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*the premier journal of  
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## Theory to Practice

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## Public Administration Review

May | June 2009  
Volume 69 | Number 3

### **Public Sector Knowledge Networks as Governance: The Role of Legal Frameworks, Conflict Management, and Public Voice**

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### **From "Need to Know" to "Need to Share": Tangled Problems, Information Boundaries, and the Building of Public Sector Knowledge Networks**

**Sharon Dawes, Tony Cresswell, and Theresa Pardo**

#### **Memorandum of January 21, 2009 Transparency and Open Government Memorandum for the Heads of Executive Departments and Agencies**

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

*Government should be transparent.* Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.

*Government should be participatory.* Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive de-

partments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

*Government should be collaborative.* Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation. \*\*\*

Signed BARACK OBAMA

*Federal Register*, Vol. 74, No. 15, p. 4685 (published Monday, January 26, 2009)

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In their remarkably understated way, Dawes, Cresswell, and Pardo focus our attention on something so important that President Barack Obama made it the subject of one of his first acts in office. Governance is about sharing information, building knowledge, and using it together to make policy. How exactly do we do that in this new information age?

Using their 15 years of action research, Dawes, Cresswell, and Pardo argue that astute, strategic, and adept managers can build effective public sector knowledge networks (PSKNs), that these are not simply information technology (IT) but rather structures for governance, and that political leaders and public managers must master fundamental skills to function in PSKNs. They use case studies that vary on the dimensions of focus

(on a specific need or problem compared to systemic shared knowledge and information) and extensiveness (within one organization, across organizations in one jurisdiction, and across organizations in multiple jurisdictions and sectors).

Dawes, Cresswell, and Pardo present a series of lessons learned in terms of challenges and opportunities. Challenges include the elusive nature of knowledge (explicit and tacit); the fact that knowledge varies in codifiability (can be expressed formally in language or numbers), embeddedness (generated by practice or doing), and dynamics (changing in and through use); cross-boundary exchanges, including boundaries related to ideology, professional norms, and institutional divisions; lack of trust, whether calculus-based or identity-based; and differing perceptions of and tolerance for risk. Opportunities include building professional networks, organizational connections, and reusable capabilities; mobilizing support that may help structure formal legal authority; learning to navigate policy barriers by early intervention and action; learning to navigate organizational barriers through innovation and creative management; learning leadership behaviors such as mission focus, emphasizing people and communication, experimentation, and nurturing joint success; learning to identify expectations and communicate explicitly about benefits, barriers,

and risks; learning how to adapt; and recognizing that technology is necessary but not sufficient for success.

They conclude that managers who emphasize early, open dialogue do better than those who rush to an IT solution; that managers who adapt and learn from experience do better at both networking and substantive goals; and that PSKNs need some legal foundation, resources, support, and innovative leadership to succeed (for another view of knowledge management in networks, see Agranoff 2008). Questions remain, nevertheless. What kind of legal foundation might we need? How and with what skills do we conduct the necessary dialogue? And where is public voice in this vision of PSKNs?

#### **Legal Frameworks for Collaboration**

Dawes, Cresswell, and Pardo document how legal authority is a significant factor in PSKN legitimacy and effectiveness. For example, they state that legal issues of privacy and proprietary information may create conflicts unless they are made explicit. They also write that laws create risk through their ambiguity about statutory authority to collect, share, or release information and degrees of openness to public access, again implicating issues regarding privacy, confidentiality, and security. Dawes, Cresswell, and Pardo report that they "studied successful networks created specifically in law or by executive order, or formed under the general authority of an existing statute" and that "[n]one of the PSKNs we have studied over the years would have survived without this legitimating authority." Similarly, they observe that policy and legal barriers are the "greatest obstacles to achieving the expressed program or policy goals," in part because government is risk averse. Ultimately, they conclude that PSKNs need some legal foundation to be sustainable as organizational forms.

However, PSKNs are not the only networks that are coming up against the legal framework problem. It is a critical issue for collaborative public management and new forms of civic engagement generally. President Obama's executive memorandum is the first step toward addressing the problem in the federal sector, and it is likely that state reforms will follow federal ones.

As Dawes, Cresswell, and Pardo point out, "wicked" and even merely "tangled" problems challenge the capacity of a single governmental unit operating in hierarchy. Hierarchy's command-and-control management strategies may fail if problems cannot be solved easily by an entity acting alone (Agranoff and McGuire 2003). The concept of governance rather than government (Durant, Fiorino, and O'Leary 2004; Kettl 2002) suggests steering rather than top-down directing and often entails collaborative relationships toward achieving a public policy goal. It may involve multiple organizations and stakeholders from public, private, and nonprofit sectors that combine in a network to address a common and shared problem through collaborative public management (Agranoff and McGuire 2003; O'Leary, Gerard, and Bingham 2006). Citizens may participate through institutionalized civic engagement called participatory governance, deliberative democracy, or collaborative governance (Bingham, Nabatchi, and O'Leary 2005).

In contrast, relevant public law addresses a single agency and its decision-making process. In the United States, federal administrative agencies are sometimes thought of as a fourth branch of government in which judicial, legislative, and executive functions from the other three are collapsed (Rosenbloom 2003, 11). They have substantial discretion to choose among different gover-

nance processes under the Administrative Procedure Act (APA, 5 U.S.C. §§551 *et seq.*; Rosenbloom 2003, 6-7), which provides for both quasi-legislative and quasi-judicial agency action. Quasi-legislative agency action is prospective; general in application; and sets standards, rules, and regulations for behavior. Traditional rulemaking can meet these criteria, particularly for substantive or legislative rules (Rosenbloom 2003, 59). Quasi-judicial agency action is retrospective, fact-based, and determines the rights or obligations of selected citizens or stakeholders through formal or informal adjudication. Roughly the same structure and distinctions exist in state administrative procedure acts across the 50 states.

Within the executive branch, agencies derive their authority in part from the APA, Freedom of Information Act (5 U.S.C. §552), Federal Advisory Committee Act (FACA, 5 U.S.C. Appendix II, intended to restrict and reduce agency use of advisory committees), Negotiated Rulemaking Act (NRA, 5 U.S.C. §561, *et seq.*, expressly authorizing committees to negotiate draft rules prior to notice and comment rulemaking), and Administrative Dispute Resolution Act (ADRA, 5 U.S.C. §571, *et seq.*, expressly authorizing agencies to use negotiation, mediation, arbitration, and other dispute resolution processes).

These statutes were not drafted expressly to authorize agencies to collaborate in networks with other actors, nor with a view toward joint agency action. Their unit of analysis, the obligations they impose, and the processes they authorize all take as their starting place individual agency action. Even FACA looks at an individual agency's choice to create advisory committees, not its ability to collaborate with other agencies. The statutes are silent on the structure of collaborative networks, forms of collaborative public management, and the wide variety of models for collaborative gov-

ernance in agency policymaking. They do not contemplate the dramatic evolution of technology related to communication and online deliberation, such as wikis, blogs, or Internet 2.0. (For an ongoing dialogue on the uses of technology and agency collaboration, see the National Academy of Public Administration website, [www.collaborationproject.org](http://www.collaborationproject.org).)

Agency lawyers may require more explicit language enabling agencies to do this work. I have argued elsewhere (Bingham 2008) that new legal infrastructure must address questions of how agencies can exercise delegated authority in networks, how to reconcile networks with transparency in government, how to foster citizen participation in networks, how to get networks to use more innovative deliberative processes with citizens, and how to ensure that the network is adequately accountable to the public. These questions have two contexts: agency collaboration and civic engagement that is face-to-face, and that which is mediated by IT.

There are a variety of approaches to solving the legal infrastructure problem. One might be a model analogous to a hybrid of the ADRA and NRA. Like the ADRA, it could provide the broad bottom-up authorization for agencies to develop many different collaborative public management structures through which they are empowered to act collectively, without violating the scope of delegation to any single participant. At the same time, it could provide guidance on what criteria an agency might consider when deciding to use such a collaborative public management structure, much like the NRA criteria to assist an agency in deciding to use negotiated rulemaking. An agency's decision on whether or not to collaborate could, like the decision to use alternative dispute resolution under the ADRA or negotiated rulemaking, be committed to agency discretion. An essential element to foster both transparency and accountability

would be, like the case of FACA, to expand public participation greatly and make it effective. Involving the public in collaborative governance would make the work of collaborative public networks more visible and directly accountable in a way that is far more immediate than judicial review. In order to foster continued growth in new processes for dialogue and deliberation, the statute could contain a broad authorization for agencies to use a nonexclusive list of existing models, much like the list in the ADRA of forms of dispute resolution. Similar to the ADRA, it could require that agencies develop capacity in this area by designating a specialist in collaborative governance. The ADRA did not cost money, but an appropriation would have made diffusion of this innovation move faster through government. Finally, the new statute might explicitly apply to both face-to-face and technology-mediated models of communication.

The advantage of a statute is that in one simple act Congress could eliminate many of the legal obstacles and barriers that now hamper agencies' ability to collaborate with each other and with the private and non-profit sectors. President Obama's executive memorandum begins a process for agencies in the federal sector to examine the ways in which they collaborate with others and to think about how they might make new and expanded uses of collaboration to do the public's work effectively. This may lead to a new examination of federal administrative law.

### **Conflict Management**

Dawes, Cresswell, and Pardo suggest that collaborative capacity building in PSKNs requires managerial support, leadership, facilitative skills, attitudes toward power and trust, and resources. Critically, they also indicate that it requires a willingness to "change attitudes" and "serve collective as

well as individual agency missions and goals." How exactly should managers do this? The authors recognize that participants in a PSKN must engage in negotiation. They observe that in the justice information systems case, a shift to a "unified system required difficult negotiations, including crafting a formal interagency contract to deal with costs, processes, and authority relationships." Similarly, in the homeless services and annual reassessment cases, they observed that critical concepts "were understood differently by different actors and had to be explained, debated, and harmonized," again effectively negotiation. Trust, a critical success factor for Dawes, Cresswell, and Pardo, is also a major topic of the research literature on negotiation. Dawes, Cresswell, and Pardo identify different understandings of risk as a source of disagreement. The negotiation literature also discusses using differing perceptions of risk as an avenue for dovetailing interests (Fisher, Ury, and Patton 1991).

Other negotiation issues cited by Dawes, Cresswell, and Pardo include budget, resources, and dominance; they mention how agencies may be concerned about threats to their discretion or autonomy, which again are termed fundamental interests in the negotiation literature. They describe numerous negotiated exchanges as the studied networks attempt to function. They repeatedly refer to necessary managerial skills, but what skills?

In Bingham, Sandfort, and O'Leary (2008), we argue that managers in networks must learn to do—and must do to learn—how to inhabit the role of participant in a network. They must master the skills of designing a network with the necessary players at the table, structuring governance for the collaborative group, participating in the varieties and structures of networks effectively using col-

laborative practices, negotiating ethically to leverage agency resources best, facilitating meetings of the network, and managing conflict among network members, among other skills. This entails both explicit and tacit knowledge, especially about negotiation. In O'Leary and Bingham (2007), we argue that managers should resolve network conflict using principled or interest-based negotiation as essential skills. We describe how managers must understand the spiral of unmanaged conflict, learn how to prepare for negotiation, master basic interest-based negotiation skills, learn how to communicate during conflict, design governance structures to anticipate conflict, and design ways to engage the public in policy dialogue.

Interest-based negotiation allows networks to use collaborative problem-solving and creativity. Participants focus on satisfying as many interests or needs as possible for all negotiators through a problem-solving process aimed at reaching an integrative solution. This distinguishes it from competitive or hard bargaining, in which participants distribute rewards in a win/lose process. Interest-based negotiation is not simply yielding or compromise. It uses Mary Parker Follett's (1940) early management notion of integration. Participants learn to identify interests by focusing on basic human needs for security, economic well-being, belonging, recognition, and autonomy (Fisher, Ury, and Patton 1991). Interest-based negotiation involves defining the issues in negotiation, framing them as a joint task to meet all parties' needs, educating each other about your interests, looking for ways to create value or expand the pie, brainstorming or generating multiple options for settlement, evaluating options based on how well they meet needs, selecting and adapting options on the same basis, using objective criteria to address stalemates, and planning for implementation.

As Dawes, Cresswell, and Pardo illustrate, how the network chooses to govern itself, lead members, develop consensus, and create conventions for dialogue and deliberative processes are all important issues. This suggests that networks should engage in a conscious design of governance rules at the earliest stage of their work. Building agreement on the governance structure of a network includes identifying network members whose agreement is necessary, identifying the scope and jurisdiction of the network, addressing issues of the network's legitimacy, negotiating the ground rules, negotiating the processes governing exchanging views, discussing administration and allocation of responsibilities, negotiating the decision rules for closure on an issue, identifying a system for resolving impasse, and identifying a decision process for ending the network.

Managers can learn negotiation skills. Increasingly, they are part of public administration and public affairs education. Moreover, executive education and training programs are plentiful. However, we need to be more explicit about exactly what skills network managers need.

### **Public Voice**

A movement toward dialogue, deliberative democracy, and collaborative governance has emerged in response to perceived failings in representative democracy in conflict over public policy (Bingham, Nabatchi, and O'Leary 2005). Public organizations in networks owe a unique responsibility to citizens because networks often address issues of public concern but may not afford sufficient transparency or accountability. President Obama's executive memorandum stresses the value of participation in democracy and specifically observes that knowledge is widespread in society; public managers in networks do not have a monopoly

on either information or knowledge. The President has directed agencies to study how they might make their work more participatory and to solicit more public input.

Dawes, Cresswell, and Pardo do not address this issue. In several of their cases, one might logically ask whether including public voice might strengthen the PSKN. For example, they describe an annual reassessment project involving a network of state and municipal actors that ran up against unanticipated problems with real-property sales data because there were not sufficient sales in each town every year and the assessors refused to consider similar towns as politically untenable. What might have happened if the network had consulted with the public about this problem? Fair market value is simply what a buyer will pay a seller; one could consult the potential buyers and sellers. Cost-benefit analysts do this all the time (Graham 2008). Instead, Dawes, Cresswell, and Pardo refer to the public in top-down fashion: assessors "interact with and educate the public." Assessors are the experts; citizens are the ignorant.

When they address the variations in the nature of information and knowledge resources and the challenges facing the geographical information systems cooperative, Dawes, Cresswell, and Pardo never discuss how outreach to potential users in the diffuse public sphere might have strengthened the network's position and helped it build support. They observe, "the American political system is designed to prevent the consolidation of power that can flow from information and knowledge sharing." However, they do not discuss the obvious remedy: transparency to the public. They cite the surprise of network members when a late-joining representative from a domestic violence shelter expressed objections to the network's failure to protect the confidentiality of the shelter's location.

Again, broader public outreach might have surfaced this concern earlier in their negotiating process.

In identifying the problem of inadequate legal authority, Dawes, Cresswell, and Pardo talk about building political support, but they only look to political linkages such as the explicit support of an elected official, governor, or mayor, the governor's criminal justice coordinator, or project leaders responsive to a chief executive. They look "up" to others in the hierarchy, not "across" to citizens as partners. Although they refer to "wide consultation and experimentation," the context suggests that this is consultation with organizational stakeholders, not the public in general. For example, in talking about state officials' assumptions about locals, they clarified that it was local officials who were of interest.

Fung, Graham, and Weil (2007) address the interactive roles of citizens and technology in targeted transparency, a policy tool. They conduct a meta-analysis of policy and program evaluation literature spanning a variety of substantive areas, including financial disclosure, hazardous materials at the workplace, toxic substance releases, nutrition labeling, plant closures, hospital mistakes, restaurant hygiene, sex offender registries, and mortgage lending. They describe the future of disclosure as decentralized, IT-driven, dynamic, and interactive "collaborative transparency."

Fung, Graham, and Weil describe targeted transparency as a third way in regulation, one that entails "mandated public disclosure by corporations or other private or public organizations of standardized, comparable, and disaggregated information, regarding specific products or practices to further a defined public purpose" (2007, 6). Targeted transparency relies on decentralized, bot-

tom-up action rather than centralized, top-down enforcement. Effective targeted transparency policies create a dynamic: information users understand disclosures and use the information to make better choices. In turn, disclosers see these changed choices and improve their practices or products in response. The dynamic in this way fosters the public policy goal.

As noted above, Fung, Graham, and Weil introduce the breakthrough concept of "collaborative transparency," which they define as the use of IT to enable communities of users to both shape information content and act as self-disclosers (2007, 17). The SARS epidemic is a salient example. Through private emails, cell-phone calls, and Internet chat-room messages, Chinese citizens reported an illness whose existence the Chinese government denied (151). Private trackers picked up this traffic and warned of an outbreak. The United Nations World Health Organization (WHO) could only act on an official government alert but used the information to pressure China. Under new WHO rules, the agency may respond to citizen reports. In collaborative transparency, the power of IT allows users of information to become disclosers.

Collaborative transparency systems have some features of targeted transparency but also include technology-facilitated pooled user disclosure. They also employ interactivity, data customization, and IT. The government acts as convener and facilitator (Fung, Graham, and Weil 2007, 153). Fung, Graham, and Weil (2007) argue that disclosure rules are evolving into collaborative transparency in environmental safety, hospital care, auto safety, and school performance. Collaborative transparency's distinguishing feature is that citizens can initiate disclosure on their own, creating interactive online transparency systems to aid each oth-

er in decision making and improve their economic, political, and social choices.

These examples demonstrate what is missing in Dawes, Cresswell, and Pardo's vision of PSKNs. The public has a role to play in knowledge formation for public policy. Public managers have a responsibility to engage the public voice.

## Conclusion

Dawes, Cresswell, and Pardo make an intriguing and valuable contribution to our understanding of the increasingly important issue of collaboration around information and sharing knowledge in the public policy process. With many rich and useful examples, they illustrate within the context of PSKNs issues that apply universally to collaborative public management and network governance. Three issues for the future stand out. First, we need a better legal framework for collaboration in governance. Second, we need to train managers in interest-based negotiation and conflict management skills. Finally, we need to incorporate the public's voice into the work of networks.

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