

Toward Just and Competent Decisions¹

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One of the reasons I delight in this kind of exchange is the intellectual generosity extended by colleagues. My heartfelt thanks to all of the authors for their insights and contributions to the dialogue. I would especially like to thank Paul Stern for his expansive mind and commitment to the commonweal.

Before responding to the commenters, I would like to make two observations about this process. First, I have discovered that in evaluating a work like *Understanding Risk*, the evaluator tends to simplify the material whereas the authors have distilled the material. That is, many of the commenters were correct when they said that I mischaracterized the report or didn't fully represent its message. Caron Chess, Paul Stern and Tom Webler worked on *Understanding Risk* for over a year. It is certainly presumptuous of me to comment on it in such a short, and perhaps bulldozer-like way. I am sure I missed many nuances in my desire to build a new road through public policy. I appreciate their corrections and insights.

Second, I observe that all but one of those who responded to my paper are scientists or academics of one stripe or another, in spite of the best efforts of the editors to include more lay people. The difficulty they had, and the resulting tenor of the dialogue indicate one of the problems of creating a process of analysis and deliberation.

My substantive comments address two issues, the shift in power when deliberation is added to the equation and the recommendations made by the responders.

Power

At its core, *Understanding Risk* is radical because if followed it fundamentally shifts power. It is no secret that environmental decision making is made in the crucible of money. And those with the money have the power. We cure disease rather than prevent it so someone can make a buck off the pill. We clean up pollution rather than prevent it for the same reasons. Decision-makers cloak themselves in the ever more remote rhetoric of sound science and risk assessment rather than the commonplace wisdom of "an ounce of prevention is worth a pound of cure." As Ozonoff aptly points out, "the agency/industry/policy maker has shot the arrow, and the risk assessor obligingly paints the target around it ..." In this world, power is coercive.

Barry Lopez, in his new book *About this Life: Journeys on the Threshold of Memory*, asserts, "...while American society continues to value local knowledge as a quaint part of its heritage, it continues to cut such people off from any real political power. This is as true for small farmers and illiterate cowboys as it is for American Indians, native Hawaiians, and Eskimos" (1998, 137). Webler recognizes this problem when he argues for a just and competent process which capitalizes on the local knowledge of affected parties. The power shift advocated in *Understanding Risk* is designed to institute justice.

The committee who wrote *Understanding Risk* understood that adding a deliberative component to the existing analytical framework of decision making would change the relationships of power, particularly if we invited the farmer and the American Indian to the table. Webler addresses this idea by saying we need to "rethink our assumptions about the privileged role" scientists play. Tuler also comments on the issues of power, status and authority in his discussion of "patterns of privileging." In my original paper, I argued that we needed to redefine the role of scientists and define it as sharing decision-making power. This notion of shared power inheres in the label "co-learner" rather than "expert." In this world, power is communion rather than coercion.

There will be resistance to sharing power and giving decision-making authority to those affected by a decision. The resistance will come from all parties — the scientists, the lay people and the agency employees.

Let me turn to the stakeholder's resistance. I hear a quiet voice in the back of my head — the voice of one of those farmers asked to join in yet another public participation process. (We might note that being asked would be a novel experience for the small farmer since she almost never flies to Washington DC, or even the state capitol to participate in decision-making. In the first place she's rarely asked. In the second place, the Farm Bureau is going to claim that it speaks for her.) The weary voice says, "Why? What would be different? Is it worth my time?" What indeed would be different if any of the recommendations or commentary were carried through in some risk situation?

Recommendations

Chess, Dietz, Shannon, Bradbury and Stern propose more research into implementation of deliberative processes

and analysis of their limitations. (Tuler suggests a different line of inquiry: organizational learning.) Chess, Dietz and Shannon present the threshold questions agencies need to ask regarding the sufficiency of information and agreement on values prior to a deliberative process. Fortunately, the authors of all three papers are not advocating more research to delay action (as is too typical), but research to provide “practical guidance” to managers and scientists on how to implement these processes. I agree that any information that will assist agencies, scientists *and* stakeholders carry out successful analysis and deliberation will lead to better policy. One model for that guidance might be a book like, *Getting To Yes* which described a process for conflict resolution and was used by lay people, scientists, and agency staff (Fisher and Ury 1981). I would urge that this kind of guidance be accessible and available to all parties, including stakeholders.

Such guidance would be particularly useful if it dovetails with Paul Stern’s recommendation to consider the utility of various decision rules for environmental policy. The National Academy of Sciences has devoted years to risk assessment — certainly a method for “understanding risk” — but now has an opportunity to bring to the fore other decision rules, such as the precautionary principle, which expresses a different set of values than risk assessment as practiced by federal and state agencies.

Weblor offers some diagnostic questions which can produce processes that, in his words, are “competent and just.” His elegant questions could be used as goals for establishing a process and used later to evaluate the process.

I would like to focus on one word (“respectful”) in Weblor’s fourth question, which asks “How can we create venues for deliberation among interested and affected parties in which shared and individual concerns emerge and become clarified, and which enables a discussion that moves toward closure in a respectful and productive manner?” The notion of respect is the fulcrum for both the process and substance urged in my paper and the process described in *Understanding Risk*.

In contrast to the idea of respect, the idea of reason has dominated U.S. law and policy for 150 years. We use the “reasonable person standard” to judge civil offenses in our legal system. And the whole notion of analysis carries with it the philosophic tradition of reason. Some years ago I collaborated on a different legal standard to judge offenses

against dignity, particularly sexual harassment, and for occasions of uncertainty. That standard is the “Respectful Person” (Bernstein 1997). “To be a respectful person is to treat other human beings as persons who are as valuable as you are — even if you have had advantages that they have not had. It is to acknowledge their dignity and humanity, to recognize that they are like you, yet have their own goals and wishes” (Bernstein 1997, 523).

I offer it here again. *Understanding Risk* describes a process that is not only reasonable, but respectful of local knowledge and the insights of scientists. Just as an employer has a responsibility to provide a respectful place of employment, so too do policymakers have a responsibility to provide a respectful process for analysis and deliberation.

But Respect goes beyond process and also addresses substance. For example respect undergirds the notion of the precautionary principle and, as a decision rule, therefore, more appropriately fits the process described in *Understanding Risk*. Bernstein says, “The precautionary principle asserts that society should anticipate, rather than simply attempt to remedy, activities that harm the environment. Urging policymakers to err on the side on nonencroachment and distance, the precautionary principle expresses respect. [...] Like the ethical duty to refrain, the precautionary principle counsels hesitation; the respectful person understands the prudence of caution” (Bernstein 1997, 514-515).

Herein lies wisdom as well as just and competent decisions.

Forum Editors’ Note

1. In writing her response to the commentaries, the author did not have the full set to review. Missing from the commentaries she reviewed were those by Trisha Pritikin and Mike Sage, and, therefore, she was unable to comment on the content of their contributions.

References

- Bernstein, A. 1997. The respectful person. *Harvard Law Review* 3(2), 446-527.
- Fisher, R. and W. Ury. 1981. *Getting to YES: Negotiating Agreement Without Giving In*. Boston: Houghton Mifflin.
- Lopez, B. 1998. *About this Life: Journeys on the Threshold of Memory*. New York, NY: Alfred A. Knopf.