

**TOWN MEETING REVISITED**

by

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## **ACKNOWLEDGMENTS**

I wish to express my sincere appreciation to those who spent their valuable time in reading drafts of the first two parts of this paper and rendered helpful judgments on its substance. Adjustments were made in light of those assessments, but not everything offered could be accommodated. The third part of the paper, consisting of observations and recommendations I offer in light of the first two parts, was not submitted for review and reflects my own views. Thus, deficiencies in the final work are attributable solely to me, not the readers.

In particular, I wish to thank Mr. Arthur L. Stevenson, Esq., the current Town Moderator, for his perceptive and plain spoken review of the first draft of the first and second parts of the paper. We do not agree on some crucial aspects of my evaluation of the state of Town Meeting in Concord, or its likely future. Nevertheless, I believe it fair to say that we do agree upon the critical importance of preserving and maintaining the highest possible degree of democracy in the affairs of this historic town where both peaceful and forcible American resistance to political tyranny found early expression. Arthur's many years of service to this town are creditable, and his comments on the first draft were most helpful. We still disagree on particulars, but do so in the spirit of seeking the common good of Concord's citizens.

David Stephens  
Concord, MA  
January 6, 1995

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## TOWN MEETING REVISITED

Town Meeting is in jeopardy in Concord. In his fascinating overview of the history and significance of the Town Meeting, Wenham Moderator Joseph Harrington, Jr. describes an institution that has served as a foundation of government of, by and for the people for over 1000 years.<sup>1</sup> Town Meeting is the closest approximation achieved so far to a pure form of democracy in which (1) every person has a right to be heard in council, (2) group decision is made by the vote of all, and (3) everyone is bound by the decision of the majority. Town meeting is jeopardized in Concord by persistent and aggravated failure in each of these essential features.

As adapted to the New England scene, Town Meeting assumes many specific forms and local differences in procedure. However, in every case the issue of its continued viability as a form of local government emerges when the conditions for its effectiveness decline or disappear. Those conditions are the preconditions necessary to each of its essential, functional features. *When those preconditions are absent, then another form of government must be adopted which maximizes the possibility of free people to be heard, to decide for themselves, and to be accountable in light of those decisions.*

The question, then, is three-fold: *What are the preconditions of a viable Town Meeting form of government? What is the current status of those preconditions in Concord, Mass.? And, What corrective action, if any, is required?*

The following is an attempt to address these questions in sufficient detail to allow an assessment of the situation regarding Town Meeting in Concord and to provoke serious consideration of what may be done either to correct, modify or supplant it in the interest of optimizing free government by and for the people of Concord. The motivation here is the perception that, indeed, Town Meeting in Concord is in jeopardy for reasons to be indicated.

### VIABLE TOWN MEETING -- ITS PRECONDITIONS

*Town Meeting is viable when it fulfills the purpose of allowing people to be heard, to decide for themselves, and to be accountable in light of those decisions.* Some special conditions must be satisfied without which Town Meeting as an institution cannot fulfill its purpose. These requirements may be summed under the headings of Communication, Decision, and Accountability.

**Town Meeting and Communication.** Communication is, at its best, bi-directional in that information is both given and received by the participants. It may serve several ends, such as providing information, persuasion, direction, and warning. Communication is vitally related to the decision making process and is concerned with making people aware of their circumstances so that issues at hand may be resolved in the best interest of everyone and their society.

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Cherished freedoms of association, of the press and of speech have been codified and qualified by law and precedent in our national life so as to preserve the access of citizens to truth about themselves and their circumstances. At local levels, as one approaches the domain of individual interest, the preservation of such access becomes increasingly difficult, since the power of individuals and interest groups is enhanced by a narrow area of action with reduced sets of checks and balances. This is partially offset by the immediacy of personal contact and social pressure which relies upon more direct methods of alerting people to the implications of their situation.

*Town Meeting presupposes a constituency that is able to communicate fully, in assembly, on the issues that arise for community decision.* In the early days in New England, all qualified members of the community were required to attend and were fined for any failure to do so.<sup>2</sup> For practical purposes, once a community exceeds a certain population level, Town Meeting can no longer suffice as a communication forum.<sup>3</sup> Representation becomes problematic. Only a segment of the community can be physically accommodated, and debate becomes cumbersome, redundant, and subject to the dominance of a determined minority. As a consequence, reliance must be made upon other vehicles (e.g., the press, interest group forums, etc.) for communication in the hope that those able to attend Town Meeting will truly reflect the interests of the populace so informed.

*Town Meeting communication requires a significant degree of agreement on basic set of social and individual values.* While unanimous agreement on such values is neither expected nor experienced, Town Meeting operates upon the assumption that, as a minimum, the purposes served by Town Meeting are part of the common values of the community. Tyranny of the few over the many is in fundamental opposition to the intentions of Town Meeting. Rather, Town Meeting essentially affirms the "benign tyranny"<sup>4</sup> of the majority over the minority. Thus, persuasion in all of its benevolent forms is a vital ingredient of the Town Meeting activity. Persuasion seeks to minimize the disparity between the values of contenders in hope of a common judgment: This is **better than** that. When the degree of shared values is minimal, persuasion eventually yields to some form of coercion, and free people suffer.

*Town Meeting presupposes public access to all of the information pertinent to deciding an issue.* Censorship, deceit, and secrecy are hostile to the intent of Town Meeting. Inaccessibility of information wars against informed judgment at Town Meeting. The specialization of issues in a complex society reduces access to pertinent data. In such a case, judgment is delegated to trusted specialists that have passed some form of qualification screening as professionals or as experienced volunteers. The potential for abuse in this situation is both plain and common. At this point, communication and accountability impinge upon one another. As a community becomes more specialized in its concerns, the ability of Town Meeting to serve the democratic intent is increasingly compromised. The effect of failure here upon the level of trust required in all civil communication is devastating.<sup>5</sup>

**Town Meeting and Decision.** The exercise of judgment at Town Meeting is subject to the practical limitations and management of that process. The evolution and adaptation of parliamentary law to this venue is recognized as imperfect but essential to the orderly division and development of judgments at Town Meeting.

*The need for a powerful, judicious and fair Moderator who controls the flow of the process is fully recognized as a precondition.* Arising from among the people by choice of the people, the Moderator is granted an extraordinary measure of the benefit of the doubt in matters of procedure. He must command both trust and skill while giving minimum of offense. Ideally, he must exhibit the values and purposes of Town Meeting in his outlook and demeanor. Finally, he must be able to recognize the difference between the latitude afforded him by law and the law itself. Increasingly, reliance upon town counsel is demanded to protect himself and the process from illegalities. Absent individuals of such stature and skill, Town Meeting becomes a real danger to a community and an opportunity for imprudence and tyranny.<sup>6</sup>

*The accurate representation of all of the constituency is a prerequisite for a viable Town Meeting.* This is a function of the behavior of the Moderator, the timing of the meeting, the physical capacity of the site, the "warning" of the community ("warranting") on the issues to be considered, the public interest in the issue(s), and the public perception of the Town Meeting process itself. This is one of the most difficult conditions to satisfy and, at the same time, the least subject to direct control short of mandated attendance with sanctions for failure. A community governed by Town Meeting that generally experiences disaffection and indifference toward Town Meeting by the citizens is a community that has a serious governmental crisis on its hands.

*Viable Town Meeting requires that the warrants and warrant motions are consistent with existing law and fall within the limited prerogatives of Town Meeting.* While obvious in principle, the realization of this condition in practice in a litigious and highly codified society can be a chilling business. In itself this is no fundamental impediment to a viable town meeting, but the ability of citizens to frame, present, and understand warrant articles and motions to accomplish their intentions must be supplemented by the services of reliable counsel. The Moderator and Town Counsel should be able to give assistance here -- if they are willing and competent. Yet, the task for the average citizen can be daunting -- legal issues may swamp valid issues needing solutions. Clearly, the performance of Town Meeting is conditioned by the quality of the motions it addresses.

**Town Meeting and Accountability.** Without accountability, no government of whatever sort, can function. A democratic form of government presupposes a mutual accountability of governors and the governed, of majorities and minorities, of individuals and their society. Accountability in the context of Town Meeting is a highly conditioned form of accountability since its actions are, to a large extent, reversible. Thus, authorizations must be executed promptly or risk removal at a

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subsequent town meeting. Today's minority may become tomorrow's majority on the same issue. In the larger sense, the stability of town meeting judgments reflects the stability of the community. It is a form of accountability of a community to itself, reflecting at the community level the ideal of individual self-discipline. In the particular, however, accountability is individualistic and demanding.

***Viable Town Meeting assumes that the foibles and weaknesses of its participants can be determined and surmounted by the town meeting process itself.*** The process treats participants as if they are acting in good faith while allowing for the possibility of the contrary. It is expected that "the truth will out" in the course of fair, open, and orderly exposure to challenge by fact and argument. Town meeting expects that existing emotion and prior bias will yield to the demands of rational discourse.

This expectation of the victory of truth and prudence is more likely achieved by a community of shared values, intimate daily contact, and ready access to pertinent data. Conversely, the heterogeneity of values, social insularity, and special limitations of access to data renders the town meeting process unsuitable for discerning and bringing to account any machination or manipulation of the public. Of course, the power of truth is not dependent upon the Town Meeting process. But, the process may be used to obscure or deny access to the truth and the prudent as much as to reveal it.

***Town Meeting is anti-establishmentarian at root, consciously placing the rights of individuals in tension with the majority and would-be rulers.*** The introduction of special authority into the decision process is both problematic for the process itself and barely admissible at best. Thus, the introduction of the findings of specialists and of subordinate boards and committees, as somehow possessed of special authority, places these findings outside the pale of direct challenge.<sup>7</sup> The result is to bias the process in favor of such findings at the expense of the process itself. Town Meeting becomes a ratification process rather than a deliberative process, and the authorities escape direct accountability for their judgments. Also, excuse is given Town Meeting participants to claim "no fault" when poor decisions become evident -- they acted on the advice of authority. Even if these boards and committees can be effectively brought to account by other means, the town meeting process is subverted by appeals to their authority.

## **CONCORD TOWN MEETING -- ITS CURRENT SITUATION**

The Concord Town Meeting in 1994 must serve the needs of 17,000 residents of whom over 10,000 are registered voters. The town meeting must adjudicate the issues confronting a town with a budget in excess of \$30 Million and a population that is increasingly transient and polarized economically and culturally.

In an attempt to preserve the "unique characteristics" of Concord -- characteristics that are assumed to be known but seldom stated -- Concord has taken special measures in recent years to control land development and to capitalize upon its educational resources. Faced with the tax cap imposed by Proposition 2½ and with the relative autonomy of the public school system, Concord has experienced a growing imbalance in budgetary allocations between the demands of the school system and the operating expenses of the town in a ratio of about 2:1. State mandated levels of school aid have reduced town control in this area and state reimbursement for borrowing measures are declining from a maximum of about 71%. While enjoying an exceptional triple-A bond rating, Concord is also faced with a ratcheting, upward movement of taxes that threatens to drive out all residents who are not wealthy or are not subsidized by state and federal aid. Business finds Concord an expensive place to be except when special tax breaks are granted which, in turn, reduce their positive contribution to the relief of the town's fiscal burdens.

Culturally, there is a continuing shift from an indigenous population sharing a common, traditional perspective to a population characterized by professional transience and a non-integrated conglomeration of people from around the country and the world. A town which once could conduct its affairs informally with little concern that decisions arrived at in that manner would be seriously challenged, now finds itself bound by open-meeting laws and a general lack of understanding of or sympathy with the idealized, "unique characteristics" of old Concord. Town Meeting is one of those oddities of old Concord for which new residents have little concern or understanding. All of this is set within the context of a larger American culture which is highly secularized, materialistic, and much removed from the value structures that informed the founders of this town.

In this context, Concord's Town Meeting is faltering. Using the preconditions of a viable Town Meeting as guide, let us examine the present situation of the Concord Town Meeting which seems to justify such a judgment.

### **Town Meeting and Communication.**

*Town Meeting presupposes a constituency that is able to communicate fully, in assembly, on the issues that arise for community decision.*

In this respect, Town Meeting in Concord has long been compromised as a representative assembly



of its citizens. The former Sentry building (now Mediplex) auditorium, with its maximum capacity of about 1000 persons, has long sufficed to handle the attendance of most of the town meetings in past years. In fact, the attendance at town meetings seldom exceeds this capacity and then only for especially contentious warrant issues. Usually, the attendance rapidly attenuates during the course of its session, affording less communication and more opportunity for mischief. This is a serious reflection both on the degree of town meeting representation and upon town meeting's function as a forum for communication and deliberation. It is not uncommon for less than 5% of Concord's voting population to decide significant town issues.

Theoretically, the citizens of Concord have access to the press as some compensation for deficiency in communication. Yet, the Concord Journal is monopolistic in fact and cannot fairly be judged to be impartial. The Letters to the Editor is, fortunately, open in policy and is a kind of safety valve and source of community debate. Yet, this benefit exists at the sufferance of the Journal and is subject to editorial policy, special interest pressures, and simple economics. The Journal draws complaints from all perspectives for its inaccuracies, slanting of news reports, and lack of professionalism. Many in town refuse to subscribe to the Journal.

As a result, townspeople are seldom well informed, as a whole, on issues confronting the town. In those cases of intense contention, the information is disseminated by partisan activists whose claims often leave the constituency confused rather than enlightened. Decisions are, then, relinquished to a determined, agenda driven minority of the constituency, or are entered into with uncertainty or sheer blindness.

The inability of the Town Meeting to engage and inform over 90% of the constituency while making vital decisions for the town is a fatal flaw. The deficiencies in alternative information and deliberation methods make these incapable of offsetting that flaw. Mandatory participation of citizens being impractical, Concord's Town Meeting has become the hunting ground of determined activists.

***Town Meeting communication requires a significant degree of agreement on basic set of social and individual values.***

For most of its life, Concord enjoyed a relatively homogenous set of basic values. Even with the shift of religious focus from colonial orthodoxy to unitarianism in its deist and transcendentalist forms of later times, Concord carried within its collective consciousness an abiding sense of community which gave much trusting leeway to an elite leadership. The colonial antecedents of such leadership were translated into the revolutionary committees of correspondence and safety. From thence, the Social Circle and its derivatives carried forth an unwritten but active sense and incarnation of those values. Those values are now under siege.

Elitism is increasingly found wanting both in its general acceptability within a heterogeneous, individualistic, democratic society and in its practical effects upon such a society. The paradox of such a society is that it tends to erect its own set of elitist principles and leaders in place of the discarded ones. Contemporary "political correctness" is but a variation of political correctness of an earlier time that has been rejected. Concord now is an active participant and promoter in the rise of untrammelled individualism at the expense of community, of a sense of minority victimization in place of personal responsibility, of materialistic pragmatism over ethical standards. These together and separately militate against the ability of members of the community to communicate on matters of substance.

Town Meeting in Concord has, increasingly, reflected this decay and loss of homogeneity of community values. Opponents are booed, vilified and treated with disdain. Cantankerous or dissenting citizens are dismissed as crack-pots or worse, regardless of the quality of their ideas. The moderators have had to exert themselves against these abuses, but have also fallen themselves, at times.

Town Meeting is perceived both as a weapon and as an excuse. As a weapon, it is stacked by partisans awaiting phone calls to appear for special warrants. Warrants are arranged to take advantage of the attenuation of attendance over time (school issues early, land issues late). It becomes an endurance course survived only by the determined. It thus provides ample opportunity for minorities to act as majorities and for Town Meeting to become a private hunting ground for those seeking advantage. As an excuse, the resulting votes are legally cited as mandates to which the victors are bound in their subsequent decisions.

This perception, if flawed, is shared by many in the general population of Concord. As is often the case, perception here is reality for all practical purposes. This perceived co-option of the primary organ of citizen participation in town government sharply attenuates active participation by many people.

A native political indolence of people (when poorly motivated), the increased transience of Concord's population, a lack of understanding of Concord's political workings, and the perceived misuse of Town Meeting all combine to create a hostile context for Town Meeting in Concord. The Town Meeting purpose of arriving at judicious judgments that X is better than Y is deeply compromised by the decay of older community values under competition with contemporary visions of political correctness.

***Town Meeting presupposes public access to all of the information pertinent to deciding an issue.***

In addition to the communication deficiencies already noted, public access to all of the pertinent

factual, complete and accurate data is only a *de jure*, theoretical reality. In practice, such information can be obtained and kept current only by a citizen's virtual self-dedication to the task of acquiring it by accessing agency files and regular attendance at a multiple of standing boards and committees or *ad hoc* committees and "task forces". Even the local news organ finds it too daunting for its reporters and editors to undertake in a serious fashion. Average citizens must simply "trust the process" -- often at their real expense.<sup>8</sup>

Town Meeting cannot function effectively or fairly for the benefit of all of the town when essential information is beyond practical reach. As if it were not enough that individual citizens have such difficulty of informing themselves, even the standing boards and committees are like the left hand that doesn't know what the right hand is doing (or knows). Legally circumscribed in their legitimate focus, committees and boards lack an integrating overview of the issues before them. Thus, when they render their judgments on warrant motions in Town Meeting, their collective and individual judgment is genuinely open to question.

The level of trust demanded by such a situation is, also paradoxically, more than Town Meeting can truly bear. Town Meeting was born in a context of distrust and fear of encroachment by one or more upon the rights of both the individual and the community. To insist on virtual blind trust, is to negate communication on all but the most peripheral issues. Further, if one must trust so much in the specialists and functionaries then why should citizens waste their time trying to collect information in quest of the truth? Ultimately, why go to Town Meeting? Trust the Town Meeting activists, and if they get too obnoxious, rip into them! But, then what? It may be too late to undo real damage!

Concord Town Meeting is faltering due to an increasing failure of communication within the community at large and within the town meeting process itself.

### **Town Meeting and Decision.**

*The need for a powerful, judicious and fair Moderator who controls the flow of the process is fully recognized as a precondition.*

Fortunately for Concord, the town has had a set of moderators over the past twenty years or so that has come close to satisfying this condition for a viable Town Meeting. It appears that the task can and must, to a degree, conform the person to its demands. Service in the interest of fairness can have an ennobling effect such that personal dispositions are largely set aside for fairness sake -- usually. Further, and despite the popular cavils about lawyers, the discipline of that profession has contributed to the success of some of these men.

The future, however, is murky as to both the supply and quality of future moderators. Shunning a

basic pessimism about the future, one may still question who there is that can rise to the occasion of the departure of former moderators from the scene. As long as Town Meeting is an active institution in Concord, there certainly will be someone who is called to the task. Of particular concern is the growing necessity of the Moderator to be sensitive to the nuances of municipal law. With this growth, it is possible that the route to Moderator will tend to be through the Town Counsel.<sup>9</sup> At present, Concord's Town Counsel is Lexington's Moderator.

Further, the question of values impinges upon the future of Town Meeting as it relates to the Moderator. Contemporary legal philosophy that highlights positive law at the expense of natural law may seem a bit of an arcane consideration for the subject at hand, but, the ground, stability, and nature of community values is at stake. With the preoccupation with positive law, that ground, stability and nature becomes more and more subjective in contrast to the "objectivism" that undergirded the concept of Town Meeting. As moderators may be drawn heavily from the legal profession in the future, we may be justified, somewhat, in holding our breath a bit about the ramifications for the town meeting process.

Relative to this factor, however, Concord's Town Meeting is not particularly threatened.

***The accurate representation of all of the constituency is a prerequisite for a viable Town Meeting.***

Most of the elements of this criterion are circumscribed by state law such that the Moderator's duties, timing of the meetings, and the necessity and form of warranting the community are well understood and fixed. These elements provide minimum assurance that fairness prevails at Town Meeting and that none are arbitrarily excluded from the town's decision process. Yet, in themselves, they do not ensure that the constituency is accurately represented at Town Meeting.

Representation is having one's voice heard, participating in the decision by voting, and taking public responsibility, directly or indirectly, for one's stance and choices. Ultimately, responsibility is an individual matter, whether part or not of a larger association of people. Unfortunately, Town Meeting, as presently exercised in Concord, is not assuredly representative of the constituency. For reasons cited above, most Concordians exhibit a general disaffection and indifference to Town Meeting -- to their own detriment. Yet, were all of the voters to appear on site, the effect would be stupefying.<sup>10</sup>

Lack of adequate or accurate representation produces a basic instability in the decision making process. An inattentive, true majority may wake up, on some issue, to discover they had been outvoted by a minority, resulting in a revisiting, if possible, of the issue. That would have been unnecessary had they been adequately or accurately represented. This may have happened in Concord on such issues as the Route 2A property use and the transfer of Willard School land to

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the Housing Authority, as indicated over the years by the oscillation of Town Meeting judgment on these matters. Such potential and actual instability does little to breed trust in the Town Meeting process!

Further, the degree to which the town boards and committees reflect the true sentiments of the citizens is open to question. Yet, these boards and committees fully realize the determinative impact of their recommendations upon Town Meeting decisions, and they fully exploit that power. Having put themselves "on the line", these same bodies close ranks even in the face of patent error and challenge. This is a natural human foible, but is certainly contrary to the best interest of the town and the future of Town Meeting.

Given this doubtful quality of representation at Concord's Town Meeting, one sees another rip in the cloak of integrity and viability of Concord's Town Meeting.

***Viable Town Meeting requires that the warrants and warrant motions are consistent with existing law and fall within the limited prerogatives of Town Meeting.***

Here, the situation at Town Meeting in Concord is dependent upon the efforts of the Moderator and Town Counsel. Some warrants and warrant motions entail legal conundrums that puzzle the lawyers, not to mention the average person. Such a case was the motion to rescind a Town Meeting decision to transfer Willard School property to the Housing Authority. This resulted in a complex motion requiring different quantifications of vote for its parts. Usually, however, the warrants and motions are straight forward and relatively easy to comprehend.

As such, Concord's Town Meeting is no more or less threatened by failure to satisfy this condition than elsewhere. The only caveat derives from the growing complexity of municipal and state law that may render desirable actions to be prohibited or difficult to achieve in Town Meeting.

### **Town Meeting and Accountability.**

***Viable Town Meeting assumes that the foibles and weaknesses of its participants can be determined and surmounted by the town meeting process itself.***

While this may be a test of one's view of the practical and theoretical correctability of humans, or of the superiority of collective over individual judgment, in practice the test is whether or not Town Meeting can be relied upon in most cases to avoid tyranny. The question is whether or not the process is, in fact, effective in checking individual and collective tendencies to abuse one another in a process of mutual accountability.

To the degree that communication is strong, and the decision process reflects the will of the

majority, to that extent one may be encouraged or discouraged about the town meeting process. So far, it seems, Concord's town meeting process is not encouraging. It may suffice to handle routine items over which there is little room for controversy. In more contentious issues, however, the lack of real accountability of the standing boards and committees to the electorate, coupled with their dominance of the process, is a cause for serious concern about the viability of Town Meeting in Concord.

One may vote out the selectmen and the school committee members, and town employees may be removed for cause. But town committee members function with little or no effective accountability to or by the voters.<sup>11</sup> Appointed for the most part, the selection of these individuals is from a pool of something over 200, and uses screening criteria which include social familiarity, common perspective and interest, and past participation, not merely availability. Review of the list of participant appointees over the past 20 years suggests the activity of all of these factors in the selection process.<sup>12</sup>

For all practical purposes, the appointees are effectively anonymous to the general public and beyond its detailed scrutiny. The dedication of the appointees is usually high and the effort expended by these volunteers is substantial. The authority exercised by these folk is very sensitive to challenge, and even the appearance of unknown or outspoken citizens is often very unsettling to them. The recent, Selectman sponsored seminar on the state open-meeting law was very revealing in the reactions of these board and committee members to the necessity of openness to public scrutiny. Most are generally used to conducting business quietly with little or no public accountability, nor do they expect it.<sup>13</sup>

***Town Meeting is anti-establishmentarian at root, consciously placing the rights of individuals in tension with the majority and would-be rulers.***

Concord truly has a problem here, if observations count for anything. The watch-cry of those who extol the present town meeting process in Concord is a call for trust. The closer criticism comes to the heart of a matter, the greater the emotional response to the extent that moderators and chairmen have had to counsel those in attendance to refrain from scurrilous and personally degrading comments and behavior. Dissent is a threat to a redefined consensus which protects the actors in group decisions. The prominence of these response patterns is hostile to the well-being and future of Town Meeting in Concord.

Town Meeting has been, for the most part, reduced to a battle ground where those entering are expected to have their minds already made up -- a battle ground in which a ritualistic combat is performed with little or no expectation of real persuasion of others.<sup>14</sup> When the ritual fails in its expected outcome, and ratification of predetermined positions does not occur, then there is failure of consensus and embarrassment for all around.<sup>15</sup>

The face of Town Meeting in Concord reflects little of its original intent or significance when it comes to deciding contentious matters of public concern. Raw voting power is all that really counts. Persuasion has little to do with its decisions in such cases. There is a self-identified establishment of 300 to 400 voters who have a head-lock on the process and have shown an uncommon mean-spiritedness in keeping it that way.<sup>16</sup> In a struggle for power undisciplined by a common sense of community values and equity, such an attitude can be expected. It exists in Concord and makes mockery of Town Meeting.

*Town Meeting is viable when it fulfills the purpose of allowing people to be heard, to decide for themselves, and to be accountable in light of those decisions.* From a comparison of the current situation of Concord's Town Meeting against the necessary preconditions for its viability, it is plain that this venerable institution is in serious jeopardy of failing its intended purpose and of becoming, instead, an instrument of suppression of the democratic process in Concord.

## **CONCORD TOWN MEETING -- FROM HERE TO WHERE?**

Town Meeting in Concord appears to be in trouble. As such, it reflects trouble in the basic governmental process of the town. Responsible citizens when faced with such a threat to themselves and the community cannot afford to ignore the problem -- it will not go away, but only get worse, if not corrected.

It is far easier to identify a problem than to specify its causes and remedies. We have attempted to do the first and second of these. The specification of remedies remains and is the most difficult of all. Once having confirmed the situation, the community as a whole must seek remedies appropriate to the issue of enhancing responsible self-government by that community. What will follow is one man's opinion of what some of the corrective actions may be.

The strength of Town Meeting is its proximity to pure democracy. Yet, as in most things, its strength is its weakness -- exposed as it is to the direct influence of both the best and the worst in human nature. *Movement away from or modification of this basic form of democracy to another form is justified if it optimizes the opportunity for people to be heard, to decide for themselves, and to be accountable in light of those decisions -- the essence of democracy.* The suggestions that follow are offered for consideration in any community dialogue devoted to this optimization of Concord's town government.

### **Deliberation or Decision.**

Any proposed solution to acknowledged deficiencies of Town Meeting in Concord must be some mix of deliberation and decision. By deliberation is meant the process of identifying, defining, and developing issues of public concern to the point where a reasonable decision among options is possible. Decision, of course, is the exercise of the vote relative to those options. Inadequate deliberation blinds decision while unreasonable restraint upon the vote renders decision undemocratic. Accountability or its absence flows directly from the quality of deliberation and decision performed. The following alternatives may be classified according to the nature and degree of adjustments that are involved in the process of deliberation or decision.

### **Minimalist Solutions Evaluated.**

Minimalist solutions are those corrective measures taken to adjust the Town Meeting process to make it more effective in achieving its governmental purpose while Town Meeting is retained in its general form and simply adjusted to enhance its functions. Representative Town Meeting is typically envisioned here, but other adjustments of Open Town Meeting of whatever sort would



also be included.

*Open Town Meeting Adjustments.* Of these, **decision adjustments** are likely to be the first considered. Since restraint on the vote usually consists in the physical inaccessibility of the citizens to the voting site due to space or time considerations, improvement in such physical accessibility must be considered. Space limitations must be removed by providing ample facilities that may accommodate the expected attendance. For populations in excess of 6000, Massachusetts has recognized that such adjustment becomes increasingly impractical and has authorized town adoption of some form of Representative Town Meeting. Concord, with a voting population of over 10,000, has greatly exceeded that limit and recent events have indicated the uneconomical and impractical nature of simple spatial adjustments. This renders time adjustments moot. (The complexity of voters lives and scheduling requires unusual accommodation of any timing of Open Town Meeting by individual voters themselves with little that can be done by the municipality to adjust to individual needs. Concord has experimented with two, topically oriented Town Meetings per year without good results.<sup>17</sup>) Further, since the Open Town Meeting requires the physical presence of voters for them to legally cast their votes, absentee ballots are illegal. The legalization of absentee ballots is a possible decision adjustment which would significantly alter the meaning of "Town Meeting" and introduce questions of deliberation.

**Deliberation adjustments** would involve extension of the issue shaping process (post-warrant) to permit extensive debate, etc., at Town Meeting time or to rely on extra-Town Meeting activities to become part of "Town Meeting". A fundamental flaw in both of these is that the post-warrant debate should properly address the *warrant motion*, which is made during the session of Town Meeting. Debate of bare warrants can often be well beside the point of an actual motion, and motions are often not moved on warrant articles when Town Meeting sessions convene. Further, the identification and formation of the warrant articles is outside the Town Meeting which is called to consider them. *Thus, it is, strictly speaking, improper to regard debate of warrant article issues to be the same as debate of warrant article motions.* It is common for Concord Town Meeting Moderators to declare the session as devoted to decision, not deliberation, which has the unfortunate effect of presuming that pre-session debate is equivalent to Town Meeting deliberation.

For Concord, both deliberation and decision adjustments to Open Town Meeting can and do lead to a basic perversion of the Open Town Meeting process, and such adjustments should not be accepted as satisfactory solutions to the deficiencies present in Concord Town Meeting.

*Representative Town Meeting.* Representative Town Meeting is usually the alternate first considered to simple adjustments to Open Town Meeting. Approved by the Massachusetts Legislature in 1926 for towns over 6000 in population, it had been adopted by forty-one Massachusetts towns by 1959. Anecdotal accounts of its inadequacy exist which suggest that the move has not always proven successful. In principal, the Representative Town Meeting is an adjustment to the **decision** deficiencies of Town Meeting. Representatives are elected and

expected to attend Town Meeting and cast votes representative of their constituency. Voters may attend the Town Meeting and speak, but only the representatives are allowed to cast votes. Yet, from both the decision and deliberative aspects of Town Meeting, Representative Town Meeting appears to be vulnerable to the same critique offered faltering Open Town Meetings: decision is limited to a few, and deliberation is as deficient as the Open Town Meeting deliberation. In fact, given the relatively few voters that would have to be influenced (the representatives) lobbying efforts are simplified, deliberations become localized and less public, and manipulation of the process is made easier. Only if these can be regarded as improvements, can Representative Town Meeting be regarded as preferable to a defective Open Town Meeting.

### **Redefinitions of "Town Meeting" Evaluated.**

There are some alternatives that may be regarded as redefinitions of the term "Town Meeting", but are technically not Town Meeting forms of government in the sense that deliberation and decision are attributes of a single activity of direct, in session, participatory government. These redefinitions essentially change the nature and scope of these activities. Such redefinition is usually tacit and unofficial, but nonetheless real in practice.

*Universalized Town Meeting.* This form of redefinition expands the scope of **deliberation** to include all of the public hearings, committee and board decision activities, debate on public issues, and Town Meeting presentations. This universalization of Town Meeting reduces the Town Meeting *session* to a ratification process in which the year long deliberations are consummated in legally binding decisions of the "Town". Implicit in all of this is some definition of the "Town" that may not be equivalent to the scope of the electorate and other residents. Attendance at Town Meeting session is prerequisite to voting (decision) on "Town" matters, but deliberation becomes a function of those who "participate" in hearings, in committee and board activities, and in public debate in other existing forums.

Concord practices, for all essential purposes, this form of Town Meeting. Some express this understanding either explicitly or implicitly.<sup>18</sup> In either case, Town Meeting session is understood to be a ratification (decision) process by voting prejudgments of warrant *article* issues arrived at prior to motions made in session. In effect, this approach is a tacit **deliberation adjustment** to Open Town Meeting without benefit of public notice and action. It does not appear to be adequate in light of the identified deficiencies in Concord's Town Meeting.

*Ballotized Town Meeting.* The ballotized form of Town Meeting redefines the Town Meeting session to be the deliberative element while the decision element is transferred to some form of public ballot beyond and outside the Town Meeting session itself. This form of redefinition **seeks**

**to expand the decision constituency by means of the ballot** and removes the necessity for physical presence at the Town Meeting session. It is reported that Vermont practices a form of this in which the session deliberates the issues followed by decision at the polls.<sup>19</sup> A similar proposal has been made to Concordians in the wake of the Special Town Meeting of 22 Nov 1994 by Mrs. Carole Wayland, Esq.<sup>20</sup>

This form of redefinition restricts the Town Meeting session to **deliberation**. It is unclear that registration to vote is a prerequisite for participation in the session discussions, although registration would clearly be a condition of later voting at the polls. It is also not clear that the problem of committee/board dominance and other issues of communication would be adequately addressed by this alternative alone. The alternative does eliminate artificial limitations on access to the vote with its potential or actual violation of the right of equal protection.

### **Summary Evaluation.**

None of the alternative solutions considered above resolve all of the issues of Communication, nor can they do so directly. While the Universalized Town Meeting ostensibly maximizes town visibility and participation in the "Town Meeting" deliberations, in practice no provision is made for an integrated overview or assessment of the combined implications of the various committee/board determinations, nor is it practical for citizens to secure the requisite data or evaluate the committee/board decision processes. The Ballotized Town Meeting may correct this deficiency if committee/board selection and accountability can be effectively addressed. The Universalized Town Meeting seeks to maximize deliberative participation at the committee/board level and leaves unreasonable constraints upon access to the vote. The Ballotized Town Meeting gives maximum access to the vote and provides potential for an integrated assessment of support (committee/board) decisions and their interactive implications. The minimalist solutions inadequately address the basic issues confronting Concord's Town Meeting.

### **Recommendation.**

The Ballotized Town Meeting appears to provide the best, if imperfect, correction to the issues of Communication and Decision while preserving the intended deliberative and decisive dimensions of Town Meeting. Steps should be taken to adopt the Ballotized Town Meeting in Concord.

### **Implementation Issues.**

The implementation of a form of Ballotized Town Meeting entails certain implementation issues that would require resolution. Phrased as questions, some of the major issues would be:

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Town Meeting Revisited, 16 November 1994  
Revised 6 January 1995

- 1) Issues Regarding *Deliberation*:
  - a) Shall deliberation be regarded as commencing after a warrant article motion is made in Town Meeting session, or after publishing of the Town Meeting Warrant?
  - b) How much time shall be allotted to the session?
  - c) In what order shall warrant articles be considered and according to what standard?
  - d) Shall voter registration be required for attendance at the session? If not, under what terms/rules shall the discussions proceed and be terminated?
  - e) Shall the session be required to be broadcast by television and radio? Shall private recording of the proceedings be permitted?
  - f) What shall be the minimum session site capacity? Shall the capacity be a minimum proportion of the voting population?
  - g) Shall special Ballotized Town Meetings be permitted and, if so, under what conditions?
  
- 2) Issues Regarding *Decision*:
  - a) How soon after the close of the deliberative session shall the ballot be taken?
  - b) What form shall the Ballot assume (mechanical, electronic/digital, hand)?
  - c) Should the ballot be scheduled for a single day or for more than one day?
  - d) How and under what conditions may ballot decisions be reconsidered/rescinded?
  - e) What voting quantification rules shall apply (i.e., majority, 2/3, etc.)?
  - f) May Proposition 2½ override issues be resolved by action at the Ballotized Town Meeting polls, or shall such an override require a special ballot vote called for that purpose?

While these implementation issues, and others not noted, indicate the complexity of moving from the current Open Town Meeting format to the ballotized format, the move is not as upsetting as might be feared. In fact, much of the existing format could remain in place while being opened to greater flexibility in exercise and effectiveness both in the deliberative and decision aspects of the process.

In principle, the ballotized format hews close to the original intent of Town Meeting, which is to assure that *(1) every person has a right to be heard in council, (2) group decision is made by the vote of all, and (3) everyone is bound by the decision of the majority*. It has the advantage of breaking artificial constraints upon access to both dimensions of the process, deliberation and decision, for large voting populations, and it recognizes the changed realities in the political environment created by the technical means of communication and casting votes. Further, it has the potential for adjusting to both socio-political and technological changes in the future which could permit real-time decision processing by a distributed voting population.

Ballotized Town Meeting could be a way to the future, but it certainly commends itself to the developing situation in Concord, Massachusetts.

## ENDNOTES

See the addendum to the second edition (1984) of *Town Meeting Time, A Handbook of Parliamentary Law: The Town Meeting -- Its Development as a Form of Government*. The paper traces the origins of Town Meeting to its Norse and Germanic rootage as a practical and durable answer to the balancing of the demands of fiercely independent people for their rights and freedoms with the necessity of social and individual peace and security.

*op. cit.*, p. 162ff. The reason for this is broader than the narrow purpose of facilitating communication but certainly includes it as a necessary element in ensuring that the resulting decisions were both prudent and informed.

The Massachusetts constitution was amended in 1926 to enable towns having populations of 6000 or more to adopt a "representative" form of Town Meeting which, by 1959, was adopted by forty-one Massachusetts towns. *op. cit.*, pp. 5-9.

My choice of the term "benign tyranny" focuses upon the essential paradox of any democratic institution: *free people willingly subject themselves to the dominance of the majority in the expectation and trust that the will of the majority as it impacts the lives and well-being of the minority will be benign -- not malignant and destructive*. Subordination is seen to be as much a part of responsibility as is benevolent dominance. Further, the yielding in hope by the minority is a tacit assertion that the majority do not possess infallibility and unquestionable rights of dominance. Thus, a malign or foolish majority equates to tyranny in the worst sense, and is, finally, as great a threat to the peace and security of all as the insubordination of a malign and foolish minority. Virtuous and wise people are essential to the democratic process.

Of special concern here is the failure of the press in its duties as a responsible informant. The power of the press, like the power to tax, is the power to destroy. When and if the press adopts a view of its duties that is predominantly that of advocacy over accurate reportage, democracy is blinded. For small communities this may be offset by extra-press communications. In larger communities even there the difficulty of the decision process is exacerbated. Larger communities with town meeting governments are even more vulnerable to the abuse of the freedom of the press as license.

Demeter, in his *Manual of Parliamentary Law and Procedure*, is critical of moderators of town meetings as "virtual dictators", and the conduct of town meetings today as "tyrannical". *op. cit.*, pp. vi,vii. At least the potential exists, if not the reality, in fact.

The discussion of Select Committees in *Town Meeting Time* (Sect. 12, *op. cit.*, pp. 36-40) builds upon a recognition of the danger. While not specifically addressing the question of standing boards and committees or *ad hoc* town committees and "committees" as such, the concern broached here is also directly applicable to these entities. The investiture of tacit or real authority in such bodies has the advantage of efficiency of business, but also poses the clear danger of subverting the independently informed judgment of town meeting proceedings. Accountability at these levels is crucial but rarely achieved.

The LWV/C-C Bulletin, published periodically by the League of Women Voters Concord-Carlisle, reports the activities of standing boards and committees as observed by their volunteer observers. This useful document is not available to the general public but is distributed to the League's local membership. As with any such document prepared by an advocacy group, the information must be cross-checked and supplemented by independent observation. On the whole, however, the reports are reasonably detailed and accurate, given its screening perspective. Such privately distributed information, however, is not an adequate answer to the needs of the public for making decisions at Town Meeting. Rather, it helps primarily to advance the special agendas of such organizations by those privy to its contents.

The current Town Moderator, Mr. Stevenson, Esq., does not believe that being a lawyer is at all necessary to service as a Town Moderator. The functions of moderator focus more upon fairness and objectivity than legal expertise, in his experienced view, these qualities are found in many. (Letter, Stevenson to Stephens, 26 Nov 94)

A timely example is the adjournment of the 15 November 1994 Special Town Meeting to 22 November 1994 due to an overflow of voters at the Sentry (Mediplex) auditorium. The auditorium, holding over 1000 persons, was packed, the lobby full of voters checking in, lines extended into the parking lot, and traffic was bumper to bumper on Main Street beyond the House. Over 1500 voters sought attendance, of which at least a third could be not accommodated -- requiring the adjournment to the later date at the CCHS facilities.

The issue to be decided was highly contentious and the town was sharply divided on the matter. Seldom in the known history is there a clear case occurring on May 13, 1771 (cited in Wheeler, *Concord: Climate for Freedom*, p. 98), had there been a voter turnout for a change of venue for the meeting. Requests to the Moderator for absentee ballots were properly and legally denied. The second session was required to be within two weeks of the adjourned session which would have placed it in the week most inconvenient for the Jewish constituency. The 22nd was the only fair alternative, two days prior to Thanksgiving.

On the 22nd, 1413 voters attended, 14% of the registered voters. Because of the holiday timing, many were unable to attend on the 15th. Arrangements had been made to accommodate at least 2000 at the high school. The cost was \$17,000-20,000 for 1994.

Even on a voter population of 10,000, a 20% turnout would nearly have exceeded the capacity of the High School site, and 30% would have exceeded the facilities beyond practical and economic limits. Yet, at 30% (twice the actual attendance), the level of representation is low for a direct, participatory form of government such as Open Town Meeting.

This is a classic example of the difficulty of securing adequate representation at Open Town Meeting in Concord -- it certainly requires the foresight and resources of the community and its leadership.

I am aware of only one instance of a volunteer committee person being removed from position for alleged cause. Others may have been so disciplined but are unknown to me. It is more common for individuals to resign their positions without public comment, such as a recent situation with the Planning Board. Such activity leaves little but a gossip trail upon which one can base nothing but speculation. For all practical purposes appointed volunteers stay the course of their appointment regardless of the quality of their efforts.

An interesting database can be constructed from the available Annual Town Reports. See also the summary matrix of Concord Officials, Boards and Committees given in the Appendix.

My attendance at a recent Housing Planning Task Force meeting elicited the query, "What have we done to attract attention?"

The struggle over the Willard School property transfer in the previously mentioned Special Town Meeting of November illustrates the situation. The meeting was a single issue meeting. The Moderator stressed that the issue had been thoroughly *debated* prior to the meeting in other venues and the expression of viewpoint was not to take the form of debate in this meeting. Views were expressed without rebuttal with one exception: The main motion presenter's views were permitted to be rebutted without further response from the presenter to correct rebuttal errors. It was evident to all that persuasion was not the name of the game. Rather, the activity was a ritual exercise performed before the attendees cast their predetermined votes. To the eyes of many perceptive observers, the presenter's arguments were sidestepped in the interest of making contrary assertions. The Town Meeting had been reduced to declamation rather than deliberation. Decorum and process rules were preserved, but Town Meeting had become a poor, limited substitute for the ballot.

This occurred in the 1994 Town Meeting defeat of the motion granting permission to the Concord Light Plant to relocate to the Rte 2A site. The boards did not present a common front on the matter and the motion failed, causing the movers to wonder what happened. The issue is being scheduled for a revisitation at the 1995 Town Meeting.

A summary of the sad history of the now notorious struggle over the Willard School property sufficiently makes the point. The Selectmen set the tone early in declaring publicly and privately that the challengers of the transfer were anti-affordable housing, giving comfort to both laymen and local clergy to call the challengers liars and bigots. Petitioners were subjected to personal abuse even, in one case, by a former selectman. The Concord Housing Authority invoked the Deity in its response to the presentation at Town Meeting, as did the statement by the Selectmen from the floor of Town Meeting. The School Superintendent removed a legal poster planted by the petitioners and returned it only after confrontation by two citizens and a professional lawyer. Yet, at least one of the petitioners was confronted after Town Meeting with an impassioned plea that petitioners not question the establishment motives in the future! Mean-spiritedness is what it does. I speak as a close observer and visible participant in the struggle.

The experiment with two Town Meetings per year consisted of the Annual Town Meeting in the Spring dealing with finances and related matters, and a second Town Meeting later in the year dealing with matters of zoning, land use, etc. The experiment lasted a couple of years but afforded no improvement in the process. (Letter, Stevenson to Stephens, 26 Nov 94.)

The current Chairman of the Board of Selectmen appears to openly espouse this view of the matter in principle, while the present Town Moderator seems at times to do so implicitly by declaring Town Meeting sessions not to be occasions for debating issues -- only for decision. The approach of the latter preserves the technical definition of "Town Meeting" but redefines its practice. The former redefines the term both technically and in practice.

Letter, Stevenson to Stephens, 26 Nov 94.

Mrs. Carole Wayland, Esq., "Taking a Closer Look at Town Meeting", Guest Opinion, *The Concord Journal*, 1 Dec 1994. A carefully considered and forcefully presented option to what is considered a failed system of government in Concord.