the mission of the university but also ensuring the welfare of all individuals on the campus, including employees, students, and visitors. In the U.S., many universities have their own police forces with wide jurisdictional boundaries that are autonomous from municipal law enforcement agencies in the area.³⁵ In addition, universities are responsible for housing the increasing numbers of students enrolling in their programs.

Campuses must deal with the fact that they are hosting large numbers of people in a space they must police, provide with utilities, and enforce standards and values expected of public institutions, including equal access and opportunity for students, staff, and faculty. In 2018, the National Center for Education Statistics estimated 19.9 million students would enroll in the fall semester. This number has increased by 4.6 million students since 2000.³⁶ Meanwhile, there are roughly 3,895 degree-granting institutions serving this student population.³⁷ While some colleges and institutions may not provide living accommodations for their students, the sheer number of students that must use the assets of universities’ property requires municipal and civic planning much like local governments must conduct to maintain safety, order, and civility.

32. As New Public Management emphasized performance measurement, those in governing and decision-making positions came to rely more on guidance and cooperation from faculty. *See* Kennedy, *supra* note 30.

33. *See, e.g.*, Taylor, *supra* note 31. The concept of shared governance came about from the 1960s as higher education institutions faced a shift in their student attendance and sought for more inclusion of faculty and administrator participation within the institutional governing decisions. Since the start of the twenty-first century, universities have begun questioning the effectiveness of shared governance despite the fact that they continue to support the participative values behind the concept. *See, e.g.*, Robert Birnbaum, *The End of Shared Governance: Looking Ahead or Looking Back*, 2004 NEW DIRECTIONS FOR HIGHER EDUC. 5 (2004). However, the pursuit and improvement of shared governance processes continue to this day. *See* Minna S. Barrett & Duncan Quarless, *Engaging and Keeping Faculty and Students in Governance*, in SHARED GOVERNANCE IN HIGHER EDUCATION: DEMANDS, TRANSITIONS, TRANSFORMATIONS 41 (2017).

34. *See, e.g.*, Sloan, *supra* note 27, at 86.

35. *Id.* at 100. *See also* BORDNER & PETERSEN, *supra* note 27.

36. *Back to School Statistics*, Fast Facts, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=372> (last updated May 2018).

37. *Characteristics of Degree-Granting Postsecondary Institutions*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/coe/pdf/Indicator_CSA/coe_csa_2015_05.pdf (last updated May 2018). This report went to Congress as documentation of the current state of education in the United States.

B. Behavioral Expectations and Consequences

Students, faculty, and administrators must adhere to the behavioral code of the institution, much like citizens must adhere to the local, state, and federal laws of the land. When behaviors deviate from those expected, there are repercussions. In an academic setting, institutions take purposes and consequences of actions seriously, just as local governments do. This is evident by the regulations set in place for students and faculty from the outset. First, for students, academic honesty is the crucial basis of standards that students must maintain in order to remain students, or citizens, of a college or university. Each course's syllabus contains the institution's code of student rights, responsibilities, and conduct.³⁸ In higher education, a student essentially has a contract with the institution such that the student will behave appropriately, as outlined in the codebook, and the institution will respect the student's rights. Indiana University's Student Code states, "The IU Code of Student Rights, Responsibilities, and Conduct ensures your rights as an IU student are protected. While you're entitled to respect and civility, you also have responsibilities to the campus community."³⁹

Similarly, citizens of a town have responsibilities to participate in ways that are consistent with the rules of the town, while the town must respect its citizens and uphold their rights. Formal procedures are followed for deciding the consequences governing violations of the codes, rules, or laws, whether by the university or the student. Consequences can be as dire as removal from the institution, much as local governments may arrest citizens, separating them from the community. These formal procedures and the expectations of behavior of students and the university are similar to those of citizens and their local governments.

From the perspective of employees at a higher education institution, failure to adhere to university protocols and legal requirements also has consequences. University employees, just like local government employees, must adhere to all federal and state laws as well as university protocols. Federal laws prohibiting discrimination in employment and education apply to university employees as well as government employees.⁴⁰

C. Formal Organizational Structures

Within universities, governing bodies such as the board of trustees and president, chancellor, or provost, decide the direction of the university. Multiple governing bodies have authority to act on certain policies or issues depending on their mission (e.g., faculty or academic councils or disciplinary committees), similar to different departments within cities.

When looking at universities, it is clear that relationships between different groups (e.g., faculty, administrators, staff, students, alumni, donors, senior faculty,

38. For an example of such a codebook for students, see *'Code of Student Rights, Responsibilities, & Conduct*, IND. U., <http://studentcode.iu.edu/index.html> (last visited Nov. 23, 2018).

39. *Id.*

40. As an example of federal and state laws that university employees must adhere to in Indiana, see *Rights and Responsibilities*, IND. U., <http://www.indiana.edu/~uhrs/employment/rights.html> (last visited Oct. 8, 2018).

junior faculty, etc.) are complex. Scott E. Masten summarizes the complexity of university governance structures as such:

The predominant modes of academic governance—administrator determination, faculty determination, and joint administrator-faculty determination—span the three main categories of political governance—autocracy (monarchy or dictatorship), unified (or parliamentary democracy), and divided (or presidential) democracy. At the same time, educational institutions, as ‘producers’ in a specific industry, serve a narrower (and analytically more tractable) range of interests and may also be more susceptible to competitive pressures than are nations and legislatures.⁴¹

Within these complex relationships, stakeholders must navigate the university systems at the risk of potential conflicts arising from multiple governance structures and power dynamics.

Over time, higher education institutions have established versions of executive, legislative, and judiciary committees to carry out the administration and organization of the university. These committees involve a variety of combinations of faculty, administrators, alumni, external stakeholders, students, and staff that oversee a multitude of responsibilities and operations within the institution. Participation varies among the stakeholders. Kerry J. Kennedy, former director for the Centre for Governance and Citizenship at the Hong Kong Institute of Education, identifies the fact that, “patterns of governance often *emerge* as different groups seek to exercise authority and control over the directions of an organization”.⁴² The role of governance and those with express authority and control then links to the values adopted and expressed by those most frequently involved in the governance process.⁴³ Michael Shattock, visiting professor at the Institute of Education, University of London and former Registrar of the University of Warwick, defined good governance within higher education institutions as needing “well-informed and independent-minded participants, whether on governing bodies, senates or academic boards or lower bodies supported by secretariats and professional officers who coordinate business and ensure it is conducted according to approved procedures.”⁴⁴ Good governance is not just guidance from above by governing bodies but also from below by staff and students, much as city administrators guide from above while citizens and their chosen representatives share their concerns for the collective as a whole.

Students, faculty, staff, and alumni are among the main citizen groups within a university. The processes of governance that take place in higher education institutions are analogous to those of democratic cities in which participation and feedback are important features to governing. Governance in higher education carries with it values that align with the public values within universities’ missions, including contributing to society as a whole; city governments likewise seek to manage and express public values through their mission and tasks. By viewing universities as similar to cities, researchers and university stakeholders

41. Masten, *supra* note 26, at 651.

42. See, e.g., Kennedy, *supra* note 30.

43. *Id.*

44. MICHAEL SHATTOCK, MANAGING GOOD GOVERNANCE IN HIGHER EDUCATION 132-33 (2006).

are able to better address issues arising at universities through the application of public sector principles and practices.

Participation by citizens and residents is critical to all communities within democracies, including the feedback they offer to those governing. In a college or university, one can view faculty, staff, and students as its citizens. As citizens, individuals must consider what rights they have to participate in decision making and governance processes relevant to the institution's services and administration. Generally, there are limited structures for student voices upstream in policy-making and implementation. Downstream in policy enforcement, some universities have adopted structures to provide conflict management systems for students, faculty, and staff.

i. UPSTREAM: Student Representative Bodies and Structures

Once students enter higher education institutions, they have greater autonomy compared to that of secondary school. However, their role in governance is limited. In the 1960s, informal groups and associations of students began voicing opinions concerning how higher education should address public policy issues such as war, discrimination, poverty, apartheid, and the roles of women.⁴⁵ By the late 1980s, more organized student groups were staging sit-ins and other demonstrations to affect decision-making, including investment decisions, at the institutions.⁴⁶ By the early 1990s, student groups began to have more of a voice and an interest in influencing decisions on campuses.⁴⁷

Student governments, however, had a different trajectory than student groups. Student governments have had a role within universities starting in the late 1890s, but that role was related more to local or campus political issues.⁴⁸ Since the 1960s, student governments have shifted more of their focus to operational or policy issues.⁴⁹ In many universities and colleges, the overarching form of student representation is student government; students volunteer or are elected to serve in positions representing the student body. Many student governments mirror the federal government's structure by having three branches: legislative, executive, and judicial.⁵⁰ In addition, student representatives have become involved in faculty senates, academic units, academic disciplinary committees, and administrative committees. However, the overall power of a student body and the presence of students' voices within decision-making venues varies across institutions.

The range of opportunities for student voice in higher education institutions has grown throughout the U.S. as has the strength of student governments and their role on campuses. Recently, colleges and universities have been linking opportunities for student involvement with the institutions' responsibility and role

45. Adrianna Kezar, *Beyond the Yearbook, Homecoming, and Greek Week: A New Insider-Outsider Paradigm of Student Involvement in Institutional Decision Making*, in *THE SHIFTING FRONTIERS OF ACADEMIC DECISION MAKING: RESPONDING TO NEW PRIORITIES, FOLLOWING NEW PATHWAYS* 95-96 (Peter D. Eckel ed., 2006).

46. *Id.*

47. *Id.*

48. *Id.* at 95.

49. *Id.*

50. Student Leadership, Service, and Traditions, *STUDENT GOV'T ASS'N TEX. A&M U.*, <https://sga.tamu.edu/> (last visited Oct. 22, 2018).

in developing engaged citizens among the student populace.⁵¹ In addition, institutions that serve historically underrepresented populations tend to involve students more in governance and may serve as examples for how to incorporate students within decision-making processes.⁵² A few smaller colleges actually have students and faculty established as equals within the democratic community. Two such colleges under this structure include Marlboro College⁵³ and College of the Atlantic.⁵⁴ Under such structures, students share the power to review and propose courses, decide pressing issues for the colleges, and have an equal voice alongside faculty and staff in the organization.⁵⁵ It seems, however, that this degree of involvement by students is more of an exception than the norm.

Students make up the largest constituency on campuses and have the ability to create institutional changes.⁵⁶ They can “build bridges between the disparate cultures on campus” and between structural units at institutions.⁵⁷ Student governments and the participation of students on advisory boards provide opportunities for students to voice their needs and ideas at higher education institutions. In addition, they gain skills such as leadership, listening, cooperation, and strategic planning that later they can apply in the larger society.⁵⁸

However, participation in these opportunities is limited to the few. It does not represent the equivalent of public engagement in local government. Moreover, these structures represent traditional institutional models that are legislative or judicial. These are not the same as collaborative governance forms based on dialogue and deliberation.

ii. DOWNSTREAM: Mediation and Ombudsperson Offices

In addition to legislative forms, judicial structures exist which allow students to participate in governance downstream. When violations of student, employee, or institutional rights take place or when conflicts arise, many colleges and universities have mediation or ombudsperson offices to address these issues. Without such services, disputes and conflicts can detract from the quality and effectiveness of college and universities.⁵⁹ Since the 1970s and 1980s, coinciding with increased instances of student demonstrations and protests,⁶⁰ campuses made efforts to manage conflict by creating counseling centers, ombudsperson offices, student government organizations, and campus judicial systems, among others. Such programs handle disputes between students, organizational disputes, town-

51. Kezar, *supra* note 45, at 101.

52. *Id.*

53. *Community Government*, MARLBORO COLL., https://nook.marlboro.edu/public/governance/town_meeting (last visited Oct., 22, 2018).

54. *College Governance*, COLL. ATLANTIC, <https://www.coa.edu/our-community/college-governance/> (last visited Oct., 22, 2018).

55. *Id.*

56. Alexander W. Astin & Helen S. Astin, *LEADERSHIP RECONSIDERED: ENGAGING HIGHER EDUCATION IN SOCIAL CHANGE* 27 (2000).

57. *Id.* at 28.

58. *Id.* at 9.

59. WILLIAM C. WARTERS, *MEDIATION IN THE CAMPUS COMMUNITY: DESIGNING AND MANAGING EFFECTIVE PROGRAMS* (1999).

60. Tim Griffin, *The Evolution of the Role of Ombudsperson on University and College Campuses*, 55 *NEWSL. NAT'L ASS'N. FOR MEDIATION EDUCATION* 2 (1995).

gown conflicts, and student protests, to name a few.⁶¹ Conflict management approaches range from negotiation directly between two or more parties, mediation involving a neutral third-party, and arbitration led by a third party who controls the process and outcome (as distinguished from a process in which the party with the most power decides unilaterally how to proceed to resolve the conflict). In much the same way, local governments have a range of conflict management structures in place to handle issues between parties, including the government and its citizens. An ombudsperson can handle such issues as a neutral party acting as “an instrument of democratic accountability between the individual and the administrative state.”⁶²

The difficulty with mediation and conflict management on campuses is the complex environment in which colleges and universities operate. Because there are multiple groups with a range of relationships, Cohen, March, and Olsen’s garbage can model of decision-making explains how problems at universities can remain unresolved.⁶³ As the complexity of the university structure shapes the decision-making processes and the potential longevity of conflict, there is growing need for conflict management systems with flexibility to match the type of conflict. Mediation and conflict management systems take on multiple forms. For example, peer mediation programs train students how to be mediators, providing them with the skills they need to mediate a conflict among their peers. A clinical model may engage students and faculty in mediation within a department or school with the additional purpose of research.⁶⁴ William C. Warters suggests that participation in mediation training programs enhances participants’ awareness of conflict in their individual lives as well as in their culture, prepares them for future learning and reflection through self-evaluation, and increases members’ or volunteers’ motivation to help others while addressing the needs of the program.⁶⁵

Overall, higher education institutions must serve multiple stakeholders and need to resolve conflict much like local government or courts serve the public in communities. The salient difference is that democratic structures for governance and conflict management are less developed on campuses than in municipalities.

III. TEACHING CIVIC SKILLS AND DEMOCRACY

The role of higher education within American society continues to evolve with public values over time. Higher education institutions have evolved from centers for “gentlemen” to study the liberal arts, to research and teaching centers with diverse faculty and student bodies focusing on the scientific endeavors of creating knowledge.⁶⁶ As the focus of higher education’s priorities has shifted, the importance of cultivating civic skills and knowledge has likewise increased.

61. *Id.* (providing a more complete list of programs and types of cases involving ombuds).

62. Stephen Owen, *The Ombudsman: Essential Elements and Common Challenges*, in THE INTERNATIONAL OMBUDSMAN ANTHOLOGY: SELECTED WRITINGS FROM THE INTERNATIONAL OMBUDSMAN INSTITUTE 51 (Linda C. Reif ed., 1999).

63. See Michael D. Cohen, James G. March & Johan P. Olsen, *A Garbage Can Model of Organizational Choice*, 17 ADMIN. SCI. Q. 1 (1972). See also WARTERS, *supra* note 59, at 23.

64. WARTERS, *supra* note 59.

65. *Id.* at 95.

66. Donald A. Schon, *Knowing-In-Action: The New Scholarship Requires a New Epistemology*, 27 CHANGE: THE MAGAZINE OF HIGHER LEARNING 27, 29-30 (1995).

However, emphasis on scientific knowledge, positivist research methods, and practical skills has permeated higher education; as a result, time for civic skills has decreased.⁶⁷ Conflicts on campuses have moved beyond peaceful protest to more recent activism by hate groups and deadly violence. Institutions' immediate concern is for public safety by preventing harm to students, employees of the university, and the public.⁶⁸

On a deeper level, what is the root cause of the violence and lack of civility in these events? The following sections consider how K-12 and higher education has inculcated civic values and civic education. In theory, this may affect students' behavior on campus and as citizens: it may encourage civility and civil discourse, reducing adversarial politics and the potential for violence both on campus and in the society into which students graduate.

A. History of Civics in American Education

In the late 1800s, the Progressive Education Movement greatly shaped the role of public schools within American society. John Dewey, an American Pragmatist philosopher and prominent leader of ideals within the movement, emphasized the important role schools play as an integral piece of community life which reflects the values of the surrounding society. He also discussed the importance of education in society during the late 19th and early 20th centuries, and considered the particular role that education plays in a democratic society.⁶⁹ He saw education as a way of spanning the gap between the young and the more mature in a society, with the young being able to learn through replicating society's norms. Dewey's philosophy emphasized the importance of democratic institutions such as voting rights and the need to educate citizens so they are able to fully develop a public opinion to which politicians would be accountable.⁷⁰

Changing views of education and educational institutions follow closely the views and values of the government. H. George Frederickson, prominent scholar and author of social equity theory in public administration, in 1982 wrote about the need for recovering civism in public administration; he wrote, "If public administration is to be effective, persons who practice it must be increasingly familiar with issues of both representational and direct democracy, with citizen participation, with principles of justice, and principles of individual freedom. Likewise, if there is to be a restoration of government effectiveness and legitimacy, the citizenry will need to be significantly more conversant with these

67. Jody Moore, Cheryl D. Lovell, Tammy McGann & Jason Wyrick, *Why Involvement Matters: A Review of Research on Student Involvement in the Collegiate Setting*, 17 C. STUDENT AFF. J. 4 (1998).

68. The National Center for Campus Public Safety (NCCPS) is an organization originally funded by the Department of Justice that came out of a response to violence and the need for increased safety measures on university campuses. In June of 2018, the NCCPS published a report specifically on emergency management during campus protests. See *Campus Protests and Demonstrations: The Role of Emergency Management: Findings from a Critical Issues Forum of Campus Public Safety Leaders*, NAT'L CTR. FOR CAMPUS PUB. SAFETY, https://www.nccpsafety.org/assets/files/misc/Campus_Protests_and_Demonstrations_Final.pdf (last visited Sept. 5, 2018).

69. JOHN DEWEY, *DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION* (1916).

70. *Id.*

issues.⁷¹ Frederickson's article came out at a time when public education in the U.S. was taking a turn towards excellence and performance.

In the early 1980s, critics of the public education system were crying out for changes in the quality of education and the skills that students would receive by the time they graduated.⁷² The Excellence Movement shifted from general education, including civic skills and knowledge, towards more STEM-related coursework, increasing the number of courses required to graduate high school, and providing higher standards for performance among both students and teachers.⁷³ However, as school shootings and increased violence among students in schools and on campuses took place, political and educational leaders began to look to the lack of civic education in schools and higher education as a cause for the incivility and lack of participation in society. This decline in "good citizenship" encouraged a wave of studies and reports around the mid-1990s and continuing to the present.⁷⁴

Education has shifted to more individual- and performance-based metrics and more market-oriented training goals.⁷⁵ However, this primary goal of economically productive students has led students and teachers to focus on skills for practice and profit as opposed to skills for becoming critically thinking citizens capable of participating in civil discourse in order to deal with complex problems facing society.⁷⁶ Ernest L. Boyer, former commissioner of education and president of the Carnegie Foundation for the Advancement of Teaching, wrote *Scholarship Reconsidered*, which challenged the role of the university and its structures of incentives and roles for faculty.⁷⁷ He argued for scholarship to expand beyond what Donald A. Schön termed "technical rationality" and instead pursue scholarship of integration, application, and of teaching.⁷⁸ Boyer's call for new forms of scholarship now frequently informs discussion of education reform, including how to incorporate engagement into university institutions.⁷⁹ Primary, secondary, and postsecondary institutions in the U.S. continue to reshape and reevaluate their roles in society.

i. Civic Education's Function in Society: Knowledge and Skills

What is civic education, and what purpose does it serve society as a whole? According to the National Task Force on Civic Learning and Democratic Engagement, civic education includes "knowledge, skills, values, and the capacity

71. H. George Frederickson, *The Recovery of Civism in Public Administration*, 42 PUB. ADMIN. REV. 501, 503 (1982).

72. R. FREEMAN BUTTS, *THE CIVIC MISSION IN EDUCATIONAL REFORM: PERSPECTIVES FOR THE PUBLIC AND THE PROFESSION* (1989).

73. *Id.* at 1.

74. Recent studies include, ROBERT N. BELLAH ET AL., *THE GOOD SOCIETY* (1991); ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1996); PETER LEVINE, *THE FUTURE OF DEMOCRACY: DEVELOPING THE NEXT GENERATION OF AMERICAN CITIZENS* (2007).

75. MARTHA CRAVEN NUSSBAUM, *NOT FOR PROFIT: WHY DEMOCRACY NEEDS THE HUMANITIES* (2010).

76. *Id.*

77. ERNEST L. BOYER, *SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORiate* (2016).

78. Schön, *supra* note 66.

79. See Frank A. Fear & Lorilee R. Sandmann, *The "New" Scholarship: Implications for Engagement and Extension*, 20 J. HIGHER EDUC. OUTREACH & ENGAGEMENT 101 (2016).

to work with others on civic and societal challenges [that] increase the number of informed, thoughtful, and public-minded citizens well prepared to contribute in the context of the diverse, dynamic, globally connected United States. Civic learning should prepare students with knowledge and for action in our communities.”⁸⁰ The Task Force identified nine components that civic learning should include:

- Knowledge of U.S. history, political structures, and core democratic principles and founding documents; and debates—U.S. and global—about their meaning and application;
- Knowledge of the political systems that frame constitutional democracies of political levers for affecting change;
- Knowledge of diverse cultures and religions in the U.S. and around the world;
- Critical inquiry and reasoning capacities;
- Deliberation and bridge-building across differences;
- Collaborative decision-making skills;
- Open-mindedness and capacity to engage different points of view and cultures;
- Civic problem-solving skills and experience;
- Civility, ethical integrity and mutual respect.⁸¹

An earlier national commission in 1998, the National Commission on Civic Renewal, stated that, “We believe that our schools should foster the knowledge, skills, and virtues our young people need to become good democratic citizens...(including)...age-appropriate instruction in civic knowledge and skills....”⁸² This shift back towards including civic education within schools has led to much research and institutional support for understanding the status of civic education and how to bring it back into schools at all levels.

Of the above nine components, only three address knowledge of something—the remainder refer to skills. However, particularly within K-12 schools, the emphasis and the major focus for performance metrics is on providing the knowledge courses in a curriculum, including social studies, history, and government. Much less focus is on the skills students are learning within their courses.

The Center for Information & Research on Civic Learning and Engagement (CIRCLE) reports that skills other than knowledge must be cultivated, including

80. NAT’L TASK FORCE ON CIVIC LEARNING & DEMOCRATIC ENGAGEMENT, *A CRUCIBLE MOMENT: COLLEGE LEARNING AND DEMOCRACY’S FUTURE* 6 (2012),

https://www.aacu.org/sites/default/files/files/crucible/Crucible_508F.pdf. This report provides an excellent framework of knowledge, skills, values, and collective action within Figure 1 found on page 4 of the report.

81. *Id.* at 1. It is worth noting that Brookings’ Brown Center created a list of ten practices leading for high civic engagement which includes: “1) classroom instruction in civics, government, history, law, economics, and geography; 2) discussion of current events; 3) service learning; 4) extracurricular activities; 5) student participation in school governance; 6) simulations of democratic processes and procedures; 7) news media literacy; 8) action civics; 9) social-emotional learning; and 10) school climate reform”. MICHAEL HANSEN, ELIZABETH LEVESQUE, JON VALANT & DIANA QUINTERO, *THE 2018 BROWN CENTER REPORT ON AMERICAN EDUCATION: HOW WELL ARE AMERICAN STUDENTS LEARNING?* 17 (2018).

82. NAT’L COMM’N ON CIVIC RENEWAL, *A NATION OF SPECTATORS: HOW CIVIC DISENGAGEMENT WEAKENS AMERICA AND WHAT WE CAN DO ABOUT IT* (1998).

skills such as deliberation, collaboration, and public speaking.⁸³ Mary Kirlin, in a working paper for CIRCLE, reports that civic skills reside within society and reflect what society identifies as necessary to “effectively participate in public life.”⁸⁴ These skills and their outcomes have become the focal point of recent task forces and reports regarding the state of civic education in the present.⁸⁵

Reflection is an important feature of civic education and how to best ensure that students’ behaviors will develop beyond the classroom. Dewey identified and emphasized reflection as an essential behavior or process for learning.⁸⁶ Reflection, as further discussed by Carol Rodgers, becomes “a meaning-making process that moves a learner from one experience into the next with deeper understanding of its relationships with and connections to other experiences and ideas. It is the thread that makes continuity of learning possible, and ensures the progress of the individual and, ultimately, society.”⁸⁷ Students’ reflection on and awareness of their learning experiences leads to overall improvements for society.

ii. Civic Engagement in Society: Deliberative Communication and Debate

Proponents emphasize the need for civic education for students to apply civic and democratic values in society upon leaving formal educational environments through civic engagement. The American Psychological Association defines civic engagement as “individual and collective actions designed to identify and address issues of public concern.”⁸⁸ Thomas Ehrlich expands this definition by writing that within civic engagement is the belief that “A morally and civically responsible individual recognizes himself or herself as a member of a larger social fabric and therefore considers social problems to be at least partly his or her own...”⁸⁹ Peter Levine goes further to specify civic engagement as “any action that affects legitimately public matters (even if selfishly motivated) as long as the actor pays appropriate attention to the consequences of his behavior for the underlying political system.”⁹⁰ To this effect, participation in voluntary associations outside of formal educational environments may also bring about civic engagement and educational opportunities for citizens in what can be termed

83. *Civic Education*, CTR. FOR INFO. & RES. ON CIVIC LEARNING & ENGAGEMENT, <https://civicyouth.org/quick-facts/quick-facts-civic-education/#knowledge> (last updated Oct. 8, 2013).

84. Mary Kirlin, *The Role of Civic Skills in Fostering Civic Education* 3 (Ctr. for Info. & Res. on Civic Learning & Engagement, Working Paper No. 06, 2003). This paper also provides an excellent overview of how civic skills are viewed differently depending on the discipline (e.g., political science, psychology, education, etc.).

85. Examples of such reports and projects include a coalition of over 1000 colleges and universities through the Campus Compact (<https://compact.org>), the National Study of Learning, Voting, and Engagement (NSLVE) (<https://idhe.tufts.edu/nslve>), and the National Task Force on Civic Learning and Democratic Engagement (<https://www.aacu.org/crucible>).

86. Carol Rodgers, *Defining Reflection: Another Look at John Dewey and Reflective Thinking*, 104 TCHRS. C. REC. 842, 857 (2002).

87. *Id.* at 845.

88. *Civic Engagement*, AM. PSYCHOL. ASS’N, <http://www.apa.org/education/undergrad/civic-engagement.aspx> (last visited Nov. 24, 2018).

89. THOMAS EHRLICH, CIVIC RESPONSIBILITY AND HIGHER EDUCATION at xxvi (2000).

90. LEVINE, *supra* note 74, at 13.

as “schools of democracy.”⁹¹ However, civic engagement requires certain communication skills, including deliberative discourse and advocacy, as in debate.

Deliberation has become a prominent point of research and practice regarding civic engagement in democracy. It specifically addresses how policy makers and stakeholder create solutions to public problems through democratic discussion.⁹² John Dewey’s work as well as the research of Jürgen Habermas have shaped the principles and motivation behind deliberative communication. Habermas sees participation and deliberation in democracy as a remedy for any power inequalities that may be present during communication processes between parties, particularly citizens and decision-makers.⁹³ Deliberative communication⁹⁴ is a term used to describe such processes of discourse that can be as simple as conversation and discussion between two individuals or can incorporate more macro-level interactions within political systems through which citizens and civic and government leaders engage.⁹⁵ Deliberative communication becomes a way for officials and citizens to deal with conflict and to resolve complex issues. Stephanie Burkhalter, John Gastil,⁹⁶ and Todd Kelshaw define deliberation as a process in small groups that “(a) involves the careful weighing of information and views, (b) an egalitarian process with adequate speaking opportunities and attentive listening by participants, and (c) dialogue that bridges differences among participants’ diverse ways of speaking and knowing.”⁹⁷

The ways in which communication takes place within civic engagement are important to understanding the skills necessary for citizens and public officials to share views and ideas about society. The skills cultivated for and from deliberative civic engagement, deliberation in particular, include “rhetorical expression, eloquence, empathy, courtesy, imagination, and reasoning ability.”⁹⁸

91. Matthew Baggetta, *Creating Good Citizens?: Toward a Clarified Understanding of Selection and Causality in Voluntary Associations* (Am. Soc. Ass’n Ann. Meeting, Conference Paper, 2012). The connection of voluntary associations as potential “schools of democracy” has circulated research since Alexis de Tocqueville’s *DEMOCRACY IN AMERICA* in 1969.

92. See Tina Nabatchi, *An Introduction to Deliberative Civic Engagement*, in *DEMOCRACY IN MOTION: EVALUATING THE PRACTICE AND IMPACT OF DELIBERATIVE CIVIC ENGAGEMENT* (Tina Nabatchi, John Gastil, G. Michael Weiksner & Matt Leighninger eds., 2012).

93. JÜRGEN HABERMAS, *COMMUNICATION AND THE EVOLUTION OF SOCIETY* (1979).

94. It is important to note another term that occurs more within developmental literature as being “participatory communication.” This term and the research surrounding it look at the participations of individuals from all levels to share their ideas, opinions, and expectations. Crucial to this process in developing strategies are information sharing, trust, knowledge, commitment, and an openness in the decision-making process for participation from all levels – individuals, groups, local, national, and international. Similar qualities and principles exist within the research of both participatory communication and deliberative communication including a presumption of equality among all individuals involved as well as commitment to providing a space for participation. For more information about participatory communication, see also, Jan Servaes & Patchanee Malikhaio, *Participatory Communication*, in *THE INTERNATIONAL ENCYCLOPEDIA OF COMMUNICATION* (Wolfgang Donsbach ed., 2008).

95. JOHN GASTIL, *POLITICAL COMMUNICATION AND DELIBERATION* 18-22 (2008).

96. John Gastil is a prominent communication scholar who looks at what deliberative communication processes are and how they can affect individuals participating in such processes. For more work by Gastil, see *id.*; and John Gastil & Laura W. Black, *Public Deliberation as the Organizing Principle of Political Communication Research*, 4 J. PUB. DELIBERATION (2008).

97. Stephanie Burkhalter, John Gastil & Todd Kelshaw, *A Conceptual Definition and Theoretical Model of Public Deliberation in Small Face-to-Face Groups*, 12 COMMUN THEORY 398 (2002).

98. Nabatchi, *supra* note 92.

When politicians engage with citizens through discursive processes, those involved in the discussion perceive decisions to be more legitimate.⁹⁹

One of the ways in which educators have taken to engaging students in some of the communicative skills required of deliberative civic engagement has been debate competitions. Once a common oratorical practice of public officials and common teaching strategy in the late 19th and early 20th centuries,¹⁰⁰ the practice of debate has become a competitive extracurricular activity encouraging students to perfect the art of argumentation by researching topics and making carefully planned, often emotive, arguments for one side or another. One side speaks, followed by the other side's argument, and then each side may respond once more. Students who participate in debate learn skills such as critical thinking, argumentation, speaking eloquently, and writing.¹⁰¹ Debate and speech teams both require students to engage with a topic, understand differing perspectives on an issue, collaborate with colleagues, and form well-thought-out arguments and stances on a topic. However, particularly within debate, the focus of communication is on the ability to support a perspective on an issue with the intention of producing an argument that is more convincing than that of the other team. It emphasizes facts on hand and format of delivery.

Another form of communication that is explored less in schools is negotiation and compromise. Such skills are equally important, but students encounter opportunities to build them less frequently in extracurricular activities. These additional communication skills incorporate the third component of Burkhalter, Gastil, and Kelshaw's definition of deliberation—that of bridging the differences of participants' diverse ways of speaking and knowing. To address this weakness, debate organizations and proponents instead seek ways to expand debate into classrooms¹⁰² and communities. In 2015, The Center for Democratic Deliberation hosted a conference looking specifically at ways to increase the application of speech and debate in civic education because the organizers identified a distancing of debate from its civic engagement components.¹⁰³

In contrast, the process of *deliberative* communication is one researchers have identified as educative for all participants. The iterative and collective decision-making processes require participants to share ideas, listen to others, and together form solutions. As Pincock discusses, these processes actually “develop citizen capacities and competencies for self-governing, that is, to make these processes

99. Heather Pincock, *Does Deliberation Make Better Citizens?*, in *DEMOCRACY IN MOTION: EVALUATING THE PRACTICE AND IMPACT OF DELIBERATIVE CIVIC ENGAGEMENT* (Tina Nabatchi, John Gastil, Matt Leighninger & G. Michael Weiksner eds., 2012). *See also*, JÜRGEN HABERMAS, 2 *THE THEORY OF COMMUNICATIVE ACTION* (Thomas McCarthy trans., 1987); JÜRGEN HABERMAS, *MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION* (Christian Lenhardt & Shierry Weber Nicholson trans., 1990); Joshua Cohen, *Procedure and Substance in Deliberative Democracy*, in *DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS* (James Bohman & William Rehg eds., 1997).

100. For a foundational understanding of debate, *Argumentation and Debate*, originally written by Craven Laycock and Robert Leighton Scales in 1904, discussed how debate could be taught in universities and the multiple areas from which it drew: legal, arts, sciences, etc. Future editions of the book by other authors have followed the developments of debate.

101. *See* Leslie Wade Zorwick & James M. Wade, *Enhancing Civic Education Through the Use of Assigned Advocacy, Argumentation, and Debate Across the Curriculum*, 65 *COMM. EDUC.* 434 (2016).

102. Debate Across the Curriculum (DAC) has been an effort to incorporate debate into curricula throughout colleges.

103. For more information about the conference, see *Speech & Debate as Civic Education*, CTR. FOR DEMOCRATIC DELIBERATION, debateconference.psu.edu.

self-reinforcing through their educative effects.”¹⁰⁴ Such educational loops and engagement opportunities seem fitting for educational settings to encourage future civic engagement.

iii. Civility in Society

One of the reasons for increased focus and scrutiny recently on civic education and engagement has been the incivility witnessed throughout everyday interactions and through the violent expression of hatred and lack of acceptance among individuals. Stephen L. Carter in his book *Civility* cites increased incidents of hostility when looking at how passengers are now behaving on airlines or in accidents (for example, “road rage”).¹⁰⁵ According to Pier Massimo Forni, cofounder of the Johns Hopkins Civility Project, “Being civil means being constantly aware of others and weaving restraint, respect, and consideration into the very fabric of this awareness...But it is not just an attitude of benevolent and thoughtful relating to other individuals; it also entails an active interest in the well-being of our communities and even a concern for the health of the planet on which we live.”¹⁰⁶ An ultimate goal of educating students in civics knowledge, skills, and values is that they will increase their awareness of others and their environment through civic education and conduct themselves in a civil manner once outside of the school environment.

Specific behaviors of a civil person can also be found in George Washington’s own handwriting from when he was a teenager. He wrote of the rules governing civil society that still apply today, such as “Every Action done in Company, ought to be with Some Sign of Respect, to those that are Present” or “Let your Conversation be without Malice or Envy, for ‘tis a Sign of a Tractable and Commendable Nature: And in all Causes of Passion [ad]mit Reason to Govern.”¹⁰⁷ It is fitting to note that many of the attributes of civility identified by Washington’s hand are also found within deliberative engagement and communication. As signs of civility appear with decreasing frequency, the role of civic education and civic engagement becomes even more important to society.

B. Curricular and Extracurricular Forms of Civic Education

Civic education takes on different forms, both within the formal curriculum and in extracurricular activities. The goal of incorporating civic education in a student’s life and education is to further that student’s engagement in civil society, whether through democratic processes or community efforts. Students who engage in civic learning activities are more likely to acquire the “knowledge, skills, values, and motivation to make that difference” in society.¹⁰⁸ Dewey suggested that people learn better when knowledge and action are related,

104. Pincock *supra* note 100, at 137.

105. STEPHEN L. CARTER, *CIVILITY* 7 (1998).

106. PIER MASSIMO FORNI, *CHOOSING CIVILITY: THE TWENTY-FIVE RULES OF CONSIDERATE CONDUCT* 9 (2002).

107. AMY M. EDWARDS & CHRISTINA J. MUGGLIN, *THE COPYWORKBOOK: GEORGE WASHINGTON’S RULES OF CIVILITY & DECENT BEHAVIOR IN COMPANY AND CONVERSATION* 1, 58 (2017).

108. Nabatchi, *supra* note 92, at 7.

particularly when reflection is also a component of the experience.¹⁰⁹ Throughout a student's years of formal education, they are likely to encounter opportunities to learn civic skills in the classroom as well as outside of the classroom.

Curricular forms include an understanding of the governmental mechanisms and processes through which cities, states, and federal governments operate; knowing the history of a place; having the awareness and reflective capability to understand complex situations; and being able to think critically. However, the acquisition of knowledge and skills are not solitary pursuits. John Dewey presented in his book *The Child and the Curriculum* the concept that formal curricula do not engage the student. Instead, he suggested that students will engage when activities are related to the content. Service learning is increasingly pursued as a means of giving students an opportunity to allow the formal curriculum to resonate with their own experiences.

Service learning differs from civic engagement in that service learning is more specific. Service learning incorporates course material with an experiential component, allowing students to construct their own meanings of the content.¹¹⁰ "Active learning" becomes key. Robert Bringle and Julie Hatcher define service learning as:

A credit-bearing, educational experience in which students participate in an organized service activity that meets identified community needs and reflect on the service activity in such a way as to gain further understanding of course content, a broader appreciation of the discipline, and an enhanced sense of civic responsibility.¹¹¹

It is important to clarify that service learning does not necessarily mean community service or vice versa. Picking up trash along the side of a highway as a part of a student organization's community service would not be service learning if there is no coursework or reflective process required for the student. Service learning incorporates a stronger synthesis of material through experience. In addition, the role of the instructor or teaching within service learning shifts from being the center of instruction to being a facilitator of the learning taking place outside of the classroom.¹¹²

Extracurricular activities may involve service learning, but often these activities include students' engaging in sports activities, artistic or musical practices, academic competitions, or participation within student councils or representative youth groups. The National Center for Education Statistics reported that "Although participation in extracurricular activities sponsored by a school or community organization was positively related to civic achievement, the frequency of participation was not."¹¹³ In the same report, the International IEA

109. JOHN DEWEY, *EXPERIENCE AND EDUCATION* (1938).

110. Alison Rios Millett McCartney, *Teaching Civic Engagement: Debates, Definitions, Benefits, and Challenges*, in *TEACHING CIVIC ENGAGEMENT: FROM STUDENT TO ACTIVE CITIZEN 9-21* (Alison Rios Millett McCartney, Elizabeth A. Bennion & Dick Simpson eds., 2013).

111. Robert G. Bringle & Julie A. Hatcher, *Implementing Service Learning in Higher Education*, 67 J. HIGHER EDUC. 221, 222 (1996).

112. ROBERT G. BRINGLE, MINDY A. PHILLIPS & MICHAEL HUDSON, *THE MEASURE OF SERVICE LEARNING: RESEARCH SCALES TO ASSESS STUDENT EXPERIENCES 6-7* (2001).

113. *The Demographic, Socioeconomic, and Out-of-School Context of Civic Knowledge*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/pubs2001/cived/4.asp> (last visited Nov. 24, 2018).

Civic Education Study found U.S. students in extracurricular activities that had a direct relation to academic coursework scored higher on their civic education assessment than their peers who engaged in extracurricular activities without that academic relation.¹¹⁴ This report is in alignment with the idea that to have only an activity does not necessarily allow the lessons and the greater civic skill and application to percolate or resonate for the student.

C. Civic Education in Kindergarten through Twelfth Grade: Curricula, Service Learning, and Extracurricular Activities

Primary and secondary education within American society has shifted greatly, particularly in the last century as families and communities have become less able to equip youth to become educated citizens.¹¹⁵ As American society shifted to more industrialized ways of life, the role of the family shifted and public schools became the teacher of civic values. Then, as the U.S. became more involved with international competition, particularly during the Cold War, the need for stronger science education led to an increased focus on the standards of content and measuring students' progress.¹¹⁶ The public has increasingly expected primary and secondary education institutions to build the social capital elements of society. These same institutions have also had to consider which civic values to teach and the consequences of that choice.

When one considers the coursework of students in grades K-12, civic education and skills development are not necessarily the first things that come to mind. All fifty states of the U.S. require schools to teach material on civics or government.¹¹⁷ Almost 90 percent of students have taken at least one civic course in their high school career.¹¹⁸ However, the 2018 Brown Center Report on American Education finds that civics education in the U.S. emphasizes discussion and knowledge-building components, with participatory skills being less common.¹¹⁹ This emphasis on knowledge as opposed to skills is reflective of the reforms from the 1980s as schools shifted to a more test-based focus in curricula. In addition, the quality of courses and opportunities is not consistent throughout the U.S. CIRCLE's report on civic education in the U.S. states, "Education, income, ethnicity, and immigration status are all strong predictors of civic participation and civic skill acquisition."¹²⁰ The formal curricula within secondary schools is varied and open to many improvements for engaging students. One such way schools are attempting to increase their civic education opportunities is through service learning opportunities.

Service learning has increasingly been emphasized within high schools as a means to address the skills portion of civic education. A 2005 study of 1,000 high school students found that service learning programs, when implemented well, are likely to increase students' civic engagement, particularly their likelihood to

114. *Id.*

115. James S. Coleman, *Families and Schools*, 16 EDUC. RESEARCHER 32, 32-38 (1987).

116. HANSEN, LEVESQUE, VALANT & QUINTERO, *supra* note 81.

117. *Civic Education*, CTR. FOR INFO. & RES. ON CIVIC LEARNING & ENGAGEMENT, <https://civicyouth.org/quick-facts/quick-facts-civic-education/> (last updated Oct. 8, 2013).

118. *Id.*

119. *Id.*

120. *Id.*

vote.¹²¹ However, this study also found that service learning made little difference when the programs were implemented poorly.¹²² Regarding community attachment, the study found that students who engaged in direct service were more attached to their communities while those who engaged in indirect service, such as fundraising or research, demonstrated higher academic engagement. Students scoring highest regarding civic knowledge and civic dispositions had engaged in political or civic action.¹²³

Students in secondary school are frequently involved in activities outside of their formal education. In 2006, roughly 62 percent of high school students were involved in an organized group or club.¹²⁴ The CIRCLE report that identified this statistic noted the implications, however, of one-third of high school students not being involved in any extracurricular activities. Peter Levine identifies such activities as making up the “civil society” of the school, including its informal networks and interest groups, along with the more organized student groups.¹²⁵ Of extracurricular participation, students can either be involved in “instrumental” groups or “expressive” groups. The latter, consisting of activities like music, and hobby clubs, does not have as strong a link with political participation as instrumental groups, such as those that complete a specific task like organizing events or publishing a school newspaper.¹²⁶

D. Civic Educaiton in Higher Educaiton

As students leave high school, research shows that there is a general decline in their civic engagement, particularly among non-college-bound youth.¹²⁷ Some suggest that this may be due to the lack of formal civic engagement opportunities for students after graduating from high school, as well as limited time and resources available to invest in civic activities. Having understood how civic knowledge and skills might develop among students in kindergarten through twelfth grade, it is possible to see how to enhance students’ knowledge and skills after entering college.

Higher education institutions in the U.S. have been facing increased pressures to identify their role and importance to society, particularly as federal and state funding decreases have begun to significantly impact universities, including the

121. Shelley Billig, Sue Root & Dan Jesse, *The Impact of Participation in Service-Learning on High School Students’ Civic Engagement* 1 (Ctr. for Info. & Res. on Civic Learning & Engagement, Working Paper No. 33, 2005).

122. *Id.*

123. *Id.*

124. Mark Hugo Lopez et al., *The 2006 Civic and Political Health of the Nation: A Detailed Look at How Youth Participate in Politics and Communities*, CTR. FOR INFO. & RES. ON CIVIC LEARNING & ENGAGEMENT 12 (2006), https://civicyouth.org/PopUps/2006_CPHS_Report_update.pdf.

125. LEVINE, *supra* note 74, at 136-40.

126. *Id.* at 138. Levine points to a study by Lopez and Moore that finds athletes have a high correlation with positive voting behavior, comfort with making public statements, and watching the news. See, Mark Hugo Lopez & Kimberlee Moore, *Participation in Sports and Civic Engagement*, CTR. FOR INFO. & RES. ON CIVIC LEARNING & ENGAGEMENT (Feb. 2006), https://civicyouth.org/PopUps/FactSheets/FS_06_Sports_and_Civic_Engagement.pdf.

127. Heather Malin, Hyemin Han & Indrawati Liauw, Civic Purpose in Late Adolescence: Factors that Prevent Decline in Civic Engagement After High School, 53 DEVELOPMENTAL PSYCHOL. 1384, 1385 (2017).

cost of tuition for students.¹²⁸ Higher education institutions must convey their value to society to justify their costs, and one way these institutions have been doing so is by looking at their role in training students to become engaged citizens. Anne Colby, Elizabeth Beaumont, Thomas Ehrlich, and Jason Stephens wrote, “If today’s college graduates are to become positive forces in this world, they need not only to possess knowledge and intellectual capacities but also to see themselves as members of a community, as individuals with a responsibility to contribute to their communities. They must be willing to act for the common good and capable of doing so effectively.”¹²⁹ The National Task Force on Civic Learning and Democratic Engagement identified the beneficiaries of higher education institutions undertaking civic education as a main priority to be far more than the students or the role of higher education in society. The Task Force wrote, “The more civic-oriented that colleges and universities become, the greater their overall capacity to spur local and global economic vitality, social and political well-being, and collective action to address public problems...Too few postsecondary institutions offer programs that prepare students to engage the questions Americans face as a global democratic power.”¹³⁰ The Task Force found universities’ efforts lacking, with overall the civic measures and social responsibility outcomes from civic education efforts for students graduating from college were “neither robust nor pervasive.”¹³¹

The idea of higher education institutions filling in the gap of civic education as societal civility and civic skills or social capital have decreased is precisely what Robert D. Putnam found in his 1995 article “Tuning In, Tuning Out: The Strange Disappearance of Social Capital in America.”¹³² He identified the relationship between education and civic engagement as curvilinear with “The last two years of college make twice as much difference to trust and group membership as the first two years of high school. The four years of education between 14 and 18 total years have *ten times more impact* on trust and members than the first four years of formal education.”¹³³

In order to expand and take advantage of the benefits of increased social trust and group membership, higher education institutions have the opportunity to provide students with experiences that give students the skills and knowledge needed for involvement in the governance systems of the university. Interestingly, Louis Joughin in 1968 was already identifying the need for greater involvement of students in their university and college institutions. He spoke in an address at the Symposium on Academic Freedom and Responsibility at

128. Michael Mitchell, Michael Leachman & Kathleen Masterson, *A Lost Decade in Higher Education Funding: State Cuts Have Driven Up Tuition and Reduced Quality*, CTR. ON BUDGET & POL’Y PRIORITIES (Aug. 23, 2017), <https://www.cbpp.org/research/state-budget-and-tax/a-lost-decade-in-higher-education-funding>.

129. Anne Colby, Elizabeth Beaumont, Thomas Ehrlic & Jason Stephens, *Educating Citizens: Preparing America’s Undergraduates for Lives of Moral and Civic Responsibility* 6 (John Wiley & Sons eds., 2003).

130. National Task Force on Civic Learning and Democratic Engagement, *supra* note 80, at 2.

131. Ashley Finley, A Brief Review of the Evidence on Civic Learning in Higher Education (Jan. 2012) (unpublished paper) (available at <https://www.aacu.org/sites/default/files/files/crucible/CivicOutcomesBrief.pdf>).

132. Robert D. Putnam, *Tuning In, Tuning Out: The Strange Disappearances of Social Capital in America*, 28 PS: POL. SCI. & POL. 664 (1995), <https://www.jstor.org/stable/420517>.

133. *Id.* at 667. For an excellent visual reference of the curvilinear relationship between social trust and group membership and years of education, see Figure 2 of Putnam’s article on page 668.

California State College stating, “Students cannot fulfill their responsibilities for self-development unless they are allowed certain rights and freedoms...To facilitate their involvement, institutions should: 1) provide for more information exchange; 2) consult with students; and 3) give students decision-making responsibilities in many areas of university life and complete responsibility for some areas of student life.”¹³⁴

Higher education institutions are fitting for students to continue their education as citizens but only if the institutions take responsibility for their role as facilitators of civility and educators of the future citizens of the country. Currently, institutions and centers for civility are striving to assist educators in their incorporation of civics and other skills in their curricula. For example, the Institute for Democracy and Higher Education at Tisch College of Civic Life at Tufts University provides data for colleges and universities to better understand their student populace, increase students’ political engagement, and incorporate civic learning into the student experience.¹³⁵

i. Curricula and Service Learning

The application of civic education within higher education courses has increased, particularly since the early 2000s when university leaders were called to take action and improve the civic engagement of students.¹³⁶ However, there remains a gap between what universities say are the civic skills and knowledge they are incorporating in the classroom and the students’ perceptions and understanding of such skills and knowledge they receive.¹³⁷ Nancy L. Thomas notes that higher education institutions often have structural barriers to modeling democratic practices for students, whether within the classroom or within the cultures of the schools and degree programs.¹³⁸ The National Survey for Civic Engagement (NSCE) found that younger Americans are more likely to take a passive stance toward citizenship compared to older Americans.¹³⁹ This passivity of the younger generation requires instructors to engage students in civic-oriented discussions in order to increase their knowledge and civic skills.

Utilizing the National Study for Learning, Voting, and Engagement database, Nancy Thomas and Margaret Brower identified nine campuses exhibiting high voter and political engagement and visited these schools to study their overall

134. Louis Joughin, *The Role of the Student in College and University Government*, Address at the Symposium on Academic Freedom and Responsibility (May 22, 1968), ERIC Document Reproduction Service No. ED034479.

135. About Us, INST. FOR DEMOCRACY & HIGHER EDUC., <https://idhe.tufts.edu/about> (last visited Nov. 24, 2018).

136. Nancy L. Thomas, *Why It Is Imperative to Strengthen American Democracy Through Study, Dialogue and Change in Higher Education*, 6 J. PUB. DELIBERATION Article 10 (2010).

137. *Id.* at 4. Robert G. Bringle and Julie A. Hatcher also discuss the difficulties of studying and determining the extent to which service learning and civic engagement are actually implemented into curricula, partly because of the performance metrics collected by universities not providing enough detail about the skills or knowledge taught in courses. Robert G. Bringle & Julie A. Hatcher, *Innovative Practices in Service-Learning and Curricular Engagement*, 147 NEW DIRECTIONS FOR HIGHER EDUC. 37, 37-45 (2009).

138. *Id.*

139. J. Cherie Strachan & Mary Scheuer Senter, *Student Organizations and Civic Education on Campus: The Greek System*, in *TEACHING CIVIC ENGAGEMENT: FROM STUDENT TO ACTIVE CITIZEN* 385-405 (Alison Rios Millett McCartney, Elizabeth A. Bennion & Dick Simpson eds., 2013).

campus climates and how they affected political learning and engagement.¹⁴⁰ One common practice at these universities is that faculty held active discussions about current events. When talking with faculty, the authors identified four major elements related to this approach: 1) training and preparation of faculty to lead discussions, 2) establishing classroom dynamics to build trust among the students, 3) using diversity as a pedagogical asset, and 4) introducing dissenting viewpoints.¹⁴¹

The National Task Force on Civic Learning and Democratic Engagement found that over 70 percent of college students volunteer, participate in community service or some form of service learning during college.¹⁴² However, in another study, 75 percent of community college students never have a course involving service learning.¹⁴³ The impact of this disparity is severe given that service learning while in college is correlated with increased retention and completion rates.¹⁴⁴ In order for service learning to be incorporated into college course curricula, though, incentives may be necessary. One example of an incentive is the Carnegie classification system of colleges implemented in 2005, a classification for Community Engagement for which universities could apply.¹⁴⁵ Overall, though, the results of service learning in formal curricula remain difficult to identify. Still the implications of the skills and knowledge students gain from college courses and applying such information in real-world settings are important.

ii. Extracurricular Activities

Once in postsecondary school, students gain more autonomy in their governance positions in representing their student body or in leading student organizations. Extracurricular activities often expand in possibility and scope compared to those of secondary school. Students have options to engage in academic and skills-based activities such as debate or speech teams, student organizations, governance processes with faculty and staff, as well as other activities such as Greek organizations or working as a residential hall assistant.

Traditional Greek organizations as well as athletic and honor societies began to emerge on campuses in the early 1900s. The appearance of such societies and organizations broadened and effectuated the concept of education outside of the classroom.¹⁴⁶ Recent research demonstrates that Greek organizations on campuses outperform many other types of organizations on campuses in promoting activities related to political and civic socialization.¹⁴⁷ In addition, these organizations emphasize and cultivate the political skills, civic identities, and political efficacy of their members. However, such organizations also have

140. Nancy Thomas & Margaret Brower, *The Politically Engaged Classroom*, in *TEACHING CIVIC ENGAGEMENT ACROSS THE DISCIPLINES* 21-34 (Elizabeth C. Matto, Alison Rios Millett McCartney, Elizabeth A. Bennion & Dick Simpson eds., 2017).

141. *Id.* at 26.

142. Finley, *supra* note 132, at 1.

143. NATIONAL TASK FORCE ON CIVIC LEARNING & DEMOCRATIC ENGAGEMENT, *supra* note 80, at 13.

144. *Id.* at 12.

145. Thomas, *supra* note 136, at 3.

146. Moore, Lovell, McGann & Wyrick, *supra* note 66, at 4-17.

147. Strachan & Senter, *supra* note 139, at 385.

higher levels of sexism and symbolic racism,¹⁴⁸ which work against the civic skills sought for cultivating civic engagement and civility within society.

Another opportunity afforded to students on physical campuses is the possibility to become a residential hall assistant (RA). In order to get such a position, students must undergo conflict resolution training and facilitation courses that teach students the skills they will need to mediate conflicts and facilitate healthy discussions among their peers.¹⁴⁹ Not only do RAs have an opportunity to learn these skills, but they apply the skills for an entire year while they are in their position. Such opportunities allow students time for reflection to more fully cultivate their skills and understand the roles and influence of individuals and groups.

IV. DEMOCRATIC ENGAGEMENT IN HIGHER EDUCATION

As critics call for higher education to take on more active roles in supporting students' development as educated and civil citizens,¹⁵⁰ the academy has organized various initiatives. These promote networking resources for higher education to increase student engagement with civic ideas and roles. In 2007, The Democracy Imperative (TDI)¹⁵¹ started a program that provides resources to assist institutions and individuals with teaching deliberative democracy and encouraging democratic engagement.¹⁵² Citizens can interact with deliberative democracy initiatives through efforts such as "study circles, intergroup dialogues, issue forums, public conversations, e-democracy, and more."¹⁵³ These forums give opportunities for different sectors and citizens to create solutions to issues that are increasingly complex (e.g., climate change), persistent (e.g., poverty, racism), and divisive (e.g., immigration, abortion, affirmative action).¹⁵⁴

Founder Nancy Thomas writes, "[Students] do not develop an understanding of or need to address structural or systematic problems in American society. Nor are they necessarily learning the skills they need to participate in a democracy."¹⁵⁵ Thomas notes that while universities may subscribe to creating and building citizens, higher education is rarely structurally conducive to exemplifying democratic practices. In addition, disciplines such as liberal and professional programs do not place sufficient importance on students expressing and sharing democratic ideals. One of the difficulties with incorporating civic engagement and education within the classrooms across universities has been that most of the efforts have occurred from specific disciplines, such as political science or public

148. *Id.*

149. For examples of courses and RA requirements, see Sydney Lorch, *How to Become an RA*, ODYSSEY (Nov. 30, 2016), https://www.theodysseyonline.com/ra_Resident_Assistant_Job_Description, MO ST., <https://reslife.missouristate.edu/rajobdesc.htm> (last updated June 1, 2015); *Resident Advisors*, ILL. U. HOUS., <http://www.housing.illinois.edu/aboutus/staff-employment/parapro/resident-advisors> (last visited Nov. 29, 2018).

150. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000); EHRLICH, *supra* note 89.

151. For more information about the purpose and resources produced by TDI, see generally THE DEMOCRACY IMPERATIVE, <https://thedemocracyimperative.wordpress.com/> (last visited Nov. 29, 2018).

152. Thomas, *supra* note 136.

153. *Id.* at 1-2.

154. *Id.* at 2.

155. *Id.* at 5.

affairs, rather than throughout all disciplines in higher education.¹⁵⁶ Thomas suggests dialogue as a key learning tool for colleges to begin or grow their efforts at civic engagement, and to introduce skills such as being inclusive, respectful, and reflective within a safe space (guided by ground rules for interactions).¹⁵⁷ In addition, public reasoning as a learning outcome can help in shaping political decisions, promoting social action, and building communities.¹⁵⁸ These issues become increasingly important, Thomas argues, particularly as debates over free speech on campuses, that could impact efforts to teach democratic principles as educational goals, grow.¹⁵⁹

To better understand the realities of civic engagement on campuses and how higher education may lead to higher or lower student voter turnouts, the Institute for Democracy & Higher Education (IDHE) began a major undertaking to gather data from colleges and universities throughout the U.S.¹⁶⁰ From the surveys conducted in 2014 and 2016, IDHE identified ten ways for campuses to increase college student voting, including removing barriers for student voting such as voting locations, talking politics across the campus, and supporting student activism and leadership.¹⁶¹ Overall, the larger context of the campus culture plays a major role in the teaching and learning of political knowledge and engagement.¹⁶² Nancy Thomas and Margaret Brower state that classroom experience alone is not enough to transform “disinterested students into committed political actors.”¹⁶³ The campus climate includes “the norms, behaviors, attitudes, structures, and external influences that shape the student experience.”¹⁶⁴ University faculty and administrators cannot hope to change one portion of the university without involving all other aspects if seeking transformative experiences for students.

On campuses with higher voting participation, Thomas and Brower found evidence of significant practices for increased political participation and engagement including social cohesion, diversity, pervasive political discussions, students with decision-making authority and inclusion in university governance processes, and political action.¹⁶⁵ If colleges and universities seek to improve their student voter participation and civic engagement efforts, Thomas and Brower provide examples of colleges that have succeeded.

156. Thomas & Brower, *supra* note 140, at 22.

157. *Id.* at 26.

158. *Id.* at 31.

159. Nancy Thomas, *Educating for Democracy in Undemocratic Contexts: Avoiding the Zero-Sum Game of Campus Free Speech Versus Inclusion*, 7 *EJOURNAL PUB. AFF.* 81 (2018).

160. *The National Study of Learning, Voting, and Engagement (NSLVE)*, INST. FOR DEMOCRACY & HIGHER EDUC., <https://idhe.tufts.edu/nslve> (last visited Oct. 18, 2018).

161. Nancy Thomas et al., *Election Imperatives: Ten Recommendations to Increase College Student Voting and Improve Political Learning and Engagement in Democracy*, INST. FOR DEMOCRACY & HIGHER EDUC. (2017), idhe.tufts.edu/electionimperatives.

162. Nancy Thomas & Margaret Brower, *Politics 365: Fostering Campus Climates for Student Political Learning and Engagement*, in *TEACHING CIVIC ENGAGEMENT ACROSS THE DISCIPLINES* 376 (Elizabeth C. Matto, Alison Rios Millett McCartney, Elizabeth A. Bennion & Dick Simpson eds., 2017).

163. *Id.* at 361.

164. *Id.* at 362.

165. *Id.* at 364.

V. DIVERSITY AND CIVIC ENGAGEMENT EFFORTS

The civic and diversity movements have operated in parallel universes on campuses with a negative effect on the diversity movement. In a nation that is polarized over race, whiteness, immigration, and what it means to be American, this poses a serious threat to democracy. Higher education needs to address this deficit as part of its civic mission, not just its social justice mission.

The debates of free speech on campuses bring to mind not only democratic engagement and the roles that universities play in building citizens, but also efforts for inclusion and supporting or inhibiting diverse viewpoints. Many of the questions of freedom and equity have been over-simplified to what Nancy Thomas describes as “zero-sum game approach” to debate and selection of choices between individual freedom and principles of equity and community;¹⁶⁶ much of today’s debate dates from discussions of affirmative action and introducing interdisciplinary programs into higher education coursework.¹⁶⁷

Since the civil rights movements of the 1960s, institutions of higher education have been pursuing efforts to increase and address diversity.¹⁶⁸ Efforts to increase admissions diversity expanded to providing support to increase retention and student success.¹⁶⁹ New scholarship and research efforts emerged from these diversity-related reforms, leading to considerations of neglected groups in curriculum on gender and African-American studies.¹⁷⁰ In the 1980s, as incidents and acts of hatred and bigotry took place on campuses, higher education institutions attempted to establish hate speech codes, which were often considered unconstitutional due to vagueness or overbreadth.¹⁷¹ As universities and colleges sought to curb the expressions of enmity, they took a different course of action—curricular and co-curricular interventions.¹⁷² These interventions included cultural studies and centers, living-learning communities, internal assessments of institutional climates for diversity, and more.¹⁷³ The influx of new courses and university-supported values shifted the norms of student behavior such that hate speech became unacceptable.¹⁷⁴

Equality, diversity, and inclusion within higher education continue to be relevant and important issues. As universities and colleges consider their roles and responsibilities to society and how they can enhance the civic knowledge, skills, and engagement of their students, they must consider the student population with whom they are working. Nancy Thomas and Peter Levine, both notable scholars for their work on civic education, note, “The college-attendance rate has stalled since the 1980s at about half of all young adults. About half of those who

166. Thomas, *supra* note 159, at 107.

167. *Id.* at 85.

168. Edgar Beckham, *Civic Learning and Campus Diversity: Bridging the Language Gap*, AAC&U PEER REVIEW 4-7 (1999).

169. *Id.* at 5.

170. *Id.*

171. See JON B. GOULD, *SPEAK NO EVIL: THE TRIUMPH OF HATE SPEECH REGULATION* (2010) (discussing public universities’ adoption of hate speech codes). See also *Doe v. U. of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989) (holding a university hate speech code as “overbroad both on its face and as applied”).

172. Thomas, *supra* note 159, at 86.

173. *Id.*

174. *Id.* at 86-87.

do attend college fail to graduate, and those who do graduate have very different experiences depending on the institution that enrolls them.”¹⁷⁵ The inequalities surrounding college admissions brought about concerns of structural and institutional norms and questions of higher education’s role in working within society. Some evidence suggests that “the correlation between college attendance and civic participation reflects class inequalities”¹⁷⁶ rather than college effectiveness in increasing participation.¹⁷⁷ Thomas and Levine suggest that there may even be an inverse relationship between diversity and civic learning.¹⁷⁸

Combining diversity and inclusion efforts with civic learning has proven challenging for some because of the divergent paths efforts took and the wide gap of understanding each group has of the other’s goals, whether civic engagement-focused or diversity-focused.¹⁷⁹ Edgar Beckham, former chairman of the Connecticut State Board of Education and Senior Fellow of the Association of American Colleges and Universities, identified some of the challenges and describes the division in efforts that resulted.¹⁸⁰ However, recent efforts to bridge or to combine goals of diversity and inclusion with civic engagement have presented opportunities for higher education institutions and future research. A recent meta-analysis on civic engagement and diversity finds that “diversity experiences are associated with increases in civic attitudes, behavioral intentions, and behaviors,” with greater impact of these experiences when experienced through “interpersonal interactions with racial diversity than for curricular or co-curricular diversity experiences.”¹⁸¹ The analysis also found that the extent to which civic engagement and diversity efforts are related depends on the type of civic outcome being studied and how the outcome is determined (i.e., self-reported gains or longitudinal methods).¹⁸²

Indiana University has begun a discussion that incorporates both diversity and civic engagement efforts into the core undergraduate curriculum. In October 2018, the Bloomington Faculty Council discussed a proposal to add learning outcomes of both curricular and co-curricular activities in the general undergraduate education to facilitate conversations, heighten awareness of inclusion and diversity issues, and increase knowledge of historical and society contexts.¹⁸³ As Marah Harbison writes of the proposal, “Outcomes include goals such as understanding social constructions of identities and movements that shape and challenge systems of power; being able to identify ways in which individuals and groups have unequal experiences and recognizing their implicit biases and

175. Nancy Thomas & Peter Levine, *Deliberative Democracy and Higher Education: Higher Education’s Democratic Mission*, in “TO SERVE A LARGER PURPOSE”: ENGAGEMENT FOR DEMOCRACY AND THE TRANSFORMATION OF HIGHER EDUCATION 154-76 (John Saltmarsh & Matthew Hartley eds., 2011).

176. *Id.* at 156.

177. *Id.* at 156.

178. *Id.* at 157.

179. Beckham, *supra* note 168, at 5.

180. *Id.* at 4-7.

181. Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 REV. EDUC. RES. 29 (2011).

182. *Id.*

183. Marah Harbison, *Faculty Council Focuses on Enhanced General Education Diversity Requirement*, NEWS IU BLOOMINGTON (Oct. 29, 2018), <https://news.iu.edu/stories/2018/10/iub/inside/29-faculty-council-enhanced-diversity-general-education-requirement.html>.

assumptions; and being able to challenge and question how those shape their actions.”¹⁸⁴ The Educational Policies Committee, a subcommittee of the Bloomington Faculty Council consisting of Council members and students, proposed learning outcomes that not only emphasize knowledge but also skills, both analysis or interpretive and intra- and interpersonal skills.¹⁸⁵ Through the committee’s approach of increasing inclusion and exposure to diversity, they actually incorporated the skills important to civic and democratic engagement.¹⁸⁶ Such efforts are proof of the importance and growing awareness of diversity and civic education as well as the responsibility that higher education institutions are taking towards building citizens and civic values in society.

Students need experience practicing these skills with the wide variety of people they will encounter outside of the academy. Diversity, inclusion, and social equity efforts on campus are essential parts of civic education, not an independent set of issues related to civil rights law and regulations for higher education institutions that receive federal funding.

In sum, higher education is in a unique position within society to have a great impact on the political and civic future of the U.S. through combined civic education and diversity, inclusion, and social equity initiatives.

VI. COLLABORATIVE GOVERNANCE ON CAMPUS

Higher education has struggled to provide civic education through curriculum, service learning, training in civility and debate, and limited engagement in governance on campus. However, this is not the same as practicing the skills of democracy in a setting and structure that mirrors governance after graduation. To make learning experiential, higher education needs to change the way its institutions govern themselves by giving students a voice more akin to what they will have as citizens and stakeholders in society and their communities after they leave school.

We need to make practicing civic knowledge and skills real. We can do this by bringing collaborative governance to campus.

A. Defining Collaborative Governance

Public administration scholars have offered various definitions of collaborative governance. Some focus more on multi-party stakeholder processes that can include what other scholars call collaborative public management¹⁸⁷ and

184. *Id.*

185. *Diversity in the U.S. Learning Outcomes*, IND. U. BLOOMINGTON, <https://bfc.indiana.edu/diversity-learning-outcomes/learning-outcomes.html> (last visited Nov. 4, 2018).

186. In seeking to educate students of inequalities in society, Indiana University’s Bloomington Faculty Council proposed learning outcomes such as “[s]tudents will learn and employ communicative tools for the practice of civil discourse while seeking common ground in discussing concepts of diversity, inclusion, and equity” and “understand the personal protections guaranteed by the U.S. Constitution, its amendments, and legal code and how federal, state and local laws do and do not provide a foundation for equity and social justice.” *Id.* Such skills and knowledge overlap with skills and knowledge identified for civic education efforts.

187. ROBERT AGRANOFF & MICHAEL MCGUIRE, *COLLABORATIVE PUBLIC MANAGEMENT: NEW STRATEGIES FOR LOCAL GOVERNMENTS* (2003).

public policy or environmental conflict resolution.¹⁸⁸ For example, Ansell and Gash define collaborative governance as, “[a] governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets.”¹⁸⁹ This definition does not include public engagement. Emerson, Nabatchi, and Balogh define it as “the processes and structures of public policy decision making and management that engage people constructively across the boundaries of public agencies, levels of government, and/or the public, private and civic spheres in order to carry out a public purpose that could not otherwise be accomplished.”¹⁹⁰ This broader definition does include the public in addition to stakeholders, although the process model focuses more on stakeholder networks.¹⁹¹ A parallel body of work looks at deliberative democracy¹⁹² and the voice of the public in governance.¹⁹³

To describe the array of processes across the policy continuum as public managers experience it, Bingham applied a broader definition of collaborative governance, an umbrella term¹⁹⁴ that describes a variety of system designs and processes through which public agencies can work together with the private sector, civil society or nonprofit sector, and the public in the legislative, quasi-legislative, executive, quasi-judicial, and judicial arenas.¹⁹⁵ This conception of collaborative governance encompasses stakeholder and citizen voice¹⁹⁶ in public participation, deliberative democracy, collaborative public or network management, and alternative or appropriate alternative dispute resolution (“ADR”) in the policy process.¹⁹⁷ It includes partnering with the general public,

188. ROSEMARY O’LEARY, THE PROMISE AND PERFORMANCE OF ENVIRONMENTAL CONFLICT RESOLUTION (Rosemary O’Leary & Lisa B. Bingham eds., 2003).

189. Chris Ansell & Alison Gash, *Collaborative Governance in Theory and Practice*, 18 J. PUB. ADMIN. RES. & THEORY 543, 544 (2008).

190. Kirk Emerson, Tina Nabatchi & Stephen Balogh, *An Integrative Framework for Collaborative Governance*, 22 J. PUB. ADMIN. RES. & THEORY 1, 3 (2012).

191. KIRK EMERSON & TINA NABATCHI, *COLLABORATIVE GOVERNANCE REGIMES* (2015).

192. Dave Renton, *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, 29 POL. & SOC. 5 (2001).

193. JOHN FORESTER, *THE DELIBERATIVE PRACTITIONER: ENCOURAGING PARTICIPATORY PLANNING PROCESSES* (1999); CAROLYN J. LUKENMEYER, *BRINGING CITIZEN VOICES TO THE TABLE: A GUIDE FOR PUBLIC MANAGERS* (2013); *DEMOCRACY IN MOTION: EVALUATING THE PRACTICE AND IMPACT OF DELIBERATIVE CIVIC ENGAGEMENT* (Tina Nabatchi, John Gastil, G. Michael Weiksner & Matt Leighninger eds., 2012); JOHN CLAYTON THOMAS, *PUBLIC PARTICIPATION IN PUBLIC DECISIONS: NEW SKILLS AND STRATEGIES FOR PUBLIC MANAGERS* (1995).

194. This article paraphrases the definition used for collaborative governance in the federal government. Lisa Blomgren Bingham, *The Next Generation of Administrative Law: Building the Legal Infrastructure for Collaborative Governance*, 2010 WISC. L. REV. 297 (2010). *See also* Lisa Blomgren Amsler & Tina Nabatchi, *Public Engagement and Decision-Making: Moving Minnesota Forward to Dialogue and Deliberation*, 42 WM. MITCHELL L. REV. 1629 (2016) (a/k/a *Mitchell Hamline Law Review* following a merger of schools).

195. *Id.* Lisa Blomgren Bingham, *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Citizen and Stakeholder Voice*, 2009 J. DISP. RESOL. 269, 274 (2009).

196. Bingham, *supra* note 195, at 277 (describing the spectrum of collaborative governance processes and arguing they represent a single related phenomenon of non-adversarial voice that operates across the policy continuum, including legislative, executive, and judicial functions).

197. *Id.* *See generally* Scott Burris, Michael Kempa & Clifford Shearing, *Changes in Governance: A Cross-Disciplinary Review of Current Scholarship*, 41 AKRON L. REV. 1 (2008) (discussing the current theories and literature on governance).

federal, state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders.¹⁹⁸

It also includes collaboration across the broadest scope of agency work in the policy process.¹⁹⁹ For this purpose, the phrase “policy process” is defined as any action in developing, implementing, or enforcing public policy, including but not limited to identifying and defining a public policy issue, defining the options for a new policy framework, expanding the range of options, identifying approaches for addressing an issue, setting priorities among approaches, selecting from among the priorities, implementing solutions, project management, developing and adopting regulations, enforcing regulations, and assessing the impacts of decisions.²⁰⁰

Collaborative governance on the policy continuum includes collaboration through any in-person and online method, model, or process that is participatory and consensual,²⁰¹ as distinguished from adversarial or adjudicative processes. It includes public involvement, civic engagement, dialogue, public deliberation, deliberative democracy, public consultation, multi-stakeholder collaboration, collaborative public management, dispute resolution, and negotiation.²⁰² To illustrate this array on the policy continuum, see Figure 1.²⁰³

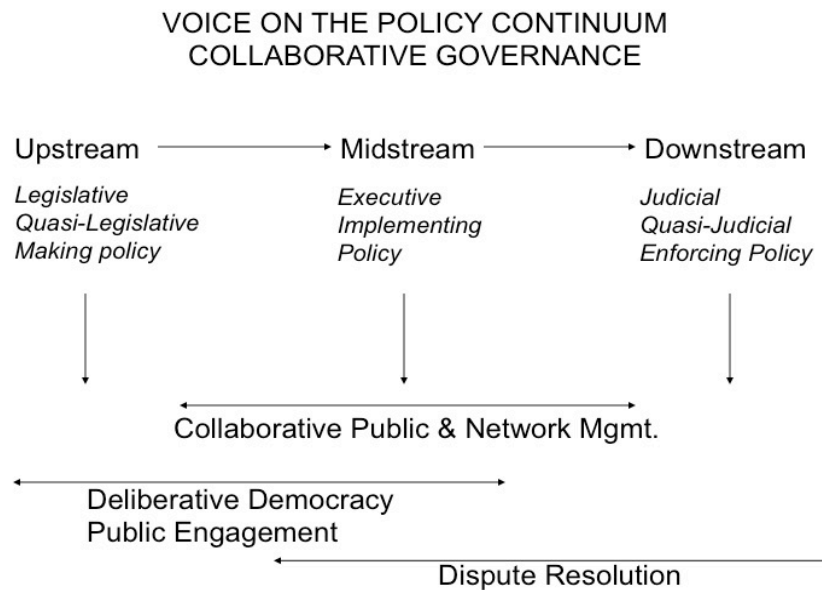


Figure 1. Collaborative Governance: Voice Processes Across the Policy Continuum

198. Bingham, *supra* note 195, at 277.

199. *Id.* at 278.

200. *Id.* at 275, 286.

201. *Id.* at 279.

202. *Id.* at 274, 319.

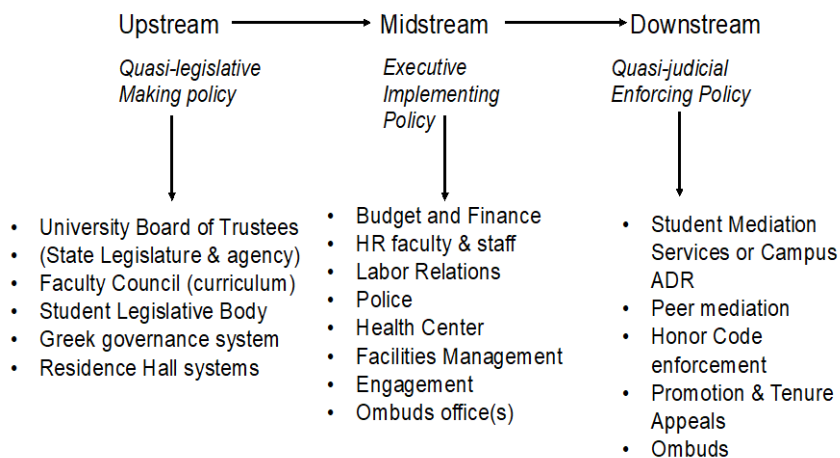
203. Reprinted from Lisa Blomgren Amsler, Collaborative Governance: Integrating Management, Politics, and Law, 76(5) PUB. ADMIN. REV. 700, 703 (2016), as adapted from Bingham, *Collaborative Governance*, *supra* note 195, at 287.

In this view, collaborative governance includes, but is not limited to, public participation and engagement as mechanisms for the voice of the public in decision making. Legal scholars have applied collaborative governance to interagency collaboration,²⁰⁴ contracting, and negotiated rulemaking.²⁰⁵ In a separate body of scholarship, Tom Tyler and co-authors examine the role of procedural justice in public participation and its contribution to perceptions of government legitimacy.²⁰⁶

B. ADAPTING COLLABORATIVE GOVERNANCE TO CAMPUS AS A COMMUNITY

Higher education can readily adapt collaborative governance processes to its legislative, executive, and judicial functions across campus. We earlier argued that a campus mirrors functions in a municipality. To illustrate this on the policy continuum, we provide a map of legislative, executive, and judicial functions on a typical college or university campus (See Figure 2).

Figure 2. Structures and Functions Across the University or College



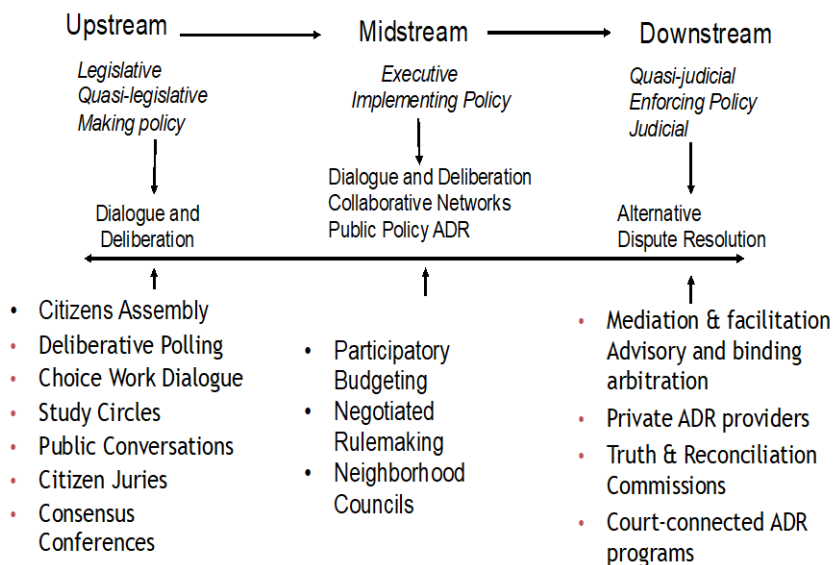
204. See Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131 (2012).

205. See Jody Freeman, *Collaborative Governance in the Administrative State*, 45 UCLA L. REV. 1 (1997) (applying collaborative governance to negotiated rulemaking); Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. L. REV. 543 (2000) (applying collaborative governance to contracting).

206. TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990).

There are many opportunities across this spectrum to empower students as participants. Bingham outlined and described a wide variety of processes used in collaborative governance;²⁰⁷ Figure 3 provides this table as an example of processes for student voice for collaborative governance on campus.

Figure 3. Examples of Processes for Student Voice on the Continuum



For example, a board of trustees makes policy on matters such as reorganization or new academic units; the faculty council makes policy in drafting curriculum. Students participate in making policy related to governance and discipline in housing. However, upstream, higher education institutions could empower students to help make policy within many spheres. For example, all the models listed on Figure 3 beneath the Upstream heading are mechanisms for giving students an opportunity to engage in dialogue and deliberation regarding important policy issues on campus, such as sustainability practices, food policy, investment of the endowment, financial aid, or other issues. A campus could employ the citizen's assembly model to engage students in drafting new rules for students to engage in voting on major policy matters, such as British Columbia used it to draft new rules on the electoral process for citizens.²⁰⁸ Campuses could have the entire student body consider the proposed electoral policy using in-person deliberative public engagement methods such as Choice Work Dialogues, Study Circles, or Public Conversations. These processes afford students opportunities to practice deliberative communication, not simply debate. Upstream, they entail facilitated small group dialogue among eight to ten individuals. This allows students to learn facilitation skills by taking turns leading discussions and recording the results of brainstorming. After having opportunities

207. Bingham, *supra* note 195, at 195.

208. *Making Every Vote Count: The Case for Electoral Reform in British Columbia*, B.C. CITIZENS' ASSEMBLY ON ELECTORAL REFORM (Dec. 2004), https://citizensassembly.arts.ubc.ca/resources/final_report.pdf.

for reasoned discussion and deliberation, the students could vote on policies through online voting; these votes might yield more broadly representative advisory opinions for the board of trustees, administration, and faculty. An alternative model is deliberative polling,²⁰⁹ in which a random sample of students would go on a retreat to hear experts from various perspectives answer questions on a policy; conveners would conduct a poll both before and after students heard from experts and deliberated. The poll afterwards would represent students' informed opinion on a given policy.

Students who live off campus often lack a connection to existing student governance structures on campus. Communities may have neighborhood associations; Los Angeles has neighborhood councils in its city charter.²¹⁰ Higher education institutions could help students spread across neighborhoods in a college town by authorizing them to have their own student neighborhood councils, entities with liaisons to student government or other representative structures or bodies.

Citizens' juries and consensus conferences are excellent models for combining learning with dialogue and deliberation.²¹¹ Analogous to a traditional jury in the common law adversary system in courts, citizens' juries provide a means for making decisions on policy issues instead of a litigated case involving disputants.²¹² When facts are contested, decision-makers might refer the policy question to a citizens' jury for investigation and a report.²¹³ For more comprehensive and larger deliberative bodies, decision-makers might use a consensus conference to address a matter of complexity in science and technology.²¹⁴ Students could learn the policy subject matter and disputed issues by using these processes to develop consensus, write reports, and present findings to inform important decisions before the faculty council, administration, or board of trustees. For example, what should the university's policy be on social media, email, and other uses of internet and cyber-technology? What are students' perspectives?

Midstream processes like participatory budgeting permit students to vote on the distribution of some portion of the institution's budget. In municipalities, an alderman in Chicago might have access to discretionary funds; residents

209. James S. Fishkin developed this model. See *What is Deliberative Polling?*, CTR. FOR DELIBERATIVE DEMOCRACY, <http://cdd.stanford.edu/what-is-deliberative-polling/> (last visited Nov. 30, 2018); James Fishkin & Cynthia Farrar, *Deliberative Polling*: From Experiment to Community Resource*, in THE DELIBERATIVE DEMOCRACY HANDBOOK: STRATEGIES FOR EFFECTIVE CIVIC ENGAGEMENT IN THE 21ST CENTURY 68-79 (John Gastil & Peter Levine eds., 2005).

210. Neighborhood Councils are part of the Los Angeles City Charter. See *Neighborhood Councils*, CITY L.A., <https://www.lacity.org/your-government/government-information/subscribe-other-meetings-agendas-and-documents/neighborhood-councils> (last visited Dec. 1, 2018).

211. Lyn Carson & Janette Hartz-Karp, *Adapting and Combining Deliberative Designs: Juries, Polls, and Forums*, in THE DELIBERATIVE DEMOCRACY HANDBOOK: STRATEGIES FOR EFFECTIVE CIVIC ENGAGEMENT IN THE 21ST CENTURY 120-38 (John Gastil & Peter Levine eds., 2005).

212. Ned Crosby & Doug Nethercut, *Citizens Juries: Creating a Trustworthy Voice of the People*, in THE DELIBERATIVE DEMOCRACY HANDBOOK: STRATEGIES FOR EFFECTIVE CIVIC ENGAGEMENT IN THE 21ST CENTURY 111-19 (John Gastil & Peter Levine eds., 2005).

213. The Jefferson Center is a current citizen jury model in the U.S. See Annie Pottorff, *We're Bringing the Citizens Jury to Athens* (Aug. 21, 2018), <https://jefferson-center.org/2018/08/citizens-jury-to-athens/>.

214. Carolyn M. Hendriks, *Consensus Conferences and Planning Cells: Lay Citizen Deliberations*, in THE DELIBERATIVE DEMOCRACY HANDBOOK: STRATEGIES FOR EFFECTIVE CIVIC ENGAGEMENT IN THE 21ST CENTURY 80-110 (John Gastil & Peter Levine eds., 2005).

brainstorm, prioritize, and vote on projects to fund.²¹⁵ Similarly, students might use participatory budgeting to allocate discretionary portions of the institution's budget, such as activity fees. Students might propose specific projects for expenditures. Campuses could use participatory budgeting to give students advisory input related to tuition, dining halls, or housing.

For important rules about major policy issues like endowment investments in unsustainable industries like coal, an institution might use negotiated rulemaking, involving a representative sample of students as stakeholders. Negotiated rulemaking is an actual decision-making process through a deliberative discussion and negotiation, perhaps with the assistance of a mediator, among the stakeholders. The process produces draft regulations subject to traditional input processes such as notice and comment. Curriculum, programs, and degree requirements are significant policy matters relegated primarily to faculty and subject to approval by boards of trustees and sometimes state boards of higher education. Students could have a more significant role shaping curriculum at the campus level through deliberative democratic practices within departments or schools.

While students already have access to downstream adjudicatory processes related to academic misconduct and discipline, on most campuses they themselves do not serve as the adjudicators. Faculty and staff most often fill this role. On campus, students experience quasi-judicial processes as disputants who look to ombuds or mediators for assistance. Students can participate in discipline decisions within Greek, campus system, or off campus housing among their roommates. Students could serve as arbitrators on peer panels, as neighborhood members do in community mediation panels.

Quasi-judicial processes also include truth and reconciliation commissions. In this model, victims and offenders come together in a public hearing to discuss and describe events and their consequences, as in South Africa's Truth and Reconciliation Commission (TRC) investigating human rights violations during apartheid.²¹⁶ With truth, there is reconciliation; there may be forgiveness, leniency, clemency, and pardon. This process might be a constructive approach to sexual assault on campus. Instead of a punitive process based on retributive justice and deterrence, a truth and reconciliation commission might provide a process of social education.

What if we more broadly trained students as facilitators and mediators themselves, so that they were prepared to intervene in conflict at any time or place across campus? Many schools already train residence hall assistants as mediators and conflict managers. There are K-12 peer mediation programs. Peer mediation as a concept could apply more broadly, for example, to political conflict in protests.

Coming full circle to the impetus for this symposium, the question is whether these experiences and skill-building exercises would empower students to respond to conflict on campus constructively, to turn hate and provocative speech into

215. See, e.g., PB Chicago Projects, 2010-2016, PB CHI., <http://www.pbchicago.org> (last visited Dec. 1, 2018). A founder of participatory budgeting in the U.S. is Josh Lerner. JOSH A. LERNER, MAKING DEMOCRACY FUN: HOW GAME DESIGN CAN EMPOWER CITIZENS AND TRANSFORM POLITICS (2014).

216. Lisa Blomgren Bingham, *Reflections on Designing Governance to Produce the Rule of Law*, 2011 J. DISP. RESOL. 67 (2011).

problem-solving dialogue? Will students develop better leadership skills? Will it enable them to engage more fully in society as citizens?

CONCLUSION

While a few schools have shared more authority over governance with students, this is not the norm. More common are traditional private sector management practices that have become prevalent with the reframing of higher education as a process of customers paying for training and credentials for jobs and participation in the economy, rather than participation in a democracy. If we are to provide experiential learning to deepen civic education, the real opportunity for growth is by making students citizens in a campus community. It is a function of giving them chances to use the training and education in civics for which we already have curriculum and instructors. We just need to build student voice and deliberation into functions institutions already have for management and governance.

To graduate citizens with civic skills, we need to give them broader opportunities in higher education to practice democracy. Students and graduates in the U.S. have \$1.5 trillion in student loan debt not dischargeable in bankruptcy. The public increasingly views higher education as a business with an ever-growing body of administrators and staff whose job is perceived as getting butts in seats and bringing in tuition dollars (which may mean encouraging students and their parents to take out student loans). This likely is related to the increasing discourse about higher education being dominated by liberals; some part of the public views it as unnecessary and a waste of time.

The primary goal of higher education should be helping people learn, transmitting truth and knowledge, and giving students practice in civic skills, including deliberative communication by participating in their communities and democracy on campus. There is both a tremendous opportunity and duty for higher education to help us reinstitute civil democratic discourse by treating our students like the citizens they are in the academic communities we create.