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Charter Reform: How to Think about It

Form of government initiatives are difficult to deal with because they rarely are raised by those who fully understand the differences between mayor-council and council-manager forms or all the variations in between. Those advocating mayor-council see a need for strong leadership, and buried within that desire is the hope that John Wayne in the form of a local Rudy Giuliani or Mayor Daley can somehow rise above the challenges of a local political culture and the inherent political values that inevitably conflict in policy debates and can make a difference.

There is little discussion of the differences between a form that separates legislative and executive powers versus united them and what those diametric differences imply. We will try in this article to provide an analytical approach to issues involved in the benefits and costs of various forms.

First, and fundamentally we make two points. A charter is the equivalent of a constitution and at the same time it simply sets out the framework for an organizational structure. Seen as a constitution, one wants to be cautious about changes. We make it difficult to change the U.S. Constitution for a reason. It is the foundation for developing

roles, responsibilities, and relationships. Its purpose is enduring. It grows out of norms and expectations and then it influences them for subsequent generations. It provides stability in governance. On the other hand, when seen as a guide to organizational structure, we assume it should be flexible. The departmental structure of a jurisdiction today is not the same as it was yesterday because structure should be seen as enhancing problem solving. As the problems change, the structure needs to adapt.

- a) If you agree with this view that structure must be suited to the problems the organization is trying to address, then the most important question when considering a change in structure or charter is: What problem are we trying to address? What is not working as well as it should? What is the evidence that changing the structure or charter would fix the problem? But the beginning point is the simple question: “What is the problem?”
 - i) Often in charter reform, we mistakenly start with a solution. In my opinion, this is a mistake because it is not a simple matter to go through a charter change. It takes time, effort, and it affects expectations.

2) The goal of any government charter is the following:

- a) The charter should include provisions that provide for the adequate **representation** of citizens in governing bodies and processes;
- b) The charter should effectively **focus policy leadership and accountability for execution of the law, policy implementation, and service delivery**
- c) It should provide a **professional/technical staff protected from inappropriate political influence** so that employees will feel free to say what needs to be said

not what they think others want to hear and so that services will be carried out without political consideration.

- d) An important point is that it is not possible to maximize all three goals at the same time. More representation leads to difficulty in focusing leadership; more policy leadership and influence in the mayor's office may politicize the civil service—city employees--and diminish the value of the council. More protection for the civil service may create obstacles to policy leadership and accountability. Charter reform—like creating and amending all constitutions--is about compromising not optimizing...
- 3) Let's look at these three goals in more depth. First, there are representation issues captured in the following types of questions which are not inclusive.
- a) How many council districts or seats?
 - b) Will your representatives be elected by district or at-large or a combination of district and at-large?
 - c) What will be the authority of the council, especially in relationship to the mayor, and in regard to personnel issues?
 - d) Reflecting upon these questions, here are a few observations.
 - i) The more diverse a community, the more important are issues of representation. This stands to reason. The more diverse a community, the more likely that the council will be elected by districts if the community wants all citizens to feel invested in the public good. You cannot expect people to commit to a greater good, if they do not feel that they are cared about. In

some ways, representation reflects caring. Who do you care about? Once we decide that question, we can work on the representation formula.

- ii) Of course, we know that the more districts, the less likely it is that the council can make decisions based on the city as a whole. Here we confront the first question for which there is no correct answer. We can make many districts to reflect diverse interests, and the cost will be a focus on the city as a whole. On the other hand, we can elect all at-large and lose the differences that exist within the community. Which is optimal? No one knows, and that is the crux of charter reform—no one really knows the correct answer because there is none; it must be developed consensually to meet a community's needs.
- 4) The second issue has to do with policy leadership. These issues tend to focus on the role of the mayor, especially with large or diverse councils. The more powers the mayor has, the more likely that political leadership will be focused in the mayor's office. The less power the mayor has, the more power the council has. Here are a few observations.
- i) The more powerful the mayor's office, the more reactive the council will become. The more power the mayor has, the more likely the council will focus on ratification, scrutiny, and constituent services rather than policy initiation and development. The point here is that these expectations and roles are inherent in the decisions that are made about the mayor's role.
 - ii) Another observation is that the more that policy leadership is focused on the mayor's office, the more probability that the mayor will court supporters on

the council and use appointments, contracts, and constituent services as a way of consolidating power.

- iii) A third observation is that the more power a mayor has, the more likely it is that a talented mayor can make a difference in a community. One of the co-authors served as mayor in his city, and arguably he was reelected with more votes than anyone had garnered up to that time historically. But, he found himself in a council-manager form where his talents were underutilized. On the other hand, do you want to create a form of government on the chance that the mayor will be an exceptional talent?
- 5) Our third variable is the need for a politically neutral and competent civil service.

This depends upon the relationship between the classified service and the council and the mayor. Credibility of government in large measure depends upon efficient, equitable service delivery and policy implementation. Does the charter provide for a chief administrative officer, selected on the basis of competence and experience?

Who does the CAO report to? Who appoints the CAO? Here are a few observations.

- i) The more isolated from political influence, the more likely city employees are to act in politically neutral ways responsive to authoritative acts of a governing body, managerial direction, and the ethical standards of their profession. We would expect public works decisions to be grounded in commitments to engineering principles as well as authoritative direction of a governing body. That would be the goal.
- ii) On the other hand, the more protections from politics that classified staff have the more cumbersome personnel management becomes. The classic tension

in human resources management comes from juxtaposing functions that can challenge one another. On the one hand, personnel systems are designed to regulate managerial and political behavior to avoid favoritism and capricious decisions. On the other hand, personnel systems are suppose to facilitate mission accomplishment. The more emphasis that is placed on the regulatory function, the easier it is to crowd out the facilitative function.

- iii) A professional chief administrative officer, hired on the basis of competence, can add significant value to efficient and equitable policy development, implementation and service delivery as well as a city-wide, long-term perspective on municipal needs. The International City/County Management Association engaged in a two year long project to determine the value that professional managers add to their jurisdictions, and it is clear that in a community culture and a form of government that fosters professionalism, a trained CAO can excel.¹
- 6) You can see that each of these functions—representation, executive leadership, and administrative effectiveness—has an impact on the other, and that maximizing one may have a negative impact on another. For example, if you seek to enhance representation by increasing the number of districts, you create obstacles to developing a city wide policy perspective. The more districts, the more important the mayor’s role becomes in trying to focus political energy on a vision. But the more powerful the mayor’s role, the less relevant the council’s role and the more potential threats to a politically neutral city staff.

¹ James Keene, John Nalbandian, Robert O’Neill, and Shannon Portillo. “How Professionals Can Add Value to Their Communities and Organizations.” Public Management, March 2007.

7) As we consider the points we have made so far, we would suggest that the fundamental decision to be made about how to represent, focus policy leadership, and create an effective/efficient civil service is whether to separate legislative and executive powers or to unify them.

i) If you choose council-manager government or a variant of that form, you likely will sacrifice “heroic” political leadership. This is not a given, and there are boundless examples of high quality political leadership in council-manager government. Henry Cisneros was mayor of a council-manager city, San Antonio, and he fits the bill of a charismatic, heroic mayor. But, in council-manager government the intent is that political leadership comes from a governing body. The mayor’s role is “facilitative.”² The term “governing body” makes sense in council-manager government because the form of government values elected officials working together with a professional staff to produce quality policy direction.

If you choose mayor-council or some variant of that form, it may be challenging to get things done because you will have deliberately created a system of checks and balances between legislative and executive functions. . Checks and balances are designed to make sure that bad things do not happen, but they can create obstacles to making good things happen with dispatch. State governments and the federal government are constitutionally designed to separate executive and legislative functions into discreet branches of government. The mayor-council design falls within this rubric of power separation even though the scope of governing institutions is smaller. Thus,

² Svava, James H. The Facilitative Leader in City Hall. Boca Raton, FL: CRC Press, 2009.

depending upon the mix, the more power a mayor has, the more we can expect conflict between mayor and council, just like we do between Congress and the President. Again, in any particular jurisdiction these likelihoods may not occur, but the probabilities are built into the system itself.

- ii) Because the dynamics between the mayor and council will be very important, and conflict can be expected, it would not be unexpected for partisanship to play a role in coordinating mayoral and council power, how things get done, and who gets what. Of course, the more that partisanship plays in coordinating the politics in a community, the more that professionalism suffers.

Before concluding one very important additional observation is necessary. While it is possible to find “pure” forms of council-manager government and mayor-council government, one is more likely to find variants. So, for example, in pure council-manager government, the mayor is elected from among the council to insure that the mayor has the council’s respect. But, over 60 percent of council-manager governments have chosen to directly elect their mayor. Also, it is increasingly likely that mayor-council government will value professionalism because the risk of failure due to non-professional appointments is so high.

In conclusion, we believe that council-manager government and its variants are superior to mayor-council at the local level because we have more faith at the local level that a partnership between political and administrative spheres can be achieved with this form. The connection between what is politically acceptable and administratively feasible is the fundamental goal of government. As long as a political culture fosters the

notion of a partnership between politics and administration rather than a conflict, variations on council-manager government are preferable. However, if diversity is so great that representation of segments of a community supersede other considerations, then ways of bringing that diversity to bear on decisions may better be served by a mayor-council form.

As a final piece of advice we reiterate: when considering form of government, start with the problems you are trying to fix and the goals you have in mind. Ask yourself what evidence is available that a change in form of government will fix the problems or advance the goals. Finally, ask yourself, “are our problems due to the individuals we are electing or appointing or due to the system itself?”