Local Government Reconsidered

Reimagining Local Government: Strengthening Democracy in Our Communities

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People with Disabilities, Public Spaces, and Democracy

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By Art Blaser

I explore accessible environments by examining the nexus between people with disabilities (PWDs), public spaces, and democracy. Understanding this nexus is essential in local governance.

The Nexus

In addressing disability, public places, and democracy, planners and the public need to take a dynamic, expansive view of all three elements.

People with disabilities (PWDs) are a broad community in which membership is fluid. A broken leg may be the source of a temporary disability. More often it involves such "major life activities" as seeing or hearing or is related to mobility. The most frequently cited global estimate is 15% of world population (World Health Organization & World Bank, 2011); the disability rate is higher in the US and increases with age. Disabled people globally are no longer simply passive recipients of services, but an active social movement manifested in Disabled Peoples' International (Driedger, 1989) and elsewhere. With disability as the basis of a social movement comes an increasing sense of the disability community in multiculturalism.

Public places include not only government buildings and parks, but also housing and the internet. The Americans with Disabilities Act of 1990 deals at length with "public accommodation": its Title III specifies twelve types of private entities that engage in commerce including among others, restaurants, gyms, nursery schools, terminals, inns, and museums.

The division between private homes and public places is disappearing. The contemporary concept of "visitability" inplies that public interests have entered into the private sphere. Concrete Change www.concretechange.org, the leading advocacy organization promoting "visitability" defines it as "One zero-step entrance; Interior doors, including bathrooms, with 32 inches or more of clear passage space; At least a half bath (preferably a full bath) on the main floor" Cities that have adopted "visitability" ordinances including Vancouver, B.C., Austin, Texas, Atlanta, Georgia, and San Antonio, Texas have used various definitions, all stressing the importance of access to people with disabilities, many using wheelchairs but also to some using walkers or canes, or with sensory disabilities. In caucus states, lack of visitability may mean disenfranchisement.

Policymakers need to consider the "web" as a public space. Increasingly, discussion of the internet identifies "electronic curbs" or barriers, as well as electronic "curb cuts."

Often, courts and the general public treat the web as a "place." Disability law scholar Ruth Colker convincingly argues that since the ADA was drafted prior to contemporary concern with "digital accessibility," it is incumbent on courts and policymakers to interpret access rights flexibly:

> It is crucial the ADA be interpreted to require new and altered facilities to include full digital accessibility. It is also crucial that employers are understood to have broad accessibility obligations under Title I so that they make basic design decisions in a way that does not allow them to implicitly make an employee's ability to read print part of the selection criteria. This interpretation will help the ADA attain accessibility for the broadest possible population of individuals with disabilities. It will also be efficient - retrofitting software and other digital technology after the fact is much more expensive and difficult than creating digital technology in an accessible format in the first instance. (799-800).

Democracy has been defined by elitists like Joseph Schumpeter to involve very limited participation. Aristotle, Alexis de Tocqueville and others emphasized the importance of participation in the community in order for individuals to maximize their potential. Many people were and are excluded from full participation, which is more often now recognized as a limit on democracy.

Democracy is increasingly about actual participation, not just opportunities for participation. Political scientist Joseph Nye wrote in *Is the American Century Over?* that "Robert Putnam notes that community bonds have not weakened over the last century. On the contrary, American history carefully examined is a story of ups *and* downs in civic engagement, not just downs – a story of collapse and renewal. Three-quarters of Americans feel connected to their communities and say the quality of life there is excellent or good. Nearly half of adults take part in a civic group or activity. Moreover, the American system is federal and more decentralized than most. Partisan gridlock in the national capital is often accompanied by political cooperation and innovation at the state and urban government levels" (2015: 90-91). Sociologist Nancy Fraser similarly conceptualizes a "bottom up" conception of democracy.

Common Barriers

Often democracy is limited because of barriers to equal participation by disabled people. In the previous section, I mentioned how the web and residences impose barriers to full and equal participation. Now, I will address three prominent categories of barriers: curb-ramps, sidewalks, and signage. For each category, I describe contemporary political controversy, and implications.

Curb-cuts or "curb ramps" (the term used in ADA guidelines) have slowly been added at intersections. Although curb ramps were required from January 26th, 1992 their absence has resulted in much litigation since then, and will presumably do so in the future.

Sidewalk access is key to accessing most public and private facilities. Where access barriers on sidewalks exist it may be difficult or impossible to take advantage of services or to use transportation. In her 2014 thesis surveying hundreds of transit agencies, Carla Paola Salehian noted:

> "Infrastructure issues proximal to transit stops such as cracked or uneven sidewalks or a lack of curb cuts have created a significant challenge; many communities lack coordination between agencies and municipalities to address these issues and in a time of economic downturns and ever-budgets, it is common for responsible parties to neglect these responsibilities or pass them on to others."

Signage's universal benefits have been identified by access advocates familiar with building design:

> Signage requirements under the ADA establish an entity's obligation to allow people with disabilities to navigate independently through a facility. Being able to get 'from here to there' on one's own is essential for full participation in everyday life. Accessible signage makes successful navigation possible for many people who have disabilities and easier for everyone. (McGuinness and Kessler, 40).

Regulations describe "wayfinding" signage that identifies an unambiguous direct "path of travel" to a destination.

Other barriers which preclude participation include inadequate personal assistance and transportation. They persist in large part for economic reasons: personal assistance and transportation which would enable participation is beyond the reach of many PWDs.

Laws, Regulations, and Guidelines

Many defendants claim that access rules are unclear and unavailable. However, the federal rules

are at the websites in the references: the White House disability portal, the ADA's site for the

Department of Justice, and the site of the Access Board (an independent federal agency

straddling the executive and legislative branches that drafts rules to implement the ADA, the

Architectural Barriers Act, and other legislation). In most cases, no additional state rules govern

access. California is a rare exception with stronger rules linked to the site of the San Francisco

Mayor's Office on Disability.

The Americans with Disabilities Act of 1990 and the *2008 ADA Amendments Act* provide

millions of Americans promises of nondiscriminatory access. After its employment provisions

(in Title 1) the Americans with Disabilities Act (ADA) addresses programs and services

provided by government (Title 2) and "public accommodations" (such as restaurants and

shopping malls in Title III). To be meaningful to the individual, access may require structural or

programmatic change. In promoting disability access, the ADA mandates equal access in major

areas of public life.

In others it suggests a simple distinction: where the change is a "reasonable modification"

it is legally required, but where it is a "fundamental alteration" it is not. Where buildings or

programs existed before January 26, 1992, the changes must be "readily achievable" to be

reasonable. The Architectural and Transportation Barriers Compliance Board (commonly

Access Board) develops the guidelines designed to promote disability equality.

Other laws aimed at removing barriers to equal participation include the Help America

Vote Act, Fair Housing Amendments Act, and the Individuals with Disabilities in Education Act.

Many courts and policymakers read web access guidelines into existing laws such as the ADA; the Web Content Access Guidelines of the public-private World Wide Web Consortium also seek to promote disability access.

Organizations and Principles

Better planning is encouraged by organizations whose input needs to be valued by policymakers. In many cases the organizations promote the key principles described below: universal design, community integration, and maximal participation.

Organizations promote increasing recognition that planning access is "bottom up" rather than "top down." Designing Accessible Communities <designingaccessiblecommunities.org> is one example. The AARP <aarp.org> is no longer just for retired people anymore, and lobbies for and disseminates information on equal access. The American Association of People with Disabilities www.aapd.com seeks comparable influence. An independent living movement, manifest in Centers for Independent Living, and national www.ncil.org and international bodies (e.g. the Independent Living Institute in Stockholm www.independentliving.org), mobilizes disability communities.

To these cross-disability examples we can add the increasingly active organizations mobilizing people with particular disabilities; blindness, deafness, autism, ALS, and so on. What is new and different is emphasis not only on research and cure, but also on living with a disability.

Study of access issues leads to fruitful debate on the utility of the legal process, and of other tactics such as voluntary action and social movement activity. Rather than the tactics being

mutually exclusive, they are often reinforcing. Leading public interest law organizations such as Disability Rights Education and Defense Fund (DREDF), Disability Rights Advocates (DRA), and the Disability Rights Legal Center (DRLC) all recognize the political nature of legal action, and that it has greater utility at some times than others.

Principles of universal (inclusive) design, community integration, and maximal participation inform effective planning.

Universal design is advanced by the Center for Universal Design at North Carolina State University and elsewhere. It defines universal design as "The design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design," and advances seven principles: equity in use, flexibility in use, simple and intuitive use, perceptible information, tolerance for error, low physical effort, and size and space for approach and use (Center for Universal Design, 1997).

Community integration is the objective of the Olmstead plans that the U.S. states are developing in response to the 1999 Supreme Court decision of Olmstead v. L.C. In practice, Keith M. Christensen and Betsy Byrne concluded from an examination of 42 plans: "Whereas the intent of Olmstead Plans is to increase community integration, it should be understood that the community needs to be accessible, understood as conveniently connected. The plans should focus on specific and measurable actions that would result in an increase in this accessibility" (Christensen and Byrne, 2014: 191). For community integration PWDs' living outside of congregate settings (such as nursing homes) was not enough: transportation and access to full community involvement were also elements of community integration.

Maximal participation is an integral part of community integration. The disability rights movement slogan of "nothing about us without us" is the basis of criticisms of common failure to introduce democratic practices in public settings.

Often the failures are unintentional, as with the ramps set in stairs criticized by David M. Perry and others (and pictured in the accompanying PowerPoint). That failure, however, is accompanied by the increasing realization that wheelchair users, people using canes or crutches, people with low vision, people who are distracted, potentially everyone is affected. The nexus of disability, public space, and democracy will continue pose major challenges and offer many opportunities for policymakers, planners, and the public throughout the 21st century.