ENVIRONMENTAL MANAGEMENT AND DEMOCRATIC LEGITIMACY

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Introduction

"Stakeholder processes" (about environmental politics and policy) is a phrase that can be used to describe a wide variety of group problem-solving strategies. Interested parties so interact as to identify and characterize environmental problems, to project possible solutions, and to coordinate collective action to manage these problems. Stakeholder processes discussed here are intended to contribute to making environmental policy. Such policy might be called public, but is usually not purely governmental. In stakeholder processes, input is typically sought from both governmental and non-governmental sources. Non-governmental entities consulted might include both business and non-profit community groups.[1]

This chapter points out selected issues about stakeholder processes. It is a mixture of general philosophical considerations; interpretations of various contemporary events; and particularly a discussion of one project, funded by the Environmental Protection Agency and the National Science Foundation, for research in Oklahoma about water management environmental policy in connection with the Illinois River Basin in eastern Oklahoma.[2]

At worst, stakeholder processes can create a manipulated, false impression of democratic community legitimacy when there are actually major flaws in the democratic quality of decision-making practices. For example, the role of interested or affected citizens in making policy may be much attenuated and yet the policy may be depicted as citizen-generated. Such flaws may also include inadequate representation of some relevant community groups, poor environmental education, or other basic problems about institutional structures. (These are overlapping problems.) At best, stakeholder processes can better educate a community about environmental problems and better prepare it to manage its environment; stimulate the

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[1] There is a distinction between (a) those consulted because they have specialized knowledge relevant to the decisions to be made, such as scientific, or engineering background, or legal-administrative expertise, or risk analysis expertise, and (b) those consulted because they are thought to have political standing to have a role in decisions, as interested and affected persons. Stern and Fineberg (1996:3) note that "Risk characterization is the outcome of an *analytic-deliberative process*....The process must have an appropriately diverse participation or representation of the spectrum of interested and affected parties, of decision makers, and of specialists in risk analysis, at each step." While their aim is not the same as that of this paper, much of what is said in their work about analysis and deliberation can be adapted and fit into the present paper's discussion of stakeholder processes. The literature summarized in their work could usefully enrich and extend this paper's necessarily abbreviated treatment of stakeholder processes. Normative ethical and political aspects of decision processes are referred to and used in justifications, but they note "the possibility that a risk decision will violate" certain "ideas of what is morally right is rarely given explicit attention in risk characterization" (Stern and Fineberg 1996:49). Also, their perspective seems to confine itself to "perceived legitimacy," while this paper is more concerned with "real legitimacy."

[2] "Ecological Risks, Stakeholder Values, and River Basins: Testing Management Alternatives for the Illinois River", a multi-year interdisciplinary research project, funded by the EPA/NSF Partnership for Environmental Research (FY 1997), EPA Grant: GAD # R825791. This particular project is far richer and more promising than can possibly be conveyed in the short span of this paper. I urge anyone who works on such topics to familiarize themselves with the relevant research, present and future, done on this project by the project PI, co-PIs, and others. The PI is Mark Meo, from the Science and Public Policy Program at the University of Oklahoma, and the co-PIs are Lowell Caneday, Will Focht, Robert Lynch, Ed Sankowski, James Sipes, Zev Trachtenberg, Baxter Vieux, and Keith Willett.

growth of new democratic institutions; and improve the prospects for the legitimacy of environmental policy. (These are overlapping gains in a best-case scenario.) Between the worst and the best, there are many possibilities.

Moral and political philosophy has a contribution to make to the evaluation of stakeholder processes as responses to environmental problems, especially through the evaluation of claims that democratic community decision-making practices have generated ethically and politically legitimate environmental policy.

Clearly, "legitimacy" here does not refer solely or even primarily to legality as such. (The word "legitimacy," with its legalistic connotations, invites misunderstanding, but is so deeply entrenched in some scholarly prose that it is difficult to dispense with. The colorless "acceptable" – or some other substitute – might be preferable if the specialized meaning were thoroughly explained; nevertheless, I use the problematic "legitimacy"). An environmental policy may have the force of law, but may be flawed normatively (either due to features of the content of the policy itself or the process by which the policy has come to be). Because of such flaws, the policy, though legal, may sometimes plausibly be called illegitimate. On the other hand, interested parties may make references to stakeholder processes (among other things) in justifying environmental management plans as "legitimate" when the plans do not have the force of law or even when the plans are contrary to existing law.

In the case of environmental policy, an important part of the motivation for stakeholder processes is sometimes an antipathy to government regulation of other institutions, or perhaps in its better forms, a desire to get government and other institutions that constitute a community to cooperate in ways that are more satisfactory. Part of what makes such cooperation more satisfactory should be the creation of institutional innovations in a democratic framework for dealing with environmental problems. While I do not share the reflexive anti-statism of those who celebrate "free markets" as a solution to societal problems, I do recognize a need to go beyond reliance on government for legitimacy. I believe that at their very best, stakeholder processes could help create novel institutional combinations, new institutional forms, and new policies to help solve environmental problems. Such processes at their very best could help reinvent democracy in desirable ways. At their worst, stakeholder processes are ways to assist the dominance of powerful institutions, whether corporate or governmental (or more likely objectionable combinations of these) that manifest no genuine concern about democratic legitimacy.

A central problem on which progress is hoped for is this. When "democracy" tries to deal with environmental problems under contemporary circumstances, to what extent and in what ways does it need institutions that are non-governmental to enter into dialogue and decision-making about public policy? This is admittedly not a problem that can be solved in academic research alone. It needs to be addressed pragmatically in societal interactions that address environmental problems. We might optimistically interpret some of the academic projects to which the EPA has contributed funding as attempts to encourage the development of not only policy content but also institutional forms suitable for generating legitimate public environmental policy. From this point of view, problems about the environment can only be addressed by addressing basic issues in political philosophy, issues not only about government but also about the most nearly ethically legitimate mix of institutions in a given community context. It is a problem about democratic community legitimacy, a community being understood as constituted by the mix of major institutions.

The Illinois River Case

This chapter discusses an example of environmental management of watershed pollution currently being studied (and intervened in) by a multidisciplinary team of researchers (including this author). The researchers include faculty in political science, environmental science, economics, civil engineering, philosophy, education, public health, and other areas. The researchers are drawn from faculties of the University of Oklahoma, Oklahoma State University Norman, and the University of Oklahoma Health Sciences Center. The overall study includes consideration of the social, natural, and economic dimensions of environmental problems about watershed management and it includes attention to stakeholder beliefs and values. That study will compare and evaluate policy alternatives; it also aims to educate and build consensus.

This multidisciplinary, multi-year project ("Ecological Risks, Stakeholder Values, and River Basins: Testing Management Alternatives for the Illinois River") aims to address problems about environmental policymaking concerning the Illinois River Basin in eastern Oklahoma. Project descriptions variously refer to legitimacy or similar concepts.

> The Illinois River, one of the most scenic rivers in Oklahoma, has been the center of political controversy about private property rights and environmental protection for more than 25 years. The Illinois River has provided multiple social benefits to the citizens of Oklahoma through its use for recreation, water and power supply, flood control, and nutrient removal. Yet, the inability of different interests to reach agreement on how to protect the Illinois River watershed has placed its hydrologic resources at increased risk of long-term degradation.
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> This 3-year interdisciplinary research project demonstrates how different environmental and social values held by river basin stakeholders can be identified and compared so that more effective environmental protection strategies can be determined and adopted by local land and water use interests and state agencies.
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> Visual simulations developed from GIS-based hydrological models will be shown to stakeholders in conjunction with focus group sessions to ascertain management preferences and the overall legitimacy of negotiated agreements.
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> The entire process will be tested to determine the degree to which the process is viewed by experts and lay stakeholders as efficient, effective, and legitimate, and therefore acceptable (Meo *et al.*, 1988).

In a later statement, again, it is written that "The project objective is to identify and compare different environmental and social values held by stakeholders in the Illinois River watershed, and to test a management protocol that is technically effective, economically efficient, and socially and politically acceptable." This 1999 statement does not use the word "legitimate" but does seem to use other concepts that do similar work; it refers, for example, to what might be "politically acceptable" and to "consensus" (Meo *et al.* 1999). The references to "legitimacy" and to what is socially and politically "acceptable" might be construed as either allusions to the perception or reality senses of "legitimacy" (or "acceptability"). (See distinctions made in the next section entitled, "Conceptions of Legitimacy").

A complicating, and central agency involved in these issues is the Oklahoma Scenic Rivers Commission, a public agency. Persons serving on it, along with persons from Oklahoma State University and the National Park Service, devised "The Illinois River Management Plan" (Bality *et al.* 1998). Ed Fite, Administrator of the Oklahoma Scenic Rivers Commission, writes in the Foreword to this report,

> The Illinois River Management Plan has been anything but a normal exercise to develop and write. It has been a convoluted process that I would be unable to convey in this brief foreword. The most unique and valuable aspect of the management plan lies in its contributors. This plan was not written solely by government, but also by many stakeholders who took their valuable time to become involved. Participation was open to all who wished to take part. This consensus-building process between government and the private sector lead to the 22 major goals and 130 strategies included in the plan and reflect a wide variety of needs and concerns for the preservation and protection of the Illinois River Basin.

The management plan was endorsed by the OSRC by a narrow vote. The Executive Summary of the plan states,

> In 1993, concerned citizens, with direction from the Oklahoma Scenic Rivers Commission (OSRC), National Park Service, and Oklahoma State University, began to develop a plan to manage the river corridor's natural, cultural, and historical values. Plan development and implementation is a citizen-driven initiative that has brought together a large number of people willing to work cooperatively to improve the future of the river. Publication of the management plan will complete the initial stage of this effort; the process of implementing the goals and strategies set forth will be ongoing for years to come.

It remains to be seen what the relation will be between this OSRC-related management plan and the management alternatives that are to be generated and compared by the academic, EPA-NSF funded project.

Phil Lorenz (1999), President of the Scenic Rivers Association of Oklahoma, comments on problems about the Illinois River, claims that, "The Scenic Rivers Commission, which was restructured into a working team after a fractious beginning in the 70s, is now showing signs of coming unglued again." Lorenz continues, "A notable symptom of this was the cliffhanging 6-5 vote in December to approve the Illinois River Management

Plan. The ominous feature of this action is that the five negative votes were cast by the locally elected commissioners. Commissioner Gerald Hilscher (whose slot on the board is filled by appointment by the governor) pleaded with his fellow commissioners to offer amendments if they objected to particular features of the plan, but there were no amendments, and the NO vote was apparently against any plan at all." Lorenz goes on to a mostly favorable discussion of the plan and upholds the authority of the OSRC, denying that the rights of the local community should prevail. He writes, "The Commission's twofold function is to preserve the river and to protect the rights of the local community. If the second function is all the local community will support, we don't need a Commission at all." However, without the Commission, Lorenz writes, among other debits: "There would be no monitoring of water quality, and no one with clout to champion action against polluters. The river would become a ditch for disposal of chicken litter, pesticides, manure from cattle, and (more recently) sewage from the Watts lagoon. Lake Tenkiller would experience more and more of a suffocating bloom of algae in summer. Swimming and fishing opportunities would go downhill in both river and lake."

Lorenz goes on to make some proposals, including increased user fees and an enlarged scope for the OSRC's work. He argues that "we" should "Reexamine the requirements for membership on the Scenic Rivers Commission, so that commissioners will honor their responsibilities to both of the two functions." Finally, he insists, "These measures will require legislative action. We 'outsiders' don't want to ride roughshod over the interests of local people who own the land and pay taxes. However, they are benefiting from our taxes; and we boost their economy by being there, so we also have some right to influence policy." (Regrettably, this is an argument that appeals to money and property as a source of legitimate political authority.)

Conceptions of Legitimacy

One basic distinction necessary for this chapter is as follows. "Legitimacy" may refer to a predominant perception (in the sense of a belief, plus correlative pro-attitudes) among a population that some feature of public policy is morally acceptable, perhaps obligatory. Actually, moral acceptability may not always be precisely what is involved, but it is a close enough fit for present purposes. The "perception" sense of "legitimacy" is to be distinguished from the normative claim that some feature of public policy is rationally binding, that it ought to be thought of and acted on as morally legitimate. We might call this the "reality" sense of "legitimacy," and we write about "real legitimacy."

There is also a possible distinction between procedural legitimacy as such and the normative rightness, obligatoriness, etc. of the content of a policy. If a policy has been arrived at by defensible social processes, including the generating institutional mix, it is unlikely, but logically possible, that it is still not objectively a good, let alone the best policy. We have some terminological options here. We could reserve the word "legitimate" to characterize only those policies with content that we think ethically good, right, etc. Or we could instead use the word to apply to policies that we think have been arrived at by appropriate processes, including the description of institutions in the description of these processes, in pure cases bracketing the question whether the policies are really good, right (etc.) policies. Sometimes it seems that both of these meanings of "legitimacy" are used in a text. We might refer to these senses of "legitimacy" as "substantive" and "procedural," respectively. Substantive and procedural legitimacy may often go together – and there is often interplay of the two concepts in deciding when to apply either – but they do not absolutely have to coincide.

It is to be noted that the distinctions between perceived and real legitimacy, and between substantive and procedural legitimacy, cut across one another. It seems that each of perceived and real legitimacy can be subdivided into references to substantive and procedural legitimacy.

Five Legitimacy Problems

In the sections that follow, five ethical problem areas will be identified about democratic community legitimacy (primarily, "real" and "procedural" legitimacy) of environmental policymaking by stakeholder processes. There is no attempt to provide an exhaustive list, which is an impossible task. There is also no attempt to provide criteria that could distinguish between legitimacy and non-legitimacy, a task which may or may not be possible to carry out, but which is beyond the aims here. The list is calculated more modestly to identify some major (overlapping) problems about democratic community legitimacy of stakeholder processes in environmental policymaking. Arguably, all of these problems are directly or indirectly concerned with democratic citizens'

freedom and equality, though there is not the space to argue for this contention here. All of the problems are arguably about the distribution of effective power in a community that is necessary for democratic legitimacy.

Problem area 1 is about relations among different cultural groups in a multicultural democratic society. This will be illustrated by the example of Native Americans in the context of the Illinois River Basin (though it has more general applicability). From my point of view, the main issues here are about "real" and "procedural" legitimacy.

Problem area 2 is about local governmental entities as contrasted with more centralized entities (e.g., states in the U.S. as contrasted with the federal government, or cities and other localities as contrasted with the state or federal government). Stakeholder processes are often about problems that extend across local boundaries, sometimes governmentally drawn boundaries, and require the participation of both local stakeholders and others. Again, this is primarily about real and procedural legitimacy.

Problem area 3 relates to the observation that the role of scientific and related technical expertise in stakeholder processes raises major issues. While there are issues about substantive legitimacy that could be raised in this context, the primary challenge is to real and procedural legitimacy and the appropriate incorporation (consistent with democratic citizens' freedom and equality) of scientific and technical expertise into stakeholder processes.

Problem area 4 concerns the differential effectiveness of various groups in stakeholder processes based, at least in part, on access to legal resources, such as the power to sue or use other legal tools. This is, again, a matter of real and procedural legitimacy.

Problem area 5 recognizes that economic, as well as concomitant political, inequality poses a major problem for stakeholder processes. This is acknowledged in the rationales for some programs within the EPA. This is perhaps the most basic worry expressed here about real and procedural legitimacy and stakeholder processes.

Cultural Relationships

There are many reasons why a gap may exist between perception and reality about legitimacy. One example connected with relations among different cultural groups in a multicultural "democracy" is the following. Suppose that there are conflicting claims about the ownership of land, perhaps because there are disputes about the acquisition of property in land that was formerly inhabited and used by indigenous cultures currently dispossessed. It could not follow morally that a consensus among stakeholders that does not include the relevant indigenous peoples suitably involved (whatever that means exactly) could generate legitimate environmental policy. It would remain an open moral question whether policy generated by such stakeholder processes is really and procedurally legitimate, even if all agreed that it was. Moreover, inclusion of some members of the indigenous cultures as individuals along with many other stakeholders of other cultural backgrounds would not seem to be enough for legitimacy, at least in some cases. Issues about group rights and group self-determination in some cases would generate problems about real and procedural legitimacy.

To some extent, the Environmental Protection Agency recognizes the importance of such issues in its programs. To take one example, EPA materials note, "The American Indian Environmental Office (AIEO) coordinates the Agency-wide effort to strengthen public health and environmental protection in Indian Country, with a special emphasis on building Tribal capacity to administer their own environmental programs."[3] More generally, EPA also has environmental justice programs: current internet materials refer to President Clinton's Executive Order 12898 on February 11, 1994, "to establish environmental justice as a national priority." Such materials also state, "The *Order* focuses federal attention on the environmental and human health conditions of minority populations and low income populations with the goal of achieving environmental protection for all communities."[4] This section of the paper concentrates more on the problems of minority cultural groups, especially Native Americans as one example.

Tahlequah, Oklahoma is the site of the OSRC headquarters. It is located in the Illinois River Basin. Tahlequah is also the county seat of Cherokee County, Oklahoma and is the capital of the Cherokee Nation.

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[3] See on the Internet (http://www.epa.gov/indian/miss.htm), July 6, 1999.

[4] See on the Internet (http://www.epa.gov/oeca/oej/), July 6, 1999.

A good deal of local tourism literature refers to the land of the Cherokees. A free handout map "Produced for the Tourism Council of the Tahlequah Area Chamber of Commerce," for example, was available in the Headquarters of the Oklahoma Scenic Rivers Commission on 9/11/98, when many of the Illinois River project research team met with Ed Fite. The map plus informational items printed on the same item invites the reader to "Discover Historic Tahlequah Capital of the Cherokee Nation." A number of the advertisements printed in the map material are from such sources as resorts, Elephant Rock Nature Park, Tenkiller State Park, motels, beds and breakfasts, etc. The map also refers to the "Tahlequah Terminus of the Trail of Tears and Capital of the Cherokee Nation Since 1941" and mentions related area attractions including the "Cherokee Heritage Center" and the "Cherokee National Museum." It should be added that the official state map of Oklahoma refers to the state as "Native America" and alludes to and depicts "American Indians" as part of its promotion of the state for tourism, both tourism by Oklahomans and non-Oklahomans.

The methodology of the EPA-NSF study, however, whatever its other merits may be, does not especially emphasize any particular culture such as the Cherokee tribe as a stakeholder group, though it does aim at representativeness. (Attempts have been made, however, to involve the Cherokee Nation of Oklahoma in policy maker deliberations, though that group had no representative at the first policymaker workshop, held on October 3 and 4, 2000, in Tulsa). For example, Focht (1998:1) describes how research team members

> "interviewed policy elites (policymakers, policy implementers, policy and technical experts), local residents and landowners, business owners and operators, tourists and recreationists, environmentalists, civic group and opinion leaders, and others who perceived that they have a stake in the outcome of river basin management planning. To maximize the representativeness of our sample, we divided the basin into nine regions – eight geographical and one functional (policy elites). Representativeness was also assured by our inclusion of participants from all stakeholder classes within each region (e.g., agriculture, forestry, plant nursery, animal feeding operation, outfitter, all levels of government, retail business, tourist and recreationist, resident, etc.). Finally, we used 'snowballing' to locate and include others who held opinions and positions different from those already interviewed."[5]

"Representativeness" here is not solely a statistical notion. It is clear that it is intended to have some sort of normative and probably specifically ethical force. Otherwise, it would be hard to understand why this report notes not only that "Participants were identified initially from lists of attendees at OSRC public hearings and from references to those known to the researchers from previous contacts," but then goes on to talk about snowballing and increasing representativeness "by interviewing representatives of all participant classes that were present in each of the nine regions, especially of those who were opinion leaders," and adds that "Finally, we attempted to ensure all races and both genders were fairly represented" (p. 4). It is to be noted that the stakeholder classes include those in agriculture (farmers) and other businesses of various sorts, as well of residents of different types, and environmentalists.

The analysis does not seem to attempt to elucidate legitimacy considerations that might not be captured in interviews with individuals, e.g., actual political relations among different cultural groups. It is possible that in the consensus-building phase of the project such relations may come more to the fore; but perhaps not. If not, the project will still be informative in its study of stakeholder values. It would, however, be desirable to supplement the project approach with an additional inquiry into the politics of multicultural interactions.

In the case of the Illinois River Basin, issues about environmental justice seem potentially applicable to questions about democratic community legitimacy of any environmental public policy, especially given considerations about tribal sovereignty. It is, however, asking a great deal from such a project as conceived to expect that it should fully address overall legitimacy problems generated by relations among cultures, perhaps even the more circumscribed area of relations of the dominant culture considered as an aggregate and such tribes as the Cherokee nation. Perhaps it would be best to say here that, besides environmental justice initiatives, the Environmental Protection Agency's efforts to deal with environmental problems in "Indian Country" do need to be taken into account in some supplementary inquiry, both for this particular project and for others. In such supplementary inquiry, issues about multiculturalism in a democracy, and Native American sovereignty, would have to be considered in greater depth than is possible here.

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[5] For an interesting approach to legitimation, see Focht *et al.* 1999.

Intergovernmental Relations

Another set of issues that need further exploration concerns the implications for legitimate policy of differences between local and non-local stakeholders, alluded to in previous sections. Tribal sovereignty issues are a subset of these issues, but we shall proceed to consider others. One important illustration of this concerns questions about state jurisdiction in the U.S. In the case of the Illinois River Basin, the relations between Oklahoma and Arkansas are particularly significant. Keith Willett, an agricultural economist and project co-PI, has for his own good reasons, not centered on issues about legitimacy, industriously explored some of the connections between issues about Arkansas as well as Oklahoma for Illinois River Basin water management.

It should be noted that there is, of course, both a local and national background to some of these problems. In describing a small part of the local background, I shall not discuss Willett's interesting work, some of which will be available independently in any event. It is worth mentioning that the Sierra Club has taken an interest in hog and chicken factory farms, especially in eastern Oklahoma. In a letter to the Norman, Oklahoma newspaper, Karl M. Rysted, writes, "I just wanted to thank you for your editorial of May 18th about the need for increased regulation by the Environmental Protection Agency ... of hog and chicken factory farms, also known as CAFOs (Confined Animal Feeding Operations). I thought the article went to the crux of the matter in stating that 'the EPA is bound to prevail, however, as people in states that have not been involved in CAFO disputes become better informed.'" (It should be emphasized that chicken waste seems to be a particular problem in the parts of the Illinois River Basin involved in the project study. It is a problem, and is locally perceived as such, according to IRB project work). Rysted adds,

> We at the Sierra Club have taken on the task of doing just that (i.e., informing the public), joining with rural residents, family farmers and public health officials on this issue. We're working together to find a national solution to this problem....Furthermore, although we were successful in getting a poultry bill passed in the state Legislature, much of the water pollution in eastern Oklahoma will continue to flow in from Arkansas and Missouri, until we have tough national standards which are enforced. According to a study of Lake Eucha, Tulsa's source of drinking water, released in February 1997 by the Oklahoma Conservation Commission, poultry growers in Arkansas and two municipal water treatment systems in Arkansas were among the phosphorous sources feeding algae in the lake. Because of Arkansas pollution, the cost of treating water for Tulsa and other northeastern Oklahoma communities increased. These Arkansas sources produce about 77 percent of the total phosphorous in the watershed, according to the study.

Rysted also notes that "the Sierra Club calls for a nationwide moratorium on construction of new livestock factories."

In *The Norman Transcript* of 8/14/98, an article concerning an Environmental Protection Agency meeting held in Oklahoma City reported "on the impact of large hog and chicken farms on the environment." Before that meeting, the Sierra Club had held its own public meeting. "Two EPA officers were present to listen to the concerns of Oklahoma residents on the possible conditions of water in the state if the general permit for hog and chicken farmers, which does not allow for public participation prior to permitting of a specific facility, is accepted." Objections were voiced by an environmental program director for the Quapaw Tribe, who spoke favorably about the family farm and against corporations. "He told EPA officers that his group had just heard about the hearing earlier in the day. Due to the fact that the tribe was not consulted about general permits within their communities, it is asking for a 45-day extension on public comments so that all concerned tribe members could have a voice." A Sierra Club regional vice president "told the officers that the EPA already had identified a total of 70 different water bodies from all across Oklahoma already impaired by the animal factories," including "some of our state's most important resources," including the Illinois River.

As the interest of the EPA and Sierra Club suggest, the issue is of more than purely state-level significance. In an article in *The New York Times* of 8/26/98, "Poultry Growers Unite to Address Waste Issue," it is reported that "Chicken and turkey producers across the country are trying to develop a uniform, voluntary plan to handle the waste runoff from their operations in hopes of avoiding either new Federal rules they fear could be costly or state-by-state rules that could create a competitive imbalance. The situation has come about in part because the Clinton Administration has declared agricultural runoff to be one of the biggest threats to water quality."

The IRB project report of 10/31/98 (p. 12) claims that:

> Farmers tend to downplay the impacts of cattle and poultry, instead insisting that Fayetteville (Arkansas) is the problem. They want more research on Fayetteville to prove that it is the problem and to exonerate farmers. They are worried that the OSRC is plotting to take their farms away. Institutional distrust is highest in this group, possibly because of their high stakes. They perceive their lifestyle as fulfilling because it is rural; this keeps them isolated from others. Thus, they view others who wish to recreate, reside, or develop in the area as a threat to their isolated lifestyle.

This localism is both a source of some types of community at the local level and a difficulty for attempts to create institutions with enough legitimate authority, scope, and clout to cope with environmental problems.

For some sorts of localism, even the authority of Oklahoma state government seems questionable. The issue raises complex issues about who controls state government and who supports various measures that are supposedly pro-environmental or anti-environmental. At the same time, the Clinton Administration is said to support more of a role for state and local governments (though this leaves unresolved what balance to strike between state and local governments).

There is a constant tension between centralizing and decentralizing tendencies in social and political arrangements. There are skirmishes of many types. No simple moral vision will do justice to the varied ethical issues involved. Sometimes more centralized measures are justifiable, at other time more decentralized measures are more appropriate. Interestingly, we may encounter alliances between centralizing tendencies and some decentralist environmental measures. Some interests favorable to economic concentration of power within a market framework (a type of centralization) may also support more localism about environmental regulation. There are many Republicans like this. It is somewhat tempting to think that consistent decentralization would be best for citizen autonomy and legitimacy, but this is far from obvious. The issue has to be dealt with in ways that cope with the larger picture and the details of a local socio-political context, and does not admit of a very general solution.

Role of Scientific and Technical Expertise

The next problem area for stakeholder processes commented on here is the role of scientific and related technical expertise in stakeholder decision-making processes. Zev Trachtenberg, a researcher on the Illinois River project, takes this issue up in his recent work, but I shall not discuss his approach here. In a way, this is an issue about those two concepts basic to democratic ideals: freedom and equality. If we think of freedom as, in part, the capability to choose in effective ways, those who think about environmental problems without knowing the relevant science (reasonably well) lack freedom. They are also unequal in deliberations as versus those who have the knowledge.

The problems here are interestingly complex. Terry Yosie and Timothy Herbst (1998), in an essay on stakeholder processes and environmental decision-making, raise the issue of how scientists are involved in stakeholder processes. In a section entitled "Clarifying the Roles and Capabilities of Scientists and Other Stakeholders," they acknowledge that stakeholders have varying roles and capabilities in a decision-making process. They quote a World Bank publication, "Experts of all types – engineers, social scientists, economists, sector specialists, institutional specialists, and more – need to contribute what they know." Yosie and Herbst endorse a picture derived from a study in which a division of function is allotted among citizens, government officials, and scientists. One feature of this picture is that citizens are seen as providing necessary input on values and "providing social and political risk information" among other inputs. "Governmental officials' primary role was seen as recommending and choosing policy options." Finally, Yosie and Herbst (1998:22) write that "scientists were viewed as providers of technical information, but many also strongly believed that scientists should not have a role in choosing policy options or offering input on values."

One doubts that this picture will work. One worry is the supposed dichotomy of "values" and "technical information." Science as an institutional activity (such as conducted in science-based institutions in engineering, medicine, and so on) tends to incorporate positions on various value issues. Sometimes this is pertinent to environmental issues. If the value-ladenness of technical theory and information is not highlighted, danger exists that these values will be input into stakeholder processes in a way that is shielded from critical examination. Due to the social prestige that science enjoys in some quarters, such values may exert undue influence on stakeholder processes. Also, science in some forms can reasonably assist in the critique of values held by individuals and communities. In a way, the picture that Yosie and Herbst endorse both overestimates the idea of value-free science and underestimates the potential critical importance of science in relation to values.

Another worry is that science is conceived with little emphasis on the fact that scientists are enabled to do what they do, for the most part, by a network of institutions, including government and business. Yet, another concern is that Yosie and Herbst write about "scientists and other stakeholders." This could just be an acknowledgment that scientists can have vested interests in environmental issues, or that they sometimes, for various other reasons, are stakeholders in senses in which anyone else might be. However, it could be that Yosie and Herbst are prejudging the question whether scientists are typically stakeholders. Finally, the study which Yosie and Herbst apparently endorse is about perceptions of legitimacy. The perceptions that people have are shifting and manipulable, and do not warrant drawing conclusive inferences about the place of science in arriving at real legitimacy (nor, in particular, real procedural legitimacy).

Access to Legal Recourse

An issue about stakeholders and stakeholder groups who are taken seriously in an environmental decision-making process is their access to legal recourse. According to some accounts, this is becoming more difficult in some respects. Glaberson (1999), referring to an article by Echeverria, director of the Environmental Policy Project at Georgetown University Law Center, and Jon T. Zeidler, reports that they claim there has been an undermining of the capacity of citizens to bring lawsuits to court about environmental issues. This issue is relevant to democratic legitimacy of stakeholder processes since it is pertinent to the functioning of stakeholder groups with effective power in stakeholder decision-making processes. A group is more likely to be consulted and its opinions weighed if it has influence – and one important type of influence is the capacity to sue. The capacity to sue, within limits, is an incentive to others to engage in stakeholder processes that include those who have the capacity, as well as mattering for other reasons. This perspective is controversial. Some, for example, warn that if using the courts looks more attractive in terms of results than do stakeholder processes, then there are poor prospects for stakeholder processes. Thus, Yosie and Herbst (1998:18) write that "if stakeholders believe they have a chance at a better outcome using the courts or the regulatory process, stakeholder processes are unlikely to generate a successful outcome."

Echeverria and Zeidler (1999:1) write, "Congress believed that granting citizens a direct right to sue would temper the risk that changing political winds and special interest influence could undermine diligent enforcement of environmental laws..."Currently, however, the effectiveness of citizen suit provisions is weakening under the cumulative weight of recent U.S. Supreme Court decisions limiting citizen 'standing' to sue." They give many examples, including many involving water pollution, of court decisions at the federal level which limit the standing to sue, e.g., of citizens living along a river in New Jersey, a San Francisco Bay environmental group, and so on. They argue that the gravest impact has been on standing to sue under the Clean Water Act. In 1972, amendments to this act enabled "any citizen" to sue, "to seek injunctive relief, civil penalties payable to the United States treasury, and reimbursement of legal costs and attorneys fees" (p. 14). "But, following the lead of the Supreme Court, the lower federal courts have recently raised the bar for citizen standing in CWA cases, undermining the regulatory scheme established by Congress" (p. 15).

Economic and Political Inequality

Perhaps the major issue about legitimacy is the role of combined political and economic inequality in structuring and determining the outcome of stakeholder processes about environmental policy. This is a huge and obvious problem. The valuable discussion prepared by Yosie and Herbst (1998) about stakeholder processes in environmental decision-making, for example, was the outcome of a project "supported by a grant from the American Industrial Health Council, the American Petroleum Institute, and the Chemical Manufacturers Association." Their discussion is full of useful ideas, but one inevitably wonders what spin is being put on issues concerning stakeholder processes, given the sources of support for the project.

A cynical but unavoidable thought about the degree of cooperation now common between government and industry is that sometimes, even often, it results in government abandoning any plausible role as a democratic and legitimate regulator of activities with an adverse impact on the environment. However, it would be much too quick to say that this is the full truth. A much more hopeful attitude is expressed by Carmen Sirianni and Lewis Friedland, who are interested in what they call "Civic Environmentalism" as an expression of the democratic impulse. They talk about "the limits of top-down regulation" and discuss the emergence of civic environmentalism, including as one element in a complex account "collaboration among various communities, interest groups, and government agencies, often initiated by a period of adversarial conflict." However, they emphasize that they "do not offer these as a full blown alternative to national regulatory tools and top-down controls. As Dewitt John (1993) has argued in his important book on this topic, civic environmentalism makes

sense as a complement, not a substitute, to regulation, and a strong federal role is often required to trigger civic approaches."[6]

Conclusion

The role of democratic government remains and will remain important in environmental protection, but invention of participatory institutions that are non-governmental and cooperation between government and non-governmental institutions are important, too. The Illinois River project, and the challenges to legitimacy I examine here, imply quite general problems about stakeholder processes, environmental policy, and democratic community legitimacy. Such problems are applicable in all USA contexts, and indeed, globally. Thus, while local, the Illinois project directly implicates more national, and probably even global, issues. Typically, environmental policy planning in a would-be democracy aspires to be part of a process that has real ethical and democratic legitimacy, especially in a procedural sense. Only that would give basic reasons to citizens to accept and act on the policy recommendations. (One more global example: environmental policymaking in South Africa, which since 1994 has more democratic institutions than under the apartheid regime, also refers to stakeholders, calls for broad participation, responds to the claims of indigenous peoples and to a multi-cultural society, deals with national and provincial government, and in general faces environmental problems broadly analogous to those in the United States that are discussed here.[7]) If there is movement toward a better future, there will eventually be changes in those non-governmental institutions so that the mix of institutions and the way they interact will be altered. This is not to take on the mantle of a prophet and say it will happen, but if there is improved democratic community legitimacy about environmental policy, it will require democratizing changes in our basic institutions. No guarantee exists that such progress will occur. Both government and non-governmental institutions must face the basic problem of severe inequality of citizen influence. This remains and will remain (in the absence of fundamental changes) an obstacle to democratic community legitimacy. Any simpler attitude than this will not do justice to the situation.

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[6] See also Sirianni and Friedland at http://www.journalism.wisc.edu/cpn/sections topics/environment/civic_perspectives /civic_environmentalismA.html. I am grateful to Mark Meo for calling my attention to their work.

[7] See, for example, a 1997 White Paper on Environmental Management Policy issued by the South African Department of Environmental Affairs and Tourism, (currently on the web at http://www.environment.gov.za/white_paper/ envmanagement.htm), especially the section entitled, "The Consultative National Environmental Policy Process."

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