

Session 3: National-level Consensus Building

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Panelists: Peter Adler, David Fairman, Jim Fishkin, Susan Collin Marks, Susan Podziba

Scenario: A federal agency has decided to involve the public in a negotiated rule making process (i.e. drafting regulations pursuant to federal legislation). Many questions regarding the role and structure of government advisory bodies in this context are answered by federal legislation (i.e. the Federal Advisory Committee Act). Some questions, however, remain open. For example, what kind of fact-finding or technical studies can and should the advisory group commission on its own (separate from the sponsoring agency)? What approach to joint fact-finding is most likely to ensure an effective balance between science and politics in the development of proposed regulations? And, is it reasonable to seek such a balance through the engagement of ad hoc representatives of various non-elected constituencies? Who should pay for whatever studies the group decides to commission? How might peer-review of the technical work fit into this process? And, what if the regulations in question concern actions or policies that could create serious risks to human health and safety? When fear, anger and emotion run high, what can and should be expected of joint fact-finding or efforts to balance science and politics?

I. Process

In his response to the questions posed by this scenario, J.Fishkin conveyed his interest in including the public in such discussions. He said that it is important to probe the political will to “clarify tradeoffs” and make “causal connections.” Furthermore, he added, the public is “disempowered” when discussing issues about which experts already agree. Therefore, it is important that elites disagree so the public is empowered to think for themselves. However, we need a consensus on which experts should field the public’s questions. We need neutral moderates. Then, of course, there’s the question of who participates, and random sampling is a good way to include people who do not have pre-formed opinions.

D.Fairman suggested that there might be mechanisms for public engagement that can supplement the work of the people at the table. He suggested joint fact-finding as a powerful way to answer analysis-based questions, but not interest-based questions.

J.Layzer agreed, saying that scientists cannot answer all questions. When a collaborative process gives a group of scientists a charge, the group is constrained by what is feasible and legitimate. Although the result is not necessarily biologically defensible, it becomes

the template from which the collaborative process proceeds. It is not too difficult to reach a technical consensus. The question that remains is what are the bounds of uncertainty about that agreement, what were the scientists asked to agree about in the first place, and what are they going to do about that. Since science will not take us to the policy conclusion, P. Adler commented, our goal should be to turn uninformed argument into a better-informed search for solutions. By themselves, joint fact-finding and scientific advisory groups are a “midpoint.” We need to establish relationships and set up a culture of inquiry, he said. We first jointly frame the question as a joint search. We then conduct an inventory of the information relevant to the topic, jointly interpret it, and then grapple with all the uncertainty and limits on our knowledge. This process is not just about scientific knowledge. There is also legal, economic and cultural expertise. D.Kahane asked if there is a reason why the selection of experts tends to involve elites rather than being democratic and why such processes are usually closed. S.Podziba answered that this is dependent on the context.

S.Podziba went on to reflect on the huge challenge for exchanging information during negotiated rulemaking. Uncertainty and power imbalances prevent the government from taking action on its own and compel people to engage with one another. Everyone around the table has something to learn and something to teach. Often, there is not enough time for joint fact-finding because that would involve initiating new studies. Like visioning, it also runs the risk of raising the level of abstraction to too high a level. How, then, do we exchange information? We should use a deliberative process to synthesize and learn from new information. We want to challenge ourselves and advance. We can then fill in what we do know and what we can create. We have to meet the group's needs in terms of how they get them the information they require and how they process that information so they can make informed decisions together. J.Fishkin cautioned that there are many defects with public discourse, such as lack of information, misinformation, contested information, and strategically incomplete information. S.Podziba replied that a criterion for selecting participants in negotiated rulemaking is that they be prepared to negotiate with good faith in good will. With the public watching, discussions about bad arguments are not sustainable and usually get filtered out.

II. Criteria for Deliberative Democracy

L.Susskind commented that the USA and other countries have institutionalized a mechanisms for scientific inquiry, like environmental impact assessment. An EIA requires transparency of decisions that might otherwise be made behind closed doors. It requires the gathering of information, it engages experts and non-experts in dialogue, and it requires accountability and reason giving by decision makers. It requires that scientists consider alternatives to what has been proposed, that proposals be clear to laypeople, and that a written record of the discussion be published for public scrutiny. He asked whether this process “meets all the requirements for enhancing deliberative democracy.”

J.Forester responded that EIA appears too static and does not provide sufficient opportunity to question the project being proposed, and is therefore not deliberative. J.Innes concurred, saying that although it does invite some stakeholder feedback and generate some public knowledge, it is too structured and discourages participation.

M.Elliott added that while EIA was a procedural intervention that added voices to the public dialogue, it is not deliberative. C.Lukensmeyer noted that EIA does create a structural framework. However, within that structure there is a need to figure out how to guarantee equity of voice and access while remaining “authentic.” D.Booher clarified that institutions such as EIA were not designed with deliberation in mind— they were designed to protect people from the government. If we assume that voters are engaged, we need an alternative to EIA because research indicates that these institutions are resistant to deliberation.

F.Fisher cautioned that deliberative democracy, and political theory in general, cannot justify a particular technique. Deliberative democracy is a utopian ideal, a counterfactual that serves as a basis for continual critique of society. There is no fixed body of principles of deliberative theory. In this respect, Fisher opined, deliberative democracy may be more interested in asking questions and testing assumptions, whereas dispute resolution may be more interested in answering questions. J.Dryzek added that deliberative democracy is more like a contextually specific critique that can help with institutional design.

J. Dryzek went on to talk about preferences. He said that reflection on the part of deliberators means changing preferences. Stakeholders have less capacity to change preferences than lay citizens, but there are good reasons to bring both groups to the table and help them examine their preferences together. He asked how we can do this, how to combine lay person deliberations with stakeholder deliberations. J.Fishkin noted that this kind of thinking—recognizing that deliberative democracy is utopian— is a good way to think about democratic reform. We can do social science experiments, he said, to see what people might think under different sets of circumstances.

III. Bias in Mediation

M.Hajer pointed out that the processes under discussion are essentially tools for communication, and that tools are always specialized—they have “biases.” (For example, a screwdriver is specialized to twist screws. This is its bias.) Since no discursive form is

without bias, mediation must have its biases. If we want to rethink deliberative democracy, we should try to identify the bias of mediation. D.Fairman responded that mediation is biased in favor of agreement and consensus. J.Forester added that organization is “the mobilization of bias”—”it organizes some things in and some things out.” He noted another bias of public dispute mediation in favor of public knowledge.