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PART IV

# Epilogue

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# Countervailing Power in Empowered Participatory Governance\*

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The chapters of this volume focus upon the institutional designs of Empowered Participatory Governance. Fair, effective, and sustainable deliberation and participation in institutions depend, however, not just on the details of their design but also upon background contexts, and in particular upon the constellation of social forces that maneuver in and around EPG institutions. In particular, as Cohen and Rogers write,

Deliberation . . . is an ideal whose realization has preconditions. In the absence of those preconditions, we cannot expect the force of the better argument to prevail . . . What are those needed conditions? Unfortunately, while the presentation of the theory and cases in this book are consistent with acknowledging the importance of such questions – and of the underlying issue of differences in background power – the similar treatment of very diverse cases obscures the issue.<sup>1</sup>

By focussing upon similarities across institutional designs, our presentation of EPG may share a fault with other proposals for collaborative and participatory governance. Such schemes are often inattentive to problems of powerlessness and domination, thus seeming to suggest that if only the institutional designs can be constructed just right, then gross imbalances of power in the contexts of these institutions will be neutralized.

That is certainly not our considered view. In this epilogue, we begin to address this crucial question regarding the social circumstances necessary for EPG to contribute to just governance by engaging the

central problem raised by Cohen and Rogers in their comment – the ways in which inequalities of background power can subvert the democracy-enhancing potential of institutional designs such as EPG. Our discussion will revolve around the concept and role of what we term *countervailing power* – a variety of mechanisms that reduce, and perhaps even neutralize, the power-advantages of ordinarily powerful actors.<sup>2</sup> We contend that in nearly all contexts significant countervailing power is necessary for EPG to yield the benefits for democratic governance that we have claimed for it. The absence of mobilized countervailing power jeopardizes both EPG institutions that aim to solve bounded policy challenges – as in the Chicago schools and policing – as well as those that aim to transform fundamental balances of social power – such as the Porto Alegre and Kerala cases.<sup>3</sup> The key question, then, is whether or not it is plausible that the required kind of countervailing power can emerge in the contexts of EPG institutions to enable them to function in a robust, sustainable manner.

Countervailing power is the too-simple concept that describes how powerful actors with privileged access to decision-making venues may be challenged and even defeated from time to time by the weak and less organized. Countervailing power conjures images of organizations of patients facing down health maintenance organizations, “citizens [circling] their wagons against the onslaught of some power elite” or “the activities of blacks, women, and environmentalists . . . against the Reagan administration.”<sup>4</sup> In such conventional, adversarial, arenas, the forms of countervailing power (which we will term “*adversarial countervailing power*”) are quite familiar. They appear as interest groups, public interest litigators, social movements, or perhaps cross-cutting networks of professionals and officials.<sup>5</sup>

The forms and functions of countervailing power relevant to empowered participatory governance are, however, much less clear. Indeed, it might seem at first glance that the deliberative ideals of empowered participatory governance are deeply at odds with the very idea of countervailing power, since countervailing power suggests the use of threats and mobilization, rather than reason, to settle issues in dispute. It is for this reason that defenders of the ideals of popular empowerment are generally skeptical about the prospects of somehow combining effective countervailing power with meaningful forms of collaboration. These concerns raise a number of important questions. What, precisely, does it mean to talk about mobilized forms of power of disadvantaged groups in a decision-making setting that is meant to engender collaborative, deliberative problem-solving? What are the obstacles to creating such forms of countervailing power? And how

can those obstacles be overcome? How might such countervailing power be cultivated, and what would prevent it from fostering adversarial confrontations that undermine the deliberations of EPG? These are the issues we will address in this epilogue.

We will begin, in section I, by clarifying the concept of countervailing power, especially as it relates to collaborative settings of decision-making. Section II explores four general propositions about the relationship between collaborative governance and countervailing power. Section III examines a number of empirical examples in light of these propositions. Section IV examines the difficulty of using adversarial countervailing power for collaborative purposes, and section V more speculatively discusses ways in which collaborative countervailing power might be constructed.

## I Governance and Countervailing Power

### Two Governance Modes: Top-Down Adversarial and Participatory-Collaborative

The forms and consequences of countervailing power, and social power generally, depend upon the shape of political institutions in which that power operates. Two dimensions on which these institutions vary are especially salient: first, the extent to which they are organized primarily as *adversarial* or *collaborative* forms of decision-making, and second, whether the governance process is primarily *top-down* or *participatory*. In adversarial decision-making, interest groups seek to maximize their interests by winning important government decisions over administrative and legal programs and rules, typically through some kind of bargaining process. In collaborative decision-making, by contrast, the central effort is to solve problems rather than to win victories, to discover the broadest commonality of interests rather than to mobilize maximum support for given interests. In top-down governance structures decisions are made by actors at the peak of an organizational structure and then imposed on lower levels; in participatory governance, decisions involve substantial direct involvement of actors from the bottom tiers.

Taking these two dimensions together generates the four types of governance in figure 11.1 (page 262).

For our purposes, the two most important cells in this typology are top-down adversarial governance and participatory collaborative governance. Many scholars have developed criticisms of top-down

|                             |                      | <i>Character of decision-making process</i> |   |
|-----------------------------|----------------------|---|---|
|                             |                      | <i>Adversarial</i>                          | <i>Collaborative</i>                                      |
| <i>Governance structure</i> | <i>Top down</i>      | Conventional interest group politics        | Expert/elite problem-solving (e.g. negotiated rulemaking) |
|                             | <i>Participatory</i> | Some town meetings                          | Empowered participatory governance                        |

*Figure 11.1* Varieties of Governance Structures and Processes

adversarial governance.<sup>6</sup> Adversarialism emphasizes the differences between groups rather than their commonalities, and so generates excess conflict. This conflict reduces the *legitimacy* of the rule-making process on one hand, and the *creativity* of governance on the other.<sup>7</sup> Because interests face different barriers to collective action, some interests dominate others and can capture the “subgovernments” or “policy subsystems” that are most vital to them.<sup>8</sup> Because those who formulate the rules and programs are often far from those who must live under them, top-down governance solutions often suffer from lack of relevant information and local knowledge, and long feedback loops. Similarly, the long chain of command connecting decision to implementation exacerbates the familiar principal-agent problems that plague the public sector. Finally, top-down governance methods have been thought to generate fixed rules that are inappropriate for governance contexts of high local diversity, volatility, and scientific uncertainty.<sup>9</sup>

Partially in response to these failures, practitioners and scholars have offered forms of collaborative governance, of which our proposal for empowered participatory governance is one kind, as alternatives to adversarial interest-group politics. The “field” of collaboration contains many flavors of non-adversarial governance, including regulatory negotiation, alternative dispute resolution, stakeholder negotiation, and grass-roots community problem-solving.<sup>10</sup> Many of these forms of collaborative governance, however, primarily involve elites and experts, thus retaining the top-down quality typical of much adversarial governance. The introduction to this volume explains how empowered participatory governance is a form of collaborative governance that

distinctively combines popular participation, decentralized decision-making, practical focus, continuous deliberation and engagement, and cooperation between parties and interests that frequently find themselves on opposite sides of political and social questions.

### **The Problem of Countervailing Power in Collaborative Decision-Making**

Both collaborative and adversarial modes of governance suffer from the characteristic danger that some interests and parties may be improperly subordinated for the sake of more powerful interests and groups. In adversarial arenas, this problem has been well explored theoretically and empirically by students of collective action, interest-group politics,<sup>11</sup> and social movements. The relevance, shape, functions, and effects of countervailing power in collaborative arenas are much less well understood. Perhaps because the topic of collaborative governance is relatively new and because those who study collaboration may be less disposed to ponder the difficulties of conflict, there has been very little empirical investigation of these questions. Another difficulty may be that there are not many forms of collaborative countervailing power to study yet. In areas where collaborative governance is novel, organizations, interest groups, and individuals may have not yet recognized the importance of countervailing power or enjoyed opportunities to develop appropriate organizations and strategies. Indeed, for many people the expression “collaborative countervailing power” may seem a bit of an oxymoron: if a governance process is truly collaborative, then how can it involve *countervailing* power of one group against another? Does this not somehow contradict the very spirit of collaboration?

We believe that, in general, collaborative governance without an appropriate form of countervailing power is likely to fail for at least three overlapping reasons. First, in areas where countervailing power is already well organized in adversarial forms – for example the environmental and labor movements – these organizations are likely to oppose institutional movements from adversarial to collaborative forms of governance. Their capacities and approaches are well adapted to adversarialism, and the shift to collaboration may be seen as risky, costly, and demobilizing. Second, the specific designs of institutions of collaboration are themselves generally the result of endogenous political processes. Where countervailing power is weak or nonexistent, the rules of collaboration are likely to favor entrenched, previously organized, or concentrated interests. They may do so by limiting the agenda of issues

that is open to collaboration, restricting the range of participants to a select few, and reducing the influence of collaboration to mere advice that can be heeded or ignored. Collaboration, under these conditions, is much more likely to become top-down collaborative governance involving experts and powerful interests even if its impulse originated from bottom-up initiatives. Third, even with fair institutional rules for collaboration, concentrated or entrenched interests will more ably advance their interests over those of others unless countervailing forms of power mitigate these general advantages. With collaborative forms of regulation, for example, firms and industry groups usually enjoy advantages over workers and consumers. When collaborative reforms aim to open service agencies – schools or police departments – to broader participation, street-level bureaucrats who are trained, full-time professionals can protect their prerogatives even as they ostensibly collaborate with parents, residents, and other lay participants. For these reasons, therefore, we feel that robust, democracy-enhancing collaboration is unlikely to emerge and be sustained in the absence of effective countervailing power.

#### Four Governance Regimes

Dichotomizing these two concepts – top-down administrative versus participatory-collaborative governance institutions and high versus low countervailing power – yields a simple four-fold schema that maps both concrete public policy reforms and the debate between proponents and critics of collaboration. Consider that space in figure 11.2.

The upper right-hand corner characterizes the familiar contested areas of public policy in which diffused, general interests are mobilized as countervailing power in order to defend their interests within adversarial political arenas. Environmental politics of the 1970s and 1980s exemplifies such adversarial pluralism, as does racial politics since the civil rights movement, and labor politics for most of the twentieth century.

The upper left-hand corner describes top-down governance arrangements in which broadly held or subordinated interests are not mobilized. If, as most of the group literature argues, concentrated, powerful interests will be able to advance their interests in government, the result will be that those powerful groups with the deepest interests in particular parts of policy will capture the relevant agencies, or form mutually beneficial alliances with relevant administrators and lawmakers. This situation is sometimes described as “captured subgovernment.”<sup>12</sup>

Frustration with governance under these top-down institutions has

|                                |                                    | <i>Degree of countervailing power</i>           |  |
|--------------------------------|------------------------------------|---|--|
|                                |                                    | <i>Low</i>                                      | <i>High</i>                              |
| <i>Governance institutions</i> | <i>Top-down administration</i>     | I<br>Captured sub-government                    | II<br>Adversarial pluralism              |
|                                | <i>Participatory collaboration</i> | III<br>Co-option, participatory window dressing | IV<br>Empowered participatory governance |

*Figure 11.2* Four Governance Regimes

led some policy-makers, practitioners, and academics to reject top-down and adversarial governance methods in favor of participatory collaboration. But critics of collaboration have highlighted the possibilities depicted in the lower left hand region of figure 11.2. A shift of governance from the top-down adversarial to the participatory collaborative form involves the delegation of power from higher to lower levels of governance and to a broader array of participants. When countervailing power is well organized for adversarial contests but not well organized to collaborate (a shift from cell II to III in figure 11.2), the outcomes for the interests they defend can suffer as a result. When there are no local environmentalists, a federal program to reduce pollution through local negotiation between firms and community residents may amount to abdication of federal oversight over that program. Writ large, the shift from top-down adversarial governance to collaborative governance, when there is no countervailing power or capacity, can amount in practice to a state-shrinking, deregulatory maneuver in which oppositional forces are co-opted and neutralized and the collaborative participation becomes mere window dressing.<sup>13</sup>

Finally, consider governance and politics in the lower right-hand region of figure 11.2. Like region III, the institutions here confer power to decentralized units of government, open decision-making to a broad array of interests that includes ordinary citizens, and aim at solving concrete public problems rather than imposing external rules or issuing commands. Unlike III, however, otherwise subordinated or diffuse interests are well organized and backed by countervailing forms of

power that enable them to engage in collaboration on more equal terms. In the ideal, empowered participatory governance occupies this region.

## II Four Claims

The rest of this chapter will provide evidence in support of four claims regarding collaborative governance and countervailing power.

*Proposition 1. Forms of participatory collaboration, including EPG institutions, will in general fail to yield the benefits that their proponents desire without the substantial presence of countervailing power.* The benefits of deliberation, participation, and collaboration are likely to result only from genuinely collaborative processes that are inclusive, fair, and free from domination. Formal institutions of participatory collaboration are usually characterized by large asymmetries in prior organization, knowledge, intensity of interest, and capabilities. These asymmetries create temptations for advantaged parties to exclude and subject others, and so fair collaboration is frequently difficult to achieve. The presence of countervailing power – for example parent organizations to check school administrators or environmental groups to balance industrial or development interests – can level some of these differences and so create conditions for fair collaboration.

*Proposition 2. The sources and forms of countervailing power that are appropriate in collaborative contexts are in general quite different from those found in adversarial ones.* The assertion that countervailing power is necessary to reap the benefits of collaboration might suggest that the most promising policy areas for the development of participatory-collaborative institutions would be those adversarial areas in which substantial countervailing power already exists. This suggestion may indeed sometimes be correct, but the inference is too quick. Adversarial interest organizations have developed competencies, methods of organizational maintenance, and mobilization strategies that depend upon victory in conflict. Participatory collaboration requires organizations with very different skills, sources of support, and bases of solidarity.

*Proposition 3. These two broad varieties of countervailing power – collaborative and adversarial – are not easily converted from one to the other.* In particular, countervailing power that has been effectively

organized for adversarial contests cannot easily be redeployed for collaborative purposes. As we shall see below, powerful organizations that supply crucial countervailing power in adversarial arenas are frequently ineffective in collaborative ones. In part due to their comparative advantages, those organizations thus often oppose reform programs to move governance from top-down adversarial to participatory-collaborative modes. Mark Sagoff observes, for example, that the

single issue strategies of many lobbying groups routinely “gridlock” policy in the Iron Triangle. For these groups, conflict provides the principal method to deal with issues and mobilize support. Deliberating with others undermines the group’s mission, which is to press its purpose or concerns as far as it can in a zero-sum game with its political adversaries . . . When an interest group joins with its enemies to solve a problem, it loses the purity of its position; it ceases to be a cause and becomes a committee.<sup>14</sup>

*Proposition 4. The problem of generating countervailing power suitable for collaborative governance is not easily solved through clever public policies and institutional designs.* Typically, even well-designed collaborative procedures, rules, and regulations will not in and of themselves yield substantial collaborative countervailing power. Countervailing sources of power usually arise from the polity, outside the boundaries of the institutions themselves, and their presence is contingent upon capricious factors such as those that give rise to interest groups, social movements, and lower barriers to collective action generally. Appropriate institutional designs can facilitate the rise and entry of countervailing voices. However, explanations of their presence and strength are separate from, though linked to, questions about the shape of collaborative institutions themselves.

### III Applications

To support these propositions we will briefly explore attempts to generate collaborative, participatory forms of governance in four arenas: civic environmentalism, workplace anti-discrimination strategies, parental and community engagement in public education, and new forms of policing. Some of these intersect the case studies in this book and others are somewhat different. In each case our concern here will be the interaction between the actual practices in these efforts and the character of countervailing power in these new governance institutions.

### Civic Environmentalism

Critics of current practices of environmental regulation contend that top-down, adversarial environmental governance has been dominated by industrial and environmental special interests. As a result it is excessively conflictual, unresponsive to local needs and priorities, insensitive to emergent concerns such as those of racial minorities, and incapable of dealing with the “unfinished business” of non-point source pollution, pollution prevention, and ecosystem integrity.<sup>15</sup> Some of these critics believe that a style of environmentalism that is at once more local, participatory, focussed on problem-solving, and collaborative – what they call *civic environmentalism* – can address many of these difficulties.<sup>16</sup> Civic environmentalism covers a wide range of activities including watershed management and restoration, forest management, urban planning and redevelopment, agricultural pollution, and community-driven industrial regulation.<sup>17</sup> Two prominent experiences highlight the disputes between civic environmentalists and skeptics of this novel approach.<sup>18</sup>

The first comes from the forests in the Sierra Nevada country of California.<sup>19</sup> After decades, a familiar struggle between environmentalists and timber harvesting interests had played itself out to bitter, sometimes violent, conflict in the logging town of Quincy. These conflicts were compounded by resource management policies of fire suppression that actually exacerbated the possibilities of devastating conflagration. After a large fire destroyed a nearby spotted-owl habitat, one resident environmental activist commented that it “wasn’t loggers versus owls that was the unresolved issue . . . it was the owls versus fire.”<sup>20</sup>

A small but diverse group of about twenty individuals – environmentalists, timber businessmen, and local officials – began to meet at a local library to explore solutions to this triple dilemma of environmental protection, economic development, and forest fires. An expanded version of this group became known as the Quincy Library Group. Over several months, the group developed a forest management plan for some 2.5 million acres around the town that attempted to satisfy all of the involved interests. For the environmentalists, the plan put one million roadless acres of forest, much of that old-growth, into a protected status. But the plan would also allow loggers to harvest forty to sixty thousand acres of dead leaning trees, young ones, and deadwood on the ground, while protecting larger trees. To control the threat of fires, the plan provided for loggers to harvest in targeted areas to create fuel breaks, now called “Defensible Fuel Profile Zones,” that would use logging to simulate non-human processes of forest thinning.<sup>21</sup>

National environmental organizations coalesced to oppose the

Quincy Library Group. This formidable coalition eventually included the Sierra Club, the Wilderness Society, the Natural Resources Defense Council, and the Audubon Society. The Quincy Library Group proposal thus created a set battle between the proponents of local, participatory collaborative problem-solving and the nationally organized adversarial countervailing power of the large environmental interest groups. Indeed, a local chapter of the Audubon Society actually supported the Quincy Library Group proposal. Its members saw the actions of the national organization as patronizing, ignorant of local conditions, and insensitive to place-based attachments.<sup>22</sup>

Why did national environmental groups reject the possibility that local environmental collaborative problem-solving groups might contribute to the national interest in environmental protection in this way? The problem was principally one of power and precedent. Rightly or not, national organizations felt that environmental interests were more likely to prevail at the national level rather than in thousands of local arenas. Sierra Club President McCloskey wrote,

Industry thinks its odds are better in these [participatory collaborative] forums. It is ready to train its experts in mastering this process. It believes it can dominate them over time and relieve itself of the burden of tough national rules. It has ways to generate pressures in communities where it is strong, which it doesn't have at the national level.<sup>23</sup>

From this perspective, Congressional adoption of the Quincy Library Group plan would set a dangerous precedent for participatory collaboration for the management of national forests. While this particular plan might work well in the case of Quincy and the surrounding Plumas, Lassen, and Tahoe National Forests, environmental interests are less organized or entirely absent in countless other locales. As precedent, the Quincy plan would be dangerous precisely because of the absence of countervailing power in other sites where collaboration might be proposed.

Despite substantial mobilization and objection, the national environmental groups lost in Congress. They were, however, not without force. Senator Barbara Boxer originally supported the bill, but withdrew due to pressure. In 1998, however, the "Quincy Library Group Forest Recovery and Economic Stability Act" was incorporated into the omnibus appropriations for fiscal year 1999.

Figure 11.3 below maps these changes and debates in terms of the distinctions depicted in figure 11.2 above. The regime of forest policy determined through centralized interest-group contests and then enforced by the U.S. Forest Service is squarely in the upper right-hand

quadrant of adversarial governance backed by the mobilized countervailing power of the large environmental organizations. The large environmental organizations viewed the Quincy plan as precedent for a broader shift from quadrant II to quadrant III governance: a regime of largely empty participatory collaboration in thousands of locales without substantial countervailing collaborative power in most of them. The Quincy Library Group, by contrast, viewed the change as moving from region II to region IV. The Quincy environmentalists saw themselves as well organized and quite capable of collaborating on fair terms with other local interests. Enthusiastic observers of the Quincy process saw it as a harbinger of a larger shift to civic environmental modes of governance more broadly.<sup>24</sup> From this perspective, local environmentalists would rise up to participate in decentralized environmental problem-solving bodies around forests, watersheds, and industrial facilities if such opportunities existed (a shift from quadrant II to IV in figure 11.3).

Critics disagree about whether or not the national environmental

|                                |                                    | <i>Presence of countervailing power</i>  |  |
|--------------------------------|------------------------------------|--|--|
|                                |                                    | <i>Low</i>   | <i>High</i>  |
| <i>Governance institutions</i> | <i>Top-down administration</i>     | I<br>The Forest Service before the environmental movement: professional ecosystem management insulated from environmentalist pressures | II<br>Pre-QLG plan: industry and environmental interests bargain for policy position         |
|                                | <i>Participatory collaboration</i> | III<br>Devolution of environmental policy to stakeholder processes dominated by industry   | IV<br>Diffusion of robust civic environmental problem-solving, exemplified by Quincy process |

Figure 11.3 Forest Management and The Quincy Library Group Plan

groups were themselves parochial in failing to recognize the substantial power and potential of local environmental organizations<sup>25</sup> or whether they were indeed generally correct and that groups like the one in Quincy were exceptional in their capability and organization.<sup>26</sup> Single local initiatives like the Quincy Library Group plan are likely to arise where there is already substantial local countervailing power in place. As such, these initiatives do not test the question posed by McCloskey and other environmental skeptics of participatory collaboration: if collaboration were to become a more widespread mode of governance, would industry's odds improve? Would it dominate over time? To gain some purchase on this larger question, consider the policy described by Craig Thomas and Bradley Karkkainen in this volume: habitat conservation planning in the Endangered Species Act.

As Thomas and Karkkainen discuss in their chapters, Habitat Conservation Plans are very promising from the point of view of proponents of participatory collaboration. However, the quality of participation in plan formulation, plans themselves, and very likely their implementation, has been quite uneven.<sup>27</sup> Very little is known about the factors that make some HCPs more democratically inclusive and scientifically rigorous, while others fail. At the local level, a working hypothesis in line with the argument offered above is that areas with mobilized environmental interests will have more inclusive and comprehensive habitat conservation plans. Nationally, environmental organizations have not for the most part mobilized to support habitat conservation planning or effectively lobbied for a vision of habitat conservation planning that prioritizes environmental interests. Perhaps as a consequence of this political weakness or inattention, the Department of the Interior has been quite lackadaisical in its efforts to make the process of habitat conservation planning more participatory and to monitor plan implementation to assure that they protect endangered species.

The move from strict ESA enforcement to habitat conservation planning, then, illustrates a shift from a regulatory regime with environmentally mobilized countervailing power and adversarial governance rules to one with collaboration but little supporting countervailing power. The price of collaboration without power is evident at both the national and local levels: weak oversight and procedural structure at the national center of regulation and lack of environmentalist capacity to utilize plasticity at the local level. The actual outcomes – for species protection, accountability, and democratic participation – will continue to fall short of the expectations of its supporters unless environmental interests mobilize at both the national and local levels.

Nationally, the regulatory regime will remain ineffective unless it includes substantial monitoring, information-sharing, and enforcement mechanisms. The plans for particular ecosystems are unlikely to protect species well or be monitored and enforced unless local environmental constituencies mobilize and gain the capacities necessary to participate in sophisticated habitat conservation planning processes.

### **Second-Generation Workplace Discrimination**

Though the problems and policies are a world away, similar governance shifts and disputes have characterized the field of workplace anti-discrimination. The familiar public strategies for ending employer racial and gender-based discrimination grew out of the hot social movements of the 1950s and 1960s. This “first generation” of anti-discrimination law resulted from adversarial struggles that pressed the state to deploy its resources against employers who egregiously violated norms of fairness and equity. The discrimination that these laws sought to stop was clear, intentional, and well established. The laws themselves were forceful, simple, and top-down in formulation and implementation. Some of these laws prohibited employers from engaging in forms of intentional discrimination such as exclusionary testing and using irrelevant characteristics such as race and gender in hiring and promotion decisions. Others required employers to adopt affirmative measures to desegregate workplaces, provide back pay to those who have been discriminated against, and seek employees from excluded communities.

These measures have been effective in stemming the most blatant kinds of racial and gender discrimination. However, this strategy has its limitations. In particular, many contemporary forms of discrimination and harassment are subtler than those of the first generation. They stem from complex patterns of individual interaction and organizational culture rather than explicit and deliberate bias. Susan Sturm, one of the closest analysts of this “second-generation discrimination,” puts it this way:

Exclusion increasingly results not from an intentional effort to formally exclude, but rather as a byproduct of ongoing interactions shaped by the structures of day-to-day decisionmaking and workplace relationships. The glass ceiling remains a barrier for women and people of color largely because of patterns of interaction, informal norms, networking, training, mentoring, and evaluation . . .

Claims of hostile workplace environment, exclusionary subjective employment practices, and glass ceilings are, by their nature, complex. Their complexity lies in multiple conceptions and causes of harm, the interactive and contextual character of the injury, the blurriness of the boundaries between legitimate and wrongful conduct . . . This complexity resists definition and resolution through across-the-board, relatively specific commands and an after-the-fact enforcement mechanism.<sup>28</sup>

The inability of traditional top-down measures to meet these challenges has led to the proliferation of participatory-collaborative anti-discrimination measures. Rather than follow rigid legal prescriptions or prohibitions against clear discriminatory action, many employers have embarked on intensive problem-solving efforts to identify and root out subtle causes of discrimination and hostility in workplaces and to increase the diversity of workforces. These programs often involve not only human resource professionals, outside diversity consultants, and training providers, but also directly engage employees of all kinds. Those workers, after all, know best the subtle patterns of human interaction, corporate culture, and workplace practice that generate hostile environments and discriminatory outcomes in their workplaces. For example, Sturm describes how Deloitte and Touche created ongoing participatory task forces to investigate the gender gap in hiring and promotion. After many of the recommendations of these committees were incorporated into management practice throughout the company, the percentage of female senior managers and partners increased dramatically, and the company-wide turnover rate dropped for both men and women.<sup>29</sup>

These participatory-collaborative strategies to solve workplace problems of diversity and discrimination have many advantages over conventional top-down, adversarial approaches. They utilize the highly contextual knowledge of workers in particular employment settings. They harness the affirmative energies of management and workforce in ways that commanding legislation could never do. They reach deeply into realms that are impenetrable for conventional regulation, yet central to second-generation discrimination: seemingly innocuous details of management policies and practices, corporate cultures, and the minutiae of human interaction at work.

Despite these advantages, critics who are at home with the adversarial approach have been less enthusiastic about shifting to a regime that encourages participatory-collaborative solutions to harassment and discrimination. For every Deloitte and Touche, there may be many more employers whose primary motivation is to avoid legal liability rather than seriously address second-generation discrimination. As an

alternative to more adversarial and commanding legal forms, a regulatory and governance regime that emphasizes management-centered collaborative problem-solving may create the space for such employers to avoid responsibility for harassing behavior. Susan Bisom-Rapp, for example, argues that the contemporary jurisprudence around sexual harassment and racial discrimination creates a liability shield for employers who take two affirmative steps: creating a grievance procedure and offering diversity training programs.<sup>30</sup> These two measures, by themselves, do little to address second-generation discrimination and pale in comparison to robust participatory collaboration.

The structure of concrete alternative approaches to discrimination and the debates surrounding the wisdom of those alternatives closely resemble developments in environmental regulation discussed above. First-generation, top-down regulatory strategies motivated by adversarial social movements made enormous progress against the problems they sought to address: explicit and egregious forms of racial and sexual discrimination (a shift from quadrant I to II in figure 11.4). They have been, however, much less effective against the more subtle forms of second-generation discrimination. The emerging alternative of participatory collaboration between managers and employees offers an attractive solution. As with the Quincy Library Group, the benefits of this strategy are manifest where conditions are favorable, as they were with the supportive management at Deloitte and Touche. The current governance regime is highly permissive, and so includes both those firms who develop impressive programs to address second-generation discrimination and those who enact the bare minimum necessary to construct legal shields (a shift from quadrant II to III in figure 11.4).

As a general strategy of regulation that governs not only enthusiastic firms but also recalcitrant ones, then, the wisdom of participatory collaboration is uncertain. Increased countervailing power to confront the reluctant employers would certainly be necessary to press them to move from minimal grievance and education procedures to innovative participatory collaboration around diversity and discrimination issues. Countervailing power might come in the form of judicial standards that require employers to adopt more pro-active, less minimal, anti-discrimination programs in order to reduce their liability or laws that press judges to enact such standards. They might also come in the form of social movement organizations, professional groups, and other intermediary associations that press employers to explore these novel approaches and help to implement them.<sup>31</sup> This unrealized possibility is depicted as region IV of figure 11.4.

*Presence of countervailing power*

|                                |                                    | <i>Low</i>   | <i>High</i>  |
|--------------------------------|------------------------------------|--|--|
| <i>Governance institutions</i> | <i>Top-down adversarialism</i>     | I<br>Pre civil-rights private ordering: deliberate practices of racial and gender discrimination | II<br>Long civil rights era, first generation anti-discrimination: clear goals, standards, and enforcement methods |
|                                | <i>Participatory collaboration</i> | III<br>Employer-driven diversity initiatives   | IV<br>Legally required employer diversity initiatives + local diversity partnerships                               |

*Figure 11.4* Racial and Gendered Employment Discrimination

**Parental and Community Engagement in Public Education**

Contending reforms in public education can also be fruitfully mapped along these dimensions of participatory collaboration and countervailing power. The long development of public education systems lies squarely in the bureaucratic ideal type of organizations that are managed in top-down fashion and insulated from countervailing power and public influence generally: the upper left-hand region of figure 11.5 (see page 277).<sup>32</sup> In many school systems, interest groups such as teachers’ unions join professional educators and school boards in governing the schools system. These arrangements generate captured policy subsystems depicted as (ii) in region I of figure 11.5. Criticisms of these policy subsystems abound, as do suggestions for how public education might be made more effective, fair, and accountable. Reform proposals occupy all four quadrants of the policy matrix in figure 11.5.

As with anti-discrimination in employment contexts, the most familiar strategies to address racial and economic disparities in public education follow the classic civil rights strategy of mobilizing adversarial countervailing power – either through grass-roots support or litigious

strategies – followed by top-down legal or policy mandates to establish fairness. These strategies are depicted in the upper right-hand corner of figure 11.5. Such strategies include court-ordered desegregation decisions, federal education equity cases, and then a host of court decisions rooted in the constitutions of individual states that attempt to level public education spending across rich and poor districts. Though legal decisions receive the bulk of media and scholarly attention, grass-roots advocacy campaigns for school equity and access comprise another important set of adversarial, top-down, strategies. Community organizations such as the Texas IAF and Oakland Community Organizations, for example, frequently mobilize to support increasing public education investment in poor areas.<sup>33</sup>

Though these active adversarial strategies have importantly increased educational opportunities of minority and poor children, they cannot reach into the organization and practices of schools themselves. Problems of education are not limited to resource deficiencies and invidious exclusions, but also include defects in school management, instruction, curriculum, governance, and community integration. As an alternative to top-down reform strategies, some reformers have urged varieties of participatory collaboration that aim to improve school performance by involving those most closely associated with students: their teachers and parents.

The best of these efforts combine participatory collaboration with countervailing parental and community power (depicted in the lower right-hand quadrant of figure 11.5). Sometimes, as with the Chicago School reforms described in chapter 4, these reforms are institutionalized into formal governance procedures. Though these reforms were intended to create robust collaboration between parents and professional educators, the Chicago experience illustrates many of the difficulties of participatory collaboration. Principals and school administrators sought to protect their professional prerogatives and spheres of insular control. Furthermore, leaders of the school system and City Hall were ambivalent regarding participatory collaboration. As a result, Local School Councils and their community-based supporters struggled with hostile central school administrators in a series of administrative street-fights over formal authority and informal control between 1995 and 2000. Though particular leaders at the top of the Chicago Public Schools rejected collaboration between 1995 and 2000, not all administrators share this disposition. By mid 2002, the CPS leadership indicated a desire for more cooperative arrangements, and these attitudes may yet be translated into action.

The faith that drove the Chicago school reform movement was that

*Presence of countervailing power*

|                                |  |  |
|--------------------------------|--|--|
|                                | <i>Low</i>   | <i>High</i>  |
| <i>Governance institutions</i> | <p><i>Top-down administration</i></p> <p>I</p> <ul style="list-style-type: none"> <li>(i) Classic education bureaucracy</li> <li>(ii) Subgovernment captured by narrow interests (unions, educators)</li> <li>(iii) Some high stakes testing and accountability reforms</li> </ul> | <p>II</p> <ul style="list-style-type: none"> <li>(i) Court ordered desegregation</li> <li>(ii) State school finance cases</li> </ul>                                       |
|                                | <p><i>Participatory collaboration</i></p> <p>III</p> <p>Professional site-based school reform efforts</p>  | <p>IV</p> <ul style="list-style-type: none"> <li>(i) Chicago Local School Councils</li> <li>(ii) Texas Interfaith Alliance</li> <li>(iii) Oakland small schools</li> </ul> |

*Figure 11.5* Governance in Public Education

residents would be willing and able to participate in the complicated business of educational governance if only the opportunities were available to them. Community organizing projects in education reform frequently aim toward the same end of participatory collaboration, but begin from the opposite premise. For them, large institutional reforms like the Chicago local school councils cannot succeed without first developing the interests and abilities of individual parents, teachers, and principals.

The Texas Interfaith Alliance Schools project offers one of the most successful examples of this type of collaborative school organizing.<sup>34</sup> Closely associated with Ernesto Cortes and the Texas Industrial Areas Foundation, the Alliance Schools Project consists of some ninety schools across Texas. In those schools, organizers have developed finely tuned strategies that link parents to teachers in resource-intensive

efforts to improve schools in widely ranging dimensions that include instruction, school safety, physical plant, educational mission, equity, and access to further educational opportunities. By most accounts from close observers, the Alliance Schools project is highly effective in fostering collaboration between parents and educators at individual schools in ways that fundamentally transform the organizational cultures in these schools and make possible deep and innovative reforms.

Another example comes from Oakland, California, where an educational reform initiative combines the bottom-up school organizing of the Alliance Schools with Chicago-style institutional reforms. In 1999, the Oakland Unified School District joined with the Oakland Community Organization (OCO) – a grass-roots organizing entity affiliated with the Pacific Institute for Community Organizing – and the Bay Area Coalition for Equitable Schools (BayCES) – a non-governmental group with substantial education reform expertise. This tripartite partnership launched an initiative that will create ten small schools in low-income Latino, Asian-American, and African-American neighborhoods. In each of these schools, BayCES will bring crucial expertise regarding instruction and curriculum while OCO will help develop community and parental engagement and support. For its part, the district hopes to improve the system both by beginning with these ten schools and by learning lessons from their experience. This partnership is a city-wide collaborative governance effort that attempts to create high-performing small schools in which organized parents – school-level countervailing power – collaborate with self-selected public school teachers and principals.

These three cases – the Chicago school reform, the Texas Interfaith Schools Project, and the Oakland school innovations – show how well-organized parent and community-based countervailing power can operate through different paths and grow from different origins to sustain participatory collaboration in educational governance.

### **The New Policing**

In a path of development that follows public school systems, big city police organizations converged on the corporate model of hierarchical, professional, and politically insulated bureaucracy in the first part of the twentieth century. These methods, combined with other criminal justice policies such as stricter sentencing and anti-drug offensives, have generated a wave of criticisms from within policing and outside of it. Skeptics charge that policing, sentencing, and incarceration practices fail dismally on two of their central objectives: keeping neighborhoods

safe and treating individuals with respect and dignity. With some veracity, Roberto Unger once described the American criminal justice system as a mechanism for deciding which members of the underclass to incarcerate. One might think this repression, as horrible as it is for particular individuals and society as whole, would at least yield the benefit of making neighborhoods, especially “underclass” neighborhoods, safer. But, for a variety of well-known reasons, modern policing has failed in this regard as well.<sup>35</sup>

These two branches of the problem have spurred separate reform movements. Traditional progressive movements have focussed on large and small structural inequities in criminal justice policy and organization and used traditional methods of adversarial social mobilization to reform those institutions. Prisoners’ rights movements belong in this broad category, as do those who advocate less investment in prison construction and more in education, and those who press for centralized community review boards to check abuses of police power. These adversarial movements tend to be rigid in how they frame political issues and mobilize political support, and in their policy demands. Techniques for this mobilization often involve constructing an image of the state, or that part of it involved in criminal justice, as incorrigible and inherently repressive or racist.

A second response has been to introduce the mechanisms of participatory collaboration into policing. Chapter 4 of this volume describes the participatory variant of community policing in Chicago, where residents regularly join with police in deliberating public safety problems and solving them together.<sup>36</sup> Despite its attractive features and successes, the experience of community policing in Chicago illustrates the problem of countervailing power in collaborative governance. Though strong community organizations moved the original institutional design of Chicago community policing in a participatory direction, the Mayor and police department eventually moved to exclude those organizations. Like the Chicago school reform experience, police and politicians were uncomfortable with a mode of collaboration in which community organizations possessed substantial countervailing power and used it to challenge their institutional and professional prerogatives. The quality of deliberation and problem-solving in neighborhood community beat meetings has likely suffered from this exclusion in two respects. Community organizations had provided substantial facilitation and training to residents, and so those capacities are in shorter supply. Furthermore, community organizers are less easily intimidated by police officers than many community residents. They thus checked police authority and domination in neighborhood discussions and

helped to build the self-confidence of residents so that they themselves could provide this source of countervailing power. Absent the contribution of community-based organizations, many residents are less likely to press their distinctive priorities or offer their own solutions to local problems. More generally, weak social movement involvement in city-level reforms to policing means that police professionals determine the substantive focus of community policing. Consequently, community policing is usually “about” public safety understood in fairly narrow terms, and that the solutions to it employ relatively conventional police methods.

#### **IV Redeploying Adversarial Countervailing Power in Collaborative Contexts**

If what we have said so far is correct, the prospects for sustainable, meaningful empowered participatory governance and other forms of participatory collaboration are fairly dismal in the absence of robust countervailing power. Where is this countervailing power going to come from? One possibility is that it may be generated by a simple redeployment of adversarial countervailing power. Substantial organizations representing disadvantaged interests contest policy in environment, civil rights, labor, and many other areas. Though most of these organizations have developed in sharply adversarial governance contexts, they would seem to be the most promising source of collaborative countervailing power. Might their resources be redeployed to support disadvantaged interests in participatory-collaborative forms of governance? Unfortunately, three general barriers prevent the smooth conversion of adversarial countervailing power to collaborative forms. Compared to adversarial organizations, collaborative groups typically operate at incompatible scales, require distinctive competencies, and build upon very different cognitive frames and sources of solidarity.

The first mismatch concerns political scale. In top-down, adversarial governance systems, groups are organized to engage at centralized points of decision-making. By contrast, collaborative countervailing organizations must operate at very local levels *and* at larger scales of political decision. This difference of operational scale grows naturally from the distinctive logics of top-down and participatory governance. In the former, groups primarily aim to influence high-level policy and legislation and consider the challenges of administration to be secondary. The contemporary environmental movement perhaps best illustrates this pattern. Those groups are well organized – through

Washington offices, lobbying capabilities, networks of allies and contacts, and campaign strategies – to influence national regulations around air and water quality, land management, endangered species protection, and the like. When civic environmentalists argue that local participation, information, and engagement will make environmental policy more just and effective, national organizations are simply not organized to support, much less lead, these local efforts.

A second mismatch concerns organizational competencies. Adversarial countervailing organizations aim to influence peak policy and legislative decisions, and their competencies flow from this aim. Some pursue narrow strategies of communication, information provision, and persuasion. Others, such as social movement organizations, attempt to mobilize broad popular support and pressure. Whereas these strategies require a variety of capacities that sway policy-makers, participatory collaboration requires competencies of problem-solving and implementation. Habitat conservation planning and the Quincy Library Group plan for forest management raised thorny political challenges, but these collaborative governance experiences also required participants to have deep local knowledge, ecological expertise, and analytic capacities. Similarly, adversarial education and police reform organizations are skilled at pressuring or persuading top administrators, municipal legislators, and city halls. Participatory collaboration, however, requires organizations that can facilitate close problem-solving with individual principals, teachers, and police officers on the beat. As with the problem of scale mismatch, adversarial countervailing organizations would have to acquire entirely new kinds of organizational competencies in order to function effectively in collaborative governance arrangements.

Third, differences in constructions of political meaning and psychological sources of solidarity also prevent adversarial countervailing organizations from redeploying their powers to support collaboration. Recent work in the sociology of social movements has stressed the importance of cognitive factors such as the construction of meaning and issue framing in processes of political mobilization.<sup>37</sup> Social movements overcome apathy and barriers to collective action in part by constructing “shared understandings of some condition or situation they define as in need of change.”<sup>38</sup> In the case of adversarial countermovements and organizations, these understandings involve narratives of inequity and disrespect – “injustice frames” – that generate common diagnoses (diagnostic framing), approaches to solutions (prognostic framing), and reasons for action (motivational framing).<sup>39</sup> Many adversarial groups and their constituencies embrace cognitive

frames that do not lend themselves to collaborative problem-solving approaches. These frames can unambiguously assign culpability (e.g. an authoritarian city government and police department), depict Manichean protagonists and antagonists (e.g. brutal police officers and defenseless youth), and prescribe simple and direct policy solutions.

Participatory collaboration, by contrast, requires much less rigid diagnostic, prognostic, and therefore motivational cognitive frames. Decentralized governance activities around public safety, education, ecosystem management, and second-generation discrimination aim in large measure to discover and test hypotheses about the complex causes of public problems and create, on the fly, locally tailored solutions to those problems. Rigid diagnoses and prognostications inhibit this flexible problem-solving. Furthermore, participatory collaboration frequently depends upon sustained and deep cooperation between diverse parties such as police officers and minority residents, parents and educators, workers and managers, and environmentalists and developers. “Injustice frames” that demonize or recriminate adversaries again obstruct such joint action. In order to provide countervailing power for collaborative governance, many adversarial organizations would be required to dramatically transform the cognitive frames through which they understand the political world, articulate solutions to the urgent problems in it, and mobilize support for themselves and for social change more broadly. Unsurprisingly, many adversarial organizations resist such revolutionary transformations. They not only erode bases of solidarity and support, but also call into question the deep purposes of leaders and the very reasons that those organizations exist.

## V Sources of Collaborative Countervailing Power

In most participatory-collaborative governance arrangements, then, countervailing power will not grow easily from either supportive public policies or existing adversarial organizations. Are there more likely sources of collaborative countervailing power? Here we must be more speculative. Contemporary forms of participatory collaboration are fairly young, and so most practitioners and scholars in this area have focussed on institutional analysis rather than upon the political and social conditions that are necessary for these institutions to operate fairly and effectively. Tentatively, then, consider three potential paths to the generation of collaborative countervailing power: local

adversarial organizations, political parties, and larger social movement organizations.

Though neither ubiquitous nor dominant, the strongest forms of collaborative countervailing power in the experiences described in section III above came from locally organized adversarial entities. For example, indigenously local rather than nationally affiliated environmental groups engaged developers and industrial interests in the forest management and habitat conservation programs. In cases of participatory collaboration in public services – education and policing – coalitions of neighborhood groups and their city-level umbrella organizations provided some countervailing force against city government. Generally, locally organized entities can shift more easily from adversarial to collaborative modes of participation. Unlike their national counterparts, they do not suffer from scale-mismatch; most are already organized for action at the levels of government and society most appropriate for decentralized problem-solving. In part because they act at this scale, adversarial groups frequently also possess some of the organizational competencies necessary to participate in collaborative governance. For example, they have deep local knowledge of the particular environmental, educational, and economic challenges in their communities. Many already engage in direct service provision, and so are familiar with the details and difficulties of implementing programs. When local groups make demands upon public or private entities, these demands often concern inclusion and representation in governance and problem-solving. They frequently demand to be allowed to collaborate rather than pressing for specific policy solutions. Cress and Snow report, for example, that one of the major demands of homelessness prevention social movement organizations is to be represented on the boards and bodies that make and implement local policies in this area.<sup>40</sup>

Perhaps the cognitive issues of framing and psychological sources of solidarity and motivation present the greatest obstacle to participating in collaborative governance for local adversarial organizations. Like their national counterparts, local frames of political understanding frequently rely upon unambiguous narratives of injustice and culpability. Such frames lead participants to be suspicious – often for good reasons – of proposals for collaboration. Nevertheless, some of the most innovative and successful local organizing entities have developed alternative frames that capaciously include both adversarial and collaborative strategies. For example, Mark Warren describes how the Texas Industrial Areas Foundation moved beyond Alinskyite understandings and strategies to develop a less myopic organizing approach that stressed

common values and allowed for constructive engagement.<sup>41</sup> This approach grounded the participatory-collaborative school organizing strategy of the Interfaith Alliance described above. Similarly, the Oakland Community Organization has used tactics of disruption and protest to secure increased funding for schools in poor neighborhoods while simultaneously engaging in partnership with the educational administration to participate in the governance of some of those schools. Though not without difficulty, they have developed political frames and narratives that understand both kinds of tactics as stemming from a common approach to building constructive power and organizing defective social institutions.

As a general matter, however, local adversarial organizations are strong in some areas and weak in others. Broadly imposing structures of collaborative governance will, as we have seen in the case of habitat conservation planning, create opportunities for some of these groups, but may also produce many other venues in which, in the assessment of environmental leader Michael McCloskey, industry has better odds.

A second source of more reaching countervailing power may come from political leaders who view participatory collaboration as good politics as well as good policy. A politician or party might champion policies that open top-down agencies, create venues for popular voice and problem-solving, and so attempt to reap the democratic and technical benefits commonly attributed to participatory collaboration. In doing so, he or she may construct constituencies of beneficiaries from the policies, who in turn support the officials who championed them. Such a politician or party would irritate administrators and entrenched interests, but that would be the price of generating participatory-populist support. In a tepid version of this strategy, Chicago Mayor Richard M. Daley strongly supported the city's community policing program. A fully blown example of this path to countervailing power comes from outside the borders of the United States. Chapters 2 and 3 above illustrate how left political parties in Porto Alegre, Brazil, and Kerela, India campaigned to implement participatory governance and provided effective countervailing power for activists involved in the process.

Perhaps more squarely within the boundaries of the American political imagination, a third path to collaborative countervailing power lies in the slow transformation of traditional adversarial organizations. The barriers outlined above are formidable, but perhaps not insuperable, for some large interest groups and social movement organizations. The large labor unions, the NAACP, some women's organizations, and some environmental organizations have both national offices and local

affiliates. The barriers of scale and competence will be lower for organizations with local affiliates that exercise the autonomy and possess the kinds of capability that are common in local adversarial organizations. The perennial conflicts over local autonomy versus national mission that occur in labor, environmental, and other movements has taken on a new dimension with the emergence of participatory collaboration as a mode of governance.

The chorus of support in favor of participatory collaboration is growing. Its natural constituents are local organizations, such as the civic environmentalists in Quincy, California and the environmental justice movement, the more energetic locals and County Labor Councils in organized labor, and local civil rights and racial justice organizations. Pressed from below by these sources and perhaps also by the disappointments of their own approaches, leaders of national adversarial organizations may eventually accept the limitations of top-down governance strategies. When they do so, they may begin to make the difficult transformations of scale, competence, and political framing necessary for them to become effective actors in participatory collaborative governance schemes.

## VII Conclusion

Across a vast range of policy questions, both proponents of participatory collaboration and its critics are united by a set of deep commitments to democratic government and social justice. They are divided principally regarding the means with which these general goals are best realized. The gulf between them, however, is deeper than most strategic disagreements, for it concerns the very structure and institutions of governance and politics. Most of the work in political science and sociology is not terribly helpful in bridging that gulf. As has been oft noted but seldom addressed, the former focusses on formal avenues of participation and influence – voting and interest groups – usually in centralized venues while social movements scholars in the latter discipline focus squarely on informal methods such as protest and disruption.<sup>42</sup> Participatory collaboration lies between these two domains, and so has largely escaped the analytic gaze of social scientists. As a consequence, there are few conclusive findings regarding the operations, outcomes, or even prevalence of this emergent governance mode.

Proponents and critics have thus relied upon their intuitions to guide them regarding crucial points of disagreement such as the role and

potential for collaborative countervailing power. Many proponents of participatory collaboration have ignored asymmetric power and so implicitly supposed that power can be bracketed away and is therefore unimportant in these venues. Others embrace a naive pluralism that supposes that interests are all sufficiently well resourced and organized to participate and that none will be systematically excluded. Critics, many of whom have studied or worked in contexts of top-down adversarial governance, frequently make the opposite but equally naive supposition. They recognize that collective action problems are extremely difficult to overcome and robust organizations hard to build. They see the impossibility of constructing countervailing power in locales where it is weak or absent. They consequently reject participatory collaborative governance from the fear that it will bring local domination and co-optation.

The best prospects for participatory collaboration lie between these extremes. Critics should recognize first that, whatever their other failings, the emergent governance structures offer possibilities of solving complex problems that are unavailable to top-down methods. Conversely, proponents should acknowledge that many of these benefits fail to accrue in the absence of sufficient countervailing collaborative power. With these common understandings, both can begin the hard work of understanding the roles, forms, and sources of political power in the distinctive structure and politics of empowered participatory governance.

## Notes

\* A longer version of this epilogue was originally written as a stand-alone paper by Archon Fung about six months after the completion of the rest of the chapters in this book. It was only after rereading the book in page-proofs that we realized that the ideas in that paper would constitute a useful epilogue to the book itself, following up on some of the central issues raised by the commentators, especially by Cohen and Rogers in chapter 10. We therefore decided to revise and shorten it for that purpose. We wish to thank David Barron, Gene Corbin, Michael Dorf, Bradley Karkkainen, James Liebman, Dara O'Rourke, and Charles Sabel for comments on previous versions of this chapter.

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1. Chapter 10 of this volume, p. 249.

2. There is no standard term in the literature for the potential power of normally weak and disadvantaged groups as they confront the powerful. The term "countervailing power" is also used in quite different contexts – as in the countervailing power of different institutions in a system of governmental checks and balances. We are adopting it here because it suggests a form of power that develops to counter some well-established form of power advantage.

3. Cohen and Rogers (chapter 10 of this volume, pp. 250–3) argue that the problem

of power imbalance may not be as relevant for policy-directed versions of EPG as for the more ambitious cases drawn from developing countries in this volume. Though the balancing of social forces occurs at very different scales in these two kinds of case, we contend that the balance of power, and the presence of countervailing power, are important in both kinds of case, and for EPG generally.

4. Andrew McFarland, "Interest Groups and the Policymaking Process: Sources of Countervailing Power in America," in Mark P. Petracca, ed., *The Politics of Interests: Interest Groups Transformed*, Boulder, CO: Westview Press, 1992, p. 58.

5. Hugo Helco, "Issue Networks and the Executive Establishment," in Anthony King, ed., *The New American Political System*, Washington, DC: American Enterprise Institute, 1978.

6. See Theodore Lowi, *The End of Liberalism: The Second Republic of the United States*, New York: Norton, 1979; Richard B. Stewart, "The Reform of American Administrative Law," *Harvard Law Review*, vol. 88, no. 8 (June 1975); Jody Freeman, "Collaborative Governance in the Administrative State," *University of California, Los Angeles Law Review*, vol. 45 (October 1997); Mark Petracca, ed., *The Politics of Interests: Interest Groups Transformed*, Boulder: Westview Press, 1992; Frank Baumgartner and Beth L. Leech, *Basic Interests: The Importance of Groups in Politics and Political Science*, Princeton: Princeton University Press, 1998.

7. Freeman "Collaborative Governance in the Administrative State," p. 18.

8. Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge, MA: Harvard University Press, 1965; Claus Offe and Helmut Wiesenthal, "Two Logics of Collective Action," in John Keane, ed., *Disorganized Capitalism: Contemporary Transformations of Work and Politics*, Cambridge, MA: MIT Press, 1985; James Q. Wilson, "The Politics of Regulation," in James Q. Wilson, ed., *The Politics of Regulation*, New York: Basic Books, 1985; Lowi, *The End of Liberalism*.

9. Joshua Cohen and Charles Sabel, "Directly-Deliberative Polyarchy," *European Law Journal*, vol. 3, no. 4 (December 1997).

10. Xavier de Souza Briggs, *Community Building: The New (and Old) Politics of Urban Problem-Solving*, Working Paper RWP02-003, Cambridge, MA: John F. Kennedy School of Government, 2002, p. 3.

11. Olson, *The Logic of Collective Action*; E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America*, New York: Holt, Rinehart, and Winston, 1960; Kay Lehmann Schlozman, "What Accent the Heavenly Chorus: Political Equality and the American Pressure System," *Journal of Politics*, vol. 46, no. 4 (November 1984); Lowi, *The End of Liberalism*; Wilson, "The Politics of Regulation."

12. See Richard B. Stewart, "Madison's Nightmare," *University of Chicago Law Review*, vol. 57 (Spring 1990).

13. Under special circumstances – where there are no deep conflicts of interest among actors engaged in the problem-solving process, or where, for some contingent reason, powerful groups adopt an altruistic moral stance toward collaboration and voluntarily refrain from using their power – it may happen that even in the absence of countervailing power, genuine participatory collaboration can take place. But the usual political context of decision-making is not so benign, and thus, as with the more familiar forms of top-down governance, power matters and the presence or absence of countervailing power will produce very different outcomes given the very same collaborative governance institutions.

14. Mark Sagoff, "The View from Quincy Library: Civic Engagement and Environmental Problem Solving," in Robert K. Fullinwider, ed., *Civil Society, Democracy, and Civic Renewal*, New York: Rowman Littlefield, 1999, p. 161.

15. Daniel Kemmis, *Community and The Politics of Place*, Norman: University of Oklahoma Press, 1990; DeWitt John, *Civic Environmentalism: Alternatives to Regulation in States and Communities*, Washington, DC: Congressional Quarterly Press, 1994; William Shutkin, *The Land That Could Be: Environmentalism and Democracy in the Twenty-First Century*, Cambridge, MA: MIT Press, 2000; Bradley C. Karkkainen,

Charles Sabel, and Archon Fung, *Beyond Backyard Environmentalism*, foreword by Amory and Hunter Lovins, Boston: Beacon Press, 2000.

16. John, *Civic Environmentalism*; Shutkin, *The Land That Could Be*; Marc Landy, *Civic Environmentalism in Action: A Field Guide to Regional and Local Initiatives*, Washington, DC: Progressive Policy Institute, 1999; Carmen Sirianni, and Lewis Friedland, *Civic Innovation in America: Community Empowerment, Public Policy, and the Movement for Civic Renewal*, Berkeley: University of California Press, 2001.

17. Edward Weber, "The Question of Accountability in Historical Perspective: From Jacksonian to Contemporary Grassroots Ecosystem Management," *Administration and Society*, vol. 41, no. 4 (1999).

18. Rena Steinzor, "The Corruption of Civic Environmentalism," *Environmental Law Reporter*, vol. 30. (October 2000).

19. This account is drawn from Sagoff, "The View from Quincy Library"; Timothy P. Duane, "The Ecosystem Approach: New Departures For Land And Water: Practical Legal Issues In Community Initiated Ecosystem Management Of Public Land: Community Participation In Ecosystem Management," *Ecology Law Quarterly*, vol. 24 (1997).

20. Sagoff, "The View from Quincy Library," p. 167.

21. Sagoff, "The View from Quincy Library," pp. 167–8; Duane, "The Ecosystem Approach."

22. Sagoff, "The View from Quincy Library."

23. Michael McCloskey, "The Skeptic: Collaboration Has Its Limits," *High Country News*, vol. 28, no. 9 (May 13, 1996); see also Michael McCloskey, "Problems With Using Collaboration to Shape Environmental Public Policy," *Valparaiso University Law Review*, vol. 34 (Spring 2000).

24. Sagoff, "The View from Quincy Library."

25. Sagoff, "The View from Quincy Library."

26. Steinzor, "The Corruption of Civic Environmentalism"; William Ratliff, "The Devolution of Environmental Organization," *Journal of Land Resources and Environmental Law*, vol. 17 (1997).

27. See Thomas, chapter 5 of this volume, Peter Kareiva, *Using Science in Habitat Conservation Planning*, Washington, DC: American Institute of Biological Sciences, 1999; Stephen Yaffee *et al.*, *Balancing Public Trust and Private Interest: Public Participation in Habitat Conservation Planning*, Ann Arbor: University of Michigan, School of Natural Resources and Environment, 1998; see Karkkainen, chapter 8 of this volume, for response.

28. Susan Sturm, "Second Generation Employment Discrimination: A Structural Approach," *Columbia Law Review*, vol. 101 (April 2001): p. 469.

29. Sturm, "Second Generation Employment Discrimination."

30. Susan Bisom-Rapp, "An Ounce of Prevention is a Poor Substitute for a Pound of Cure: Confronting the Developing Jurisprudence of Education and Prevention in Employment Discrimination Law," *Berkeley Journal of Employment and Labor Law*, vol. 22 (2001).

31. Sturm, "Second Generation Employment Discrimination"; Michael Dorf and Charles Sabel, "A Constitution of Democratic Experimentalism," *Columbia Law Review*, vol. 98 (March 1998).

32. See, for example, David Tyack, *The One Best System: A History of American Urban Education*, Cambridge, MA: Harvard University Press, 1974.

33. Research for Action and Cross Cities Campaign for Urban School Reform, *Strong Neighborhoods, Strong Schools: The Indicators Project on Education Organizing*, Chicago: Cross Cities Campaign for Urban School Reform, March 2002.

34. Frank Levy and Richard Murnane, *Teaching the New Basic Skills: Principles for Educating Children to Thrive in a Changing Economy*, New York: Free Press, 1996; Dennis Shirley, *Community Organizing for Urban School Reform*, Austin: University of Texas Press, 1997 and Dennis Shirley, *Valley Interfaith and School Reform: Organizing for Power in South Texas*, Austin: University of Texas Press, 2002; Mark Warren, *Dry*

*Bones Rattling: Community Building to Revitalize American Democracy*, Princeton: Princeton University Press, 2001.

35. Malcolm Sparrow *et al.*, *Beyond 911: A New Era for Policing*, New York: Basic Books, 1990.

36. Wesley G. Skogan and Susan M. Hartnett, *Community Policing: Chicago Style*, New York: Oxford University Press, 1997.

37. David Snow and Robert Benford, "Frame Alignment Processes, Mobilization, and Movement Participation," *American Sociological Review*, vol. 51, no. 4 (August 1986).

38. Robert Benford and David Snow, "Framing Processes and Social Movements: An Overview and Assessment," *Annual Review of Sociology*, vol. 26 (2000).

39. Snow and Benford, "Frame Alignment Processes."

40. Daniel Cress and David Snow, "The Outcomes of Homeless Mobilization: The Influence of Organization, Disruption, Political Mediation, and Framing," *American Journal of Sociology*, vol. 105, no. 4 (January 2000).

41. Warren, *Dry Bones Rattling*.

42. Cathy Cohen and Fred Harris, "Social Capital and Political Activism Among Marginal Groups," prepared for Conference on Social Capital and Political Activism, Harvard University (May 23–24, 2002); Douglas McAdam, Sidney Tarrow, and Charles Tilly, *Dynamics of Contention*, New York: Cambridge University Press, 2001.