Rhetoric, participation, and democracy: The positioning of public hearings as a mode of public participation under the NEPA

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Environmental Communication scholars have widely considered both aspirations for public participation in environmental decisionmaking and the constraints that hinder achieving those aspirations. Much of the contemporary scholarship, particularly in regard to participation in Federal natural resources policy in the United States, has focused on opportunities stemming from the National Environmental Policy Act (NEPA) and the increasingly common participatory process based on collaboration and consensus. Scholarship, both optimistic and skeptical of these innovative collaborative process, has tended to over assume the centrality of public hearings as a mode of citizen participation in NEPA decisionmaking in ways that are detrimental to efforts to engage public participation. By closely examining rhetoric produced by the CEQ I aim to demonstrate that there are subtle, but grave misconceptions about public hearings as a participatory mode under NEPA. There is an intellectual need for a picture of public hearings that is both honest regarding the opportunity to directly influence public policy while celebrating the potential of public hearings as a democratic communicative space. In an effort to take a hard look at the role that public hearings play in the discourses of public participation in NEPA, this project will extend Chantal Mouffe’s theory of
the democratic paradox to the analysis of informational material produced by the Council on Environmental Quality (CEQ). I will discuss how these documents, in contrast to the ubiquity and perceived centrality of public hearings, demonstrate a rhetorical positioning of public meetings as a relatively marginal communicative forum.

Environmental Communication scholars have widely considered both aspirations for public participation in environmental decisionmaking and the constraints that hinder achieving those aspirations. Much of the contemporary scholarship, particularly in regard to participation in Federal natural resources policy in the United States, has focused on opportunities stemming from the National Environmental Policy Act (NEPA) and the increasingly common participatory process based on collaboration and consensus. Scholarship, both optimistic and skeptical of these innovative collaborative process, has tended to over assume the centrality of public hearings as a mode of citizen participation in NEPA decisionmaking in ways that are detrimental to efforts to engage public participation. In an effort to take a hard look at the role that public hearings play in the discourses of public participation in NEPA, this project will be based on the rhetorical analysis of informational material produced by the Council on Environmental Quality (CEQ), the federal agency tasked with interpreting NEPA as well as writing federal regulations. I will discuss how these documents, in contrast to the ubiquity and perceived centrality of public hearings, demonstrate a rhetorical positioning of public meetings as a relatively marginal communicative forum. I argue that the perceived importance of public hearings by scholars, practitioners, and the public in the face of declared marginality by those most empowered to influence participatory processes is a threat to the public’s ability to influence environmental policy whereas an accurate assessment of the value of public hearings as a venue for public discourse can help to reinvigorate the public meeting as a consequential component of public discourse. By closely examining rhetoric produced by the CEQ I aim to demonstrate that there are subtle, but grave misconceptions about public hearings as a participatory mode under NEPA. There is an intellectual need for a picture of public hearings that is both honest regarding the opportunity to directly influence public policy while celebrating the potential of public hearings as a democratic communicative space.

The National Environmental Policy Act (NEPA) was passed by the United States Congress in 1969 and signed into law on live television by President Richard Nixon on January 1st 1970. The legislation, passed as part of a string of environmental laws of the late 60’s and early 70’s, has repeatedly been referred to as the environmental Magna Carta. The law requires federal agencies to take a “hard look” at policy decisions that might adversely impact the environment. The law created the well-known Environmental Impact Statement process as a mechanism for assessing the impact of alternative policy formations and created the Council on Environmental Quality (CEQ) within the Executive Office of the President. The NEPA has also resulted in a significant expansion of opportunities for the public to participate in environmental decision making. According to Tarla R. Peterson & Andrea M. Feldpausch-Parker (2013), "The U.S. National Environmental Policy Act (NEPA) of 1969 is the most historically significant national law currently mandating public participation" (p. 514). The NEPA is undoubtedly a central driver of opportunities for public participation in federal environmental decision-making.
According to Gregg Walker (2006), “public participation is a broad term subject to varied approaches and interpretations” (p. 119), but explained, “At its core, public participation is pre-decisional communication between an agency or organization responsible for a decision and that organization’s relevant public community” (p. 115). The nature of that communication has and continues to be varied, and the quality of public participation opportunities vary. Sherry R. Arnstein (1969) long ago proposed that public participation is a redistribution of power to the citizenry, and developed a “Ladder of Public Participation” to categorize degrees of power sharing (p. 119). Today, according to Peterson and Feldpausch-Parker (2013) “Essentially, public involvement still spans a broad gulf ranging from the right to know what information was used to arrive at a decision to direct participation in the decision-making process itself” (p. 515). There is an array of prospects for public participation in the NEPA and those prospects can be distinguished by the degree to which citizens are able to influence the outcome of the decisionmaking process.

According to Steven E. Daniels and Gregg B. Walker (2001), “The most basic format for the public participation activities conducted by natural resource agencies in the United States involves three specific activities: notification, issue surfacing, and comment on draft decisions” (p. 8). Notification entails publishing announcements in the Federal Register and newspapers, direct mailings, and other communications required to inform the public “that an agency decision process is beginning and what the agency might know at that time about the basic structure of the decision process.” Issue surfacing is typically referred to as scoping. This is a stage where interested parties are engaged “to determine what their interests, goals, and concerns might be.” Comment on draft decisions is typified by public meetings, hearings, and the submission of written comment. These traditional practices of public participation are considered the bare minimum requirements under NEPA (Daniels and Walker, 2001).

Scholars such as Walker have assumed that power sharing is predicated or excluded by particular practices and that the public hearing as a forum is not conducive to power-sharing. Walker (2006) distinguished traditional public participation practices (such as the public hearing) based on a lack of power-sharing arguing that “Decision space is an important element that differentiates limited or traditional participation from more innovative and interactive participation” (p. 119). This framework follows Arnstein (1969) in the assumption that power-sharing and decision space are critical for meaningful public participation. The perception of a lack of power sharing in NEPA public hearings has led the practice to be maligned as a participatory forum. The traditional approaches to public participation in NEPA rely on a consultative model of communication. According to Wondolleck and Yaffee (2000), these practices “usually provide highly controlled, one-way flows of information, guard decision-making power tightly, and constrain interaction between interested groups and decision makers” (p. 104). This tightly controlled communication results in “providing an advisory rather than policy-making role for the public” Minion et al., 2009, p. 260).

Communication scholars have shown how traditional participation process can be used to foreclose the possibility of true public participation (Walker, 2006; Senecah, 2004; Hendry, 2004) “The basic public participation process model has been broadly criticized as ineffective. Although formal public participation provide easy access and predictability, the disadvantages concentrate on the impact of that access. It is immaterial that a process is convenient if being involved has no effect” (Daniels & Walker, pp. 8-9). Frequently in the communication literature on public participation it is generally assumed that traditional approaches to public participation in NEPA fail to meet the expectations of participants because of the lack of power-sharing. The perception of a lack of power-sharing in NEPA public hearings has led the practice to be maligned as a participatory forum.
Ultimately, the challenge for public participation is to develop spaces that allow citizens to have a meaningful impact on environmental decision-making in a process that is primarily predicated on technical rationality and the scientific comparison of various policy options. Power-sharing in NEPA has limits, namely, the ultimate decision making power rests with a deciding official. Within the limits of power-sharing there remains the possibility of the deciding official being moved. “Although the deciding agency retains its authority by law to make the decision (e.g., under NEPA a forest supervisor signs a record of decision), citizens can participate actively in the construction of that decision” (Walker, 2006, p. 120). The scope of decision space for the public is contingent upon power-sharing by agency officials.

Incorporating public participation into environmental decision-making is complicated though, because the NEPA is emblematic of tensions in democratic decision-making in the modern liberal democratic nation state. The CEQ has empowered both interdisciplinary teams of experts as well as the public to communicate to an eventual deciding official. The role for technical experts is consistent with scientific rationalism specifically, and the political tradition of liberalism more generally. The role for the public is rooted in democratic ideals that expect a relationship between popular sovereignty, public opinion and governmental decision-making. The role of public participation is structured by the NEPA, but is not clearly defined. Environmental decision-making is supposed to be based on the technical analysis of experts, as well as input from the public.

The fundamental assumption of this paper is that the relationship between the technical and participatory dimensions of the NEPA is always only the product of a temporary negotiation rather than a fixed structure. In turn, the degree of power-sharing in particular practices of participation (the public hearing for example) is similarly open to negotiation. These negotiations remain open, because as Chantal Mouffe (2000) argued, the liberal and democratic traditions upon which modern liberal governance is based (and from which the participatory and technical aspects of NEPA are derived) are beset by a constituent tension. This democratic paradox can never be resolved, only negotiated. The concern of this paper is, among these negotiations, how are public hearings positioned as a practice, and how is this consequential for efforts to further democratize environmental and natural resources decision-making?

In an effort to take a hard look at the role that public hearings play in the discourses of public participation in NEPA, this paper analyzes informational material produced by the Council on Environmental Quality (CEQ), the federal agency that is tasked with interpreting the NEPA as well as writing federal regulations for NEPA implementation. A Citizen’s Guide to the NEPA: Having Your Voice Heard (2007) is an example of the CEQ’s efforts to define the scope of public participation in the NEPA and they presume an audience of citizens. The document is worthy of analysis because it explicitly seeks to guide social action in the arena of public participation. By analyzing the positioning of participatory practices in this document through the lens of rhetorical culture I will discuss how these documents, in contrast to the ubiquity and perceived centrality of public hearings, exemplify a rhetorical positioning of public hearings as a relatively marginal communicative forum.

My concern is that in the negotiation surrounding the constituent tensions in environmental decision-making the public hearing has been marginalized and that as a result public hearings are not typically taken seriously as a power-sharing practice. When public hearings are maligned it should be recognized that what is being criticized is a historically specific form of the public hearing. I argue that the rhetoric surrounding public participation has had the effect of marginalizing public hearings as a form of political practice under the National Environmental Policy Act in ways that are detrimental to the appreciation of agonism as key component of decision-making in a democratic society.
This paper will proceed by first explicating Mouffe’s conception of the democratic paradox and subsequently arguing that the democratic paradox can be understood in terms of "rhetorical culture" as articulated by Celeste Michelle Condit and John Lucaites (1993). I will then wield this framework for the analysis of a key CEQ document to illuminate the ways in which aspects of a shared rhetorical culture are wielded or obscured in order to marginalize the public hearing. In concluding, I will assess the implications of this analysis in three aspect: I will argue that this form of analysis problematizes some common assumptions in the Environmental Communication literature, reflect on the utility of Mouffe's theoretical explanation of the character of modern democracy, and then lastly propose avenues for future scholarship.

The democratic paradox and rhetorical culture

I argue that Mouffe’s articulation of the democratic paradox has utility for rhetorically minded Environmental Communication scholars. Communication scholarship has primarily focused on Mouffe’s promotion of agonistics as a key component of healthy democracies (Ivie, 2002; Peterson et al., 2005; Minion et al., 2009). "The point of agonistic pluralism is to negotiate among differences rather than erase them. Not only is dissent important to prevent democracy from collapsing in upon itself, but it also may facilitate development of new ideas and unveil alternatives to current policies and perspectives" (Minion et al., 2009, p.259). These claims regarding democracy are rooted in Mouffe’s articulation of modern liberal democracy as being characterized by the democratic paradox. According to Mouffe (2000), modern liberal democracy is based on two distinct traditions:

- On one side we have the liberal tradition constituted by the rule of law, the defence [sic] of human rights and the respect of individual liberty; on the other the democratic tradition whose main ideas are those of equality, identity between governing and governed and popular sovereignty. There is no necessary relation between those distinct traditions but only a contingent historical articulation. (p.3)

The democratic paradox is an element of Mouffe's work that is deserving of attention.

The logic of liberalism is predicated on the protection of human rights, and as such represents a limitation to the scope of popular sovereignty and the power of the people to infringe upon those rights. “In a liberal democracy limits are always put on the exercise of the sovereignty of the people” (Mouffe, 2000, p .4). For Mouffe this is evidence of an incommensurability between the two traditions that is a central aspect of modern governance.

It is vital for democratic politics to understand that liberal democracy results from the articulation of two logics which are incompatible […] and that there is no way in which they could be perfectly reconciled. Or, to put it in a Wittgensteinian way, that there is a constitutive tension between their corresponding ‘grammers’, a tension that can never be overcome but only negotiated in different ways. (p. 5)

Mouffe did not argue that this democratic paradox damned or doomed liberal democracy, rather, she suggested that the democratic paradox is both inherent to modern democracies and provides the dynamic that keeps democracy vital. The tension between liberalism and democracy ensures that the nature of democracy (and democratic practices) remains open to contestation. According to Mouffe, “Indeed, a great part of democratic politics is precisely about the negotiation of that paradox and the articulation of precarious solutions” (p. 93). The tensions at the heart of liberal democracy are navigated through communication as rhetors seek to articulate these precarious solutions.

Communication about NEPA public participation is an example of the kind of rhetorical negotiations that are necessary to navigate the democratic paradox. The explanation that democratic politics is the negotiation of various competing "grammars" and the articulation of "precarious solutions"
for the reconciliation of competing interests resonates with aspects of rhetorical theory. Mouffe leans on Wittgenstein's notion of grammar or a "network of rules which determine what linguistic move is allowed as making sense, and what isn't" (Anat and Anat, 2014). For Celeste Michelle Condit and John Lucaites (1993), this grammar or network of rules is a rhetorical culture, including the "argumentative forms that demarcate the symbolic boundaries within which public advocates find themselves constrained to operate" (Condit and Lucaites, 1993, p. xii). When "Taken in their entirety, the ideographs for a particular rhetorical culture identify the range of accessible public beliefs and behaviors within any publicly constituted community (p. xii-xiii). "An ideograph is an ordinary-language term found in political discourse. It is an high-order abstraction representing collective commitment to a particular but equivocal and ill-defined normative goal" (McGee, 1980, p. 15). When, "Taken in their entirety, the ideographs for a particular rhetorical culture identify the range of accessible public beliefs and behaviors within any publicly constituted community (p. xii-xiii). For these rhetorical scholars, as well as for Mouffe, there are limits in the range of possible language for expressing an ideology. These expanding and contracting boundaries constrain rhetors in their efforts to invent ideological argumentation but also contain the possibility of rhetorical invention.

Ideographs are central guiding terms that collectively organize rhetorical culture. Ideographs such as equality, liberty, and tyranny are "easily mistaken for the technical terminology of political philosophy." (McGee, 1980, p. 5) According Condit and Lucaites (1993), "Ideographs represent in condensed form the normative, collective commitments of members of a public and they typically appear in public argumentation as the necessary motivations or justifications for action performed in the name of the public" (p. xii-xiii). For Condit and Lucaites, ideographs represent "the central, organizing elements for any rhetorical culture," which is "the domain of rhetorical interaction through which a community actively negotiates its common needs and interests" (p. xii). According to McGee, "Human beings are 'conditioned,' not directly to belief and behavior, but to a vocabulary of concepts that function as guides, warrants, reasons, or excuses for behavior and belief" (McGee, 1980, p. 6). Ultimately, rhetorical culture is consequential for power-sharing, and for negotiating a role for public participation in environmental decisionmaking.

The degree of power-sharing in environmental decisionmaking is a product of negotiations in which rhetors draw upon the rhetorical culture to articulate solutions to the democratic paradox. A key feature of ideographs is their flexibility as cultural signifiers. An ideographic phrase such as "freedom of speech" can take on a wide range of meanings within the practices of a rhetorical culture, depending upon the particular context in which it is employed and the specific phenomenon it is used to praise or blame. Because ideographs are abstractions, and thus lack any rigidly defined meaning, creative rhetors craft their meaning-in-use as they employ them in public discourse to persuade audiences of the public nature of historically specific beliefs and actions. (Condit and Lucaites, 1993, p. xii-xiii)

Rhetorical culture is simultaneously constricting for both citizens and agents of power, but also contains the element of possibility for the reorganization of relations of power, the articulation of novel approaches to tempering the democratic paradox, and of reclaiming a legitimate role for the practice of public hearings. According to McGee (1980) "social control is in its essence is control over consciousness, the a priori influence that learned predispositions hold over human agents who play the roles of 'power' and 'people' in a given transaction." (McGee, 1980, pp. 5-6). But, according to Condit and Lucaites, the reorganization of the rhetorical also creates movement in democratic relationships. For example, "case law might privilege one interpretation of the relationship between various ideographs for a time, but laws are always open to reinterpretation and change when advocates craft new ideologies or invent new and compelling usages of the components of the rhetorical culture" (Condit and Lucaites, 1993, xv).
Marginalizing public hearings: the public rhetoric of the CEQ

The NEPA itself did not outline processes for public participation. These have primarily been promulgated by the Council on Environmental Quality (CEQ). According to Jonathan Poisner (1996), “A single statutory section embodies NEPA’s procedural requirements. Section 102 requires that all federal agencies, when proposing actions that will significantly affect the environment, prepare Environmental Impact Statements (EISs)” (p. 69) and provide copies of the EIS to the public. “Apart from this general requirement of public disclosure, NEPA provides no guidance as to what procedures should govern the process by which the public may comment on EISs” (p. 69). The CEQ took the lead in incorporating public participation in procedures for implementing NEPA processes. With some prodding by the judiciary, but with no formal instruction from Congress the CEQ gradually asserted authority to issue guidelines for how federal agencies should implement the NEPA (Poisner, 1996, p. 69). Subsequent executive orders have made CEQ NEPA guidelines binding for executive agencies. The opportunities for public participation in NEPA analysis are predicated on the guidelines and guidance of the CEQ, and dependent on implementation by federal agencies.

A Citizen’s Guide to the NEPA: Having your Voice Heard is a text that provides a particular articulation of a solution to the tensions inherent to integrating a technical process of assessing environmental risk with public participation opportunities. Whereas it is typically assumed that public hearings are a central and “traditional” method of incorporating public participation into the NEPA process, this document minimizes emphasis on public hearings and casts positions them as a marginal forum for public participation. The Citizen’s Guide addresses its audience in the familiar, second-person “you” in an explicit effort to guide social action in the realm of public participation. The Citizen’s Guide gives a detailed overview of the NEPA analysis process and lends most of its attention to articulating the stages an agency will go through when developing an Environmental Impact Statement or Environmental Assessment. The opportunities for public participation are presented as a consultative role. The Citizen’s Guide addresses its audience in the familiar, second-person “you,” and constructs the citizen participant as a person that can be of assistance to the federal agency performing the analysis and making an environmental decision:

The environmental review process under NEPA provides an opportunity for you to be involved in the Federal agency decisionmaking process. It will help you understand what the Federal agency is proposing, to offer your thoughts on alternative ways for the agency to accomplish what it is proposing, and to offer your comments on the agency’s analysis of the environmental effects of the proposed action and possible mitigation of potential harmful effects of such actions. (p. 1)

This makes clear that the citizen occupies a consultative role. The Guide articulates the role of the citizen participant both by establishing the consultative relationship, and by focusing on the procedural responsibilities of the agencies.

The attention given to particular participatory practices in the text is quite minimal, and public hearings receive no special emphasis. Public hearings are mentioned only twice in the thirty pages of text directing individuals on how to participate in NEPA analysis. The two stages of the NEPA process that require opportunities for public involvement are addressed. In both cases public hearings are offered as an allowable option that the agency may utilize for consulting the public. The CEQ informs that “Video conferencing, public meetings, conference calls, formal hearings, or informal workshops are among the legitimate ways to conduct scoping” (p. 14). In the second instance the document explains that “During [the comment period following the publication of the draft EIS], the agency may conduct public meetings or hearings as a way to solicit comments” (p. 16). In both cases public hearings are
simply offered as an allowable option that the agency may provide. The Guide does not provide any insight into how a citizen could participate in a public hearing. Despite the lack of emphasis on particular communicative forums such as public hearings, the Guide provides general advice for providing information to agencies.

In A Citizen's Guide to the NEPA the CEQ makes a repeated case for being involved early in the process. The document notes that:

The scoping process is the best time to identify issues, determine points of contact, establish project schedules, and provide recommendations to the agency. The overall goal is to define the scope of issues to be addressed in depth in the analysis that will be included in the EIS. (p. 13)

The emphasis on the scoping process suggests that the decision space becomes relatively lower later in the process and during the comment period stage. The suggestion that "Citizens who want to raise issues with the agency should do so at the earliest possible stage in the process" reinforces that interpretation. The CEQ explains that "Agencies are much more likely to evaluate a new alternative or address a concern if it is raised in a timely manner" (p. 26). The public hearing's importance is diminished by encouraging a more committing and challenging degree of participation. For example, the Guide claims that "Some of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate in the EIS" (p.14). By emphasizing early, and long term involvement in the NEPA process the CEQ tacitly indicates that opportunities in later stages of the process provide minimal power-sharing.

The Citizen's Guide also makes clear that in order for citizen input to be of consequence it must be tailored to the technical assessment process at the heart of the NEPA. Citizens are encouraged to submit either reasonable alternatives and/or substantive comments. "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and use common sense, rather than simply desirable from the standpoint of the applicant" (p. 16). This hints at the difficulty and technical nature of participating in NEPA process which is later confirmed when the CEQ notes that "Being active in the NEPA process requires you to dedicate your resources to the effort. Environmental impact analyses can be technical and lengthy" (p. 23). Further indicating the technical and time commitments necessary to produce consequential input, the CEQ suggests forming "study groups" and enlisting "local experts such as biologists or economists at a university" (p. 23). These directives suggest that citizen input must achieve a status of technical competence in order to be considered a reasonable alternative.

The Citizen's Guide also addresses the types of participation that will be taken seriously. Comments will be judged as to whether or not they are "substantive" and agencies are only required to respond to such comments. The CEQ identifies guidelines for communication and emphasizes the formal, technical, and written nature of effective comments. According to the CEQ:

Comments may be the most important contribution from citizens. Accordingly, comments should be clear, concise, and relevant to the analysis of the proposed action. Take the time to organize thoughts and edit the document submitted. As a general rule, the tone of the comments should be polite and respectful. Those reviewing comments are public servants tasked with a job, and they deserve the same respect and professional treatment that you and other citizens expect in return. Comments that are solution oriented and provide specific examples will be more effective than those that simply oppose the proposed project. Comments that contribute to developing alternatives that address the purpose and need for the action are also effective. [...] In drafting comments, try to focus on the purpose and need of the proposed action, the proposed alternatives, the assessment of the environmental impacts of those alternatives, and the proposed mitigation. [...] Commenting is not a form of “voting” on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward. [...]
In addition, general comments that state an action will have “significant environmental effects” will not help an agency make a better decision unless the relevant causes and environmental effects are explained. Finally, remember that decisionmakers also receive other information and data such as operational and technical information related to implementing an action that they will have to consider when making a final decision. (p.27)

The focus on written, dispassionate, and technical communication strongly indicates that public hearings, oral communication, and agonistic communication are marginalized in terms of effect on agency decisionmaking.

While the role of public hearings in NEPA is often taken for granted, the CEQ document discussed here demonstrates that particular articulations of public participation have the effect of minimizing the importance of some forms of participatory practice while emphasizing others. The Citizen’s Guide emphasizes the development and submission of reasonable alternatives and substantive comments in written form while devaluing the role of public meetings. Despite their ubiquity, the particular articulation of public participation provided by the CEQ positions the public hearing as a marginal forum for providing citizen input. The CEQ’s solution to the tensions inherent in appending public participation to an otherwise bureaucratic and technical process relies on relegating citizens to a consultative role. The influence of citizens comes solely from transmitting useful information to the agency. The CEQ explains that “the information you provide during the EA and EIS process can influence the decisionmakers and their final decisions because NEPA does require that federal decisionmakers be informed of the environmental consequences of their decisions. (p.7) A Citizen’s Guide to the NEPA indicates that public hearings are a marginal Avenue for influencing these decisionmakers.

The preceding evidence shows how rhetoric is used to emphasize or minimize particular practices of public participation. By utilizing a consultative approach to articulating public participation opportunities in NEPA, I believe that the CEQ reveals that the degree of power-sharing possible within the performance of a particular participatory practice is not inherent, but is contingent upon the articulation of historically specific solutions to the problem of navigating the democratic paradox. This would indicate the public hearing does not exist in some a priori form and instead requires a rhetorical effort to position it among the array of participatory practices.

Implications and pathways

This analysis yields several implications for environmental communication scholarship concerning NEPA public participation. First of all, I believe that there are some necessary correctives for how the public hearing is considered as a participatory practice. Secondly, there appears to be utility for the application of Mouffe’s theory of the democratic paradox, particularly when considered in relation to rhetorical theory and the necessity of agnostics. Lastly, I will offer Karen Tracy’s (2010) work on Ordinary Democracy as an example for possible future scholarship.

Articulating limits to participation are posed as inherent to the particular participatory practice rather than the specific circumstances in which the practice is employed diverts attention from a focus on decision space and power-sharing as well as the rhetorical nature of negotiating those dynamics. The traditional versus innovative distinction between participatory practices aligns the public hearing with a consultative approach to incorporating public participation and ignores the historically specific nature of the public hearing as it has been practiced in the name of the NEPA. Labeling public hearings as traditional is not necessarily inaccurate, but casting the practice as a baseline freezes the practice, suggest that the public hearing is not subject to innovation, limits opportunities for...
improvement, and sets exceptionally low expectations for the participatory capacity of citizens. When public hearings are compared with innovative practices which are seemingly untethered from the consultative model of participation they naturally appear inferior.

A number of scholars have articulated how traditional approaches to public participation are limiting, and have proven unsatisfactory for participants. Senecah (2004) argued that to achieve legitimacy a process must provide access, standing, and influence for participants. Access and standing can somewhat easily be accounted for with traditional approaches, but tight control over decision-making, and a consultative approach give no guarantee to participants that their participation will have influence on the decision. Senecah notes that participants do not necessarily need for their input to be included in the final decision, but want assurances that their input will be fairly considered.

I argue that a renewed emphasis on the power-sharing dimension of public participation necessitates divorcing criticism of participation practices from fixed conceptions of the nature of those practices. As framed by Mouffe's conception of the democratic paradox it is possible to read in the CEQ document analyzed above a specific articulation of the role of the public meeting. It is simply not reasonable to assume that any particular articulation expresses an essential form of the practice. Only by recognizing that opportunities for public participation are the product of negotiating inherent tensions does it become possible to disassociate practices such as the public hearing from limiting articulations such as the consultative approach to public participation.

Without this reframing the limits of public hearings will be recreated, and the possibility of power-sharing in these forums is all but foreclosed. I contend that through alternative articulations of public participation the rhetoric of citizens presented in public hearings can be consequential for decisionmakers. In a particular example, Craig Waddell (1996) found that public hearing testimony was capable of influencing decisionmakers.

Despite concerns about the role of emotion, public testimony was particularly effective when appropriate emotional appeals moved the commissioners from being convinced to being persuaded; that is, from intellectual acceptance of an idea to a commitment to act on the basis of that idea. (p. 153)

Additionally he found that the rhetoric used by citizens could be used as a resource for decisionmakers, noting that, "Public testimony was also important when it provided the commissioners with arguments that they could use to justify their recommendations." (Waddell, 1996, p. 154). I am concerned that the marginalized position of public hearings as a mode of participatory action obscures the underlying and potential value of the forum as citizens, agencies, scholars, and practitioners all engage in the continued effort for effective public participation in environmental decision-making.

Certainly, the possibilities for power-sharing in public hearings is limited by the articulations of the CEQ and agencies, but in tying the practice itself to these articulations scholars risk precluding the possibility altogether. Scholars and practitioners in the field of public participation articulate rhetoric that helps to mediate the tensions of liberal democracy, therefore the rhetoric scholars use to promote participatory practices is of consequence. It is important that these key rhetors embrace the democratic principles embedded in public hearings. In order to rehabilitate public hearings we must celebrate them for what they are and what they could be. The necessity of preserving the spaces in which consequential rhetoric might be uttered is clear, especially if we consider the public hearing as a potential site of agonistic discourse.

This leads to my suggestion that Mouffe's democratic paradox has utility for understanding the conditions that may arise to allow for more meaningful public participation. As mentioned before,
Mouffe’s plea for the necessity of agonistics in democratic debates has found application in our field. I believe that incorporating the theoretical assumptions of Mouffe’s position and recognizing that the negotiation of constituent tensions is at the heart of democratic discourse opens up new possibilities for cross-fertilization between Mouffe’s theory and rhetorical scholarship. By recognizing that rhetorical culture is the resource drawn upon for articulating temporary solutions to the democratic paradox has the effect of situating practices as expressions of these negotiations and also illuminates the possibility of rhetorical invention. Framed this way new articulations appear as possible, and the role of public hearings as a participatory practice again appears contestable.

Lastly, I believe the framework presented here, and the analysis derived therefrom indicates a need for taking public hearings more seriously, and for lending critical attention the rhetoric uttered by citizens in these forums. In order to understand the ways in which public participation might ultimately impact the outcome of environmental decisions requires more intent effort to understand what people actually say in these forums. Scholars in the Speech Communication tradition are well positioned to lend direction and analysis that may enable citizens to be more persuasive when speaking before deciding officials, and to find new ways of making those voice consequential. I believe that the work of Karen Tracy, (2006) a discourse analysis, provides an example for both scholarly inquiry, as well as suggestion for the kind of communicative models that scholars might promote.

Tracy (2006, 2010) studied school board meetings over an extended period of time and developed several theoretical concepts to aid in analyzing the communication practices that she observed in those meetings. The first concept, ordinary democracy, is Tracy’s description of what people do in local democratic governance meetings. Tracy offers reasonable hostility because “If ordinary democracy is to be strengthened, we need a communicative ideal that takes the public meeting format seriously” (p. 199). Tracy believes that “With an appreciation of the multiple purposes of ordinary democracy, Americans might change their assessment of democracy; they might not only favor it but also believe that it can work and accomplish good things” (p. 200). I believe that it is worth considering reasonable hostility as a model for celebrating the value of public hearings as a participatory practice in environmental decision-making.

Recognizing public hearings as a potential site for the expression of reasonable hostility creates a more reasonable standard for communication in those sites than does the consultative model. Recognizing multiple aims beyond the transition of technical information brings the possibility of rehabilitating the image and function of public hearings. According to Tracy, “It is this multiplicity of aims that makes determining the right communicative conduct so difficult. We need communicative ideals that take seriously the need for participants to give attention to multiple goals. Reasonable hostility does just that” (p. 207). Public hearings should not be judged for their lack of deliberating, but should be celebrated for providing space for a large range of democratic communication, including reasonable hostility.

Reasonable hostility is a norm of communication conduct that seeks to honor the importance of respectful talk as it simultaneously legitimizes the expression of outrage and criticism. Reasonable hostility, as I define it, is an expression of anger that most people would judge reasonable. It is emotionally marked, critical commentary about another’s action that matches the perceived wrong to which it responds. Whereas people are intimately connected to their ideas, and emotion and argument are expressed together, the idea of reasonable hostility captures how people actually talk (Tracy, 2010, p.203). While it is important to remember that reasonable hostility is but one form of communication that can be cultivated in public hearings, I believe it is critical that it not be excluded in neither theory nor practice.
Through the application of theory and research scholars can be of assistance to practitioners and agency officials by setting some normative goals for participatory communication while maintaining space for agonistic expression. By closely examining rhetoric produced by the CEQ I have sought to demonstrate that there are subtle, but grave misconceptions about public hearings as a participatory mode under NEPA. There is an intellectual need for a picture of public hearings that is both honest regarding the opportunity to directly influence public policy while celebrating their potential as a democratic communicative space. Public hearings might remind us that speaking in the public sphere fulfills a number of democratic functions in addition to deliberation and the pursuit of consensus. Public hearings represent a space for agonistic rhetoric and dissent that ought to be preserved. As practices of public participation in NEPA evolve it is important to preserve a space for public voice in all of its messy, cacophonous splendor.
References


