

Legitimacy, deliberative arenas and the new rural governance

Steve Connelly, Tim Miles and Tim Richardson

Steve Connelly is a Lecturer, Tim Miles a Research Associate and Tim Richardson a Senior Lecturer at

The Department of Town & Regional Planning, University of Sheffield, Winter Street, Sheffield S10 2TN, England

DRAFT REPORTING ON ONGOING RESEARCH – NOT FOR CITATION OR QUOTATION

Abstract

It is widely accepted that new governance structures are necessary in order to address the challenges inherent in the aim of rural sustainable development. There is also a widespread assumption, often elevated to a normative principle, that to address the need for the integration of diverse interests such structures should bring stakeholders together in ways which encourage the development of consensus through deliberation. However, effective governance structures must not only have the institutional capacity to act but also the legitimacy to do so. Creating such structures is not straightforward: bringing stakeholders together may promote but does not guarantee any or all of sustainable development, legitimacy, or the capacity to manage territory.

This paper seeks therefore to open up debate on the legitimacy of different forms of deliberative governance structures and, further, whether the emphasis on creating new deliberative arenas is necessarily an improvement over more traditional forms of governance. It draws on research which examined decision making for sustainable transport policy in a single national park – the Peak District in England. In order to integrate conflicting interests and build capacity to act the Park Authority established three very different types of deliberative arenas: strategic partnership working, local consensus-building, and an extension of its own representative democratic structures. These were analysed to compare how stakeholders' interests were integrated or marginalised, and so the extent to which the structures' legitimacy was constructed and sustained as stakeholders also sought to satisfy the potentially conflicting demands of increasing effectiveness and advancing sustainable policies.

Introduction

It is widely accepted that new governance structures are necessary in order to address the challenges inherent in the aim of rural sustainable development. The linked rationales for this are the nature of the problems to be faced, and the incapacity and eroded legitimacy of existing modes of government to address these problems. The shift from rural government to governance is thus part of a wider trend, reflecting the more general decline in the status of traditional representative democratic processes and institutions, which is resulting in the promotion and emergence of 'new structures of governance' (Goodwin, 1998: 5) – the familiar partnerships and networks emerging in every field and at every scale of action.

There is also a widespread assumption, often elevated to a normative principle, that to address the need for the integration of diverse interests such structures should bring stakeholders together in ways which encourage the development of consensus through deliberation. The arguments for this rest on addressing both aspects of 'the problem'. Effectiveness will be enhanced through better communication, leading to the generation and sharing of knowledge and better policy coordination, while legitimacy will be generated through giving citizens and civil society organisations direct access to the previously remote decision making processes, as equal 'stakeholders' (Hajer and Kesselring, 1999: 5-6; Saurugger, 2004: 4).

However, the success of these innovations rests on two largely untested and untheorised assumptions. The first, that such arrangements are more effective, is now a largely unchallenged orthodoxy (Bloomfield *et al.*, 2001: 510), though a few authors have raised doubts, particularly over whether such processes generate desirable substantive outcomes (e.g. Hajer and Kesselring, 1999). The second is that they can generate sufficient legitimacy to sustain their capacity to deliver policies more effectively. This immediately raises the questions of what constitutes legitimacy for such arrangements, and, further, of how this can be assessed normatively.

Representative democratic government relied on the legitimacy conferred by the ballot box. This is clearly not appropriate for the new governance institutions, so they need to generate their legitimacy in other ways. Strangely, however, the issue of how this can be done has hardly been addressed (Shortall, 2004: ; Yarwood, 2002), despite the emergence of partnerships as *the* preferred mode of rural management (Edwards *et al.*, 2000), and some exploration of how particular new forms of deliberative process contribute to legitimacy at the subnational level (Cheyne and Comrie, 2002: ; Petts, 2001).

This lack of theoretical investigation is surprisingly general – there is no settled opinion in other fields to which students of rural governance can appeal. Although the attention of political scientists has been turned towards the issue of legitimacy in the past few years, particularly in response to the perceived crisis of European democracy (Gualini, 2004), Krell-Laluhová and Schneider still claim that 'the concept of legitimacy is, despite its prominence in current discourses and political science in general, often left vague and used ambiguously' (Krell-Laluhová and Schneider, 2004: 2).

There is thus a need for the development of both analytic and normative understanding of legitimacy in this new context of rural governance. To further this, we seek here to open up debate on the legitimacy of different forms of deliberative governance structures and also to ask whether the emphasis on creating new deliberative arenas is necessarily an improvement over more traditional forms of governance.

The approach adopted draws on Foucauldian discourse analytics. Such an approach is unusual in this field (Krell-Laluhová and Schneider, 2004) and the methodology advanced here is avowedly tentative and experimental. 'Legitimacy' is seen not as a concept whose meaning can be settled in some final, objective way, but as one which is both continuously constructed through discursive processes and plays a reciprocal and highly political role in shaping those processes. The analysis is therefore of this *process*, and is of necessity conducted in a real, empirical setting in which legitimacy claims and counter-claims were an intrinsic part of the political and policy processes of establishing and maintaining new governance structures.

The paper thus develops a framework for analysing legitimacy claims, and then applies this to empirical material drawn from research on decision making for sustainable transport policy

in the English Peak District National Park. There the Park Authority established three distinctive types of deliberative arenas - strategic partnership working, local consensus-building, and an extension of its own representative democratic structures – in order to integrate conflicting interests and build capacity to act. These processes are analysed to compare how legitimacy was constructed and sustained as stakeholders also sought to satisfy the potentially conflicting demands of increasing effectiveness and advancing sustainable policies. While it follows from the analysis's underlying philosophy that it cannot evaluate these processes against some 'external', neutral standard and we started from an agnostic position about the value of the new structures of governance - neither assuming a priori that partnership working is 'a good thing', nor that the legitimacy of traditional forms of government may be more immune to criticism than the new methods (Papadopoulos, 2003) - the approach does allow us to compare locally established institutional forms and legitimacy claims with wider societal norms. We thus conclude by making some tentative general observations on the legitimacy of new, deliberative processes compared with the more traditional forms.

How do we understand legitimacy in the new rural governance?

Legitimacy is clearly a necessity for any system of democratic government, allowing the exercise of power without coercion, as 'the actions of those that rule are accepted voluntarily by those who are ruled...legitimacy converts power into authority' (Schmitter, 2001: 2). However, legitimacy is not a 'given' in any system, but a construct which has to be maintained and reproduced by the power structures it in turn legitimates (Beetham, 1991: 105). From this perspective the crucial question is 'how is this done?', which we address here through a discourse analytical approach drawing on Foucault's work. 'Discourse' embraces both text and practice, being conceptualised as 'a specific ensemble of ideas, concepts and categorisations that are produced, reproduced and transformed in a particular set of practices through which meaning is given to physical and social realities' (Hajer, 1995: 44). In this interpretation (Foucault, 1979: ;Foucault, 1990), power relations are central: as a result of a specific language use and material practice, a discourse contains a domain of 'meaningful' actions governed by a regulatory power mechanism which selects appropriate and meaningful utterances and actions. Discourses in general thus

'guide and legitimise social and political action by shaping acceptable and collectively binding interpretations and evaluations of social and political events and relationships, and they are themselves shaped in communication and argumentation processes whose character is political' (Krell-Laluhová and Schneider, 2004: 15).

In particular, the legitimacy of 'political orders' of various kinds is both the topic and the emergent result of discourses which are explicitly concerned with policy making and politics (Krell-Laluhová and Schneider, 2004).

However, through such processes different constructions of 'legitimacy' are possible and likely, with two important consequences. Firstly, legitimacy judgements will be context specific, as different processes generate their own locally accepted 'normative basis of authority' (Schmitter, 2001: 2). Secondly, there is no reason to expect that in practice all actors will agree locally on what constitutes a legitimate structure. 'Legitimacy' is therefore not only a normative criterion by which to assess a process or structure, but legitimacy claims and counter-claims are intrinsic elements of the political process itself. As

'the participants in and contributions to discourses propose and justify, or question, normative benchmarks and foundations of legitimacy, debate the extent to which criteria of acceptability are met' so

‘the discursive construction of (il)legitimacy... may thus either result in the legitimization of a political order by institutionalizing a collectively binding normative yardstick and shared assessments on the extent to which it is approximated, or it may foster delegitimation processes and challenges to such a yardstick’ (Krell-Laluhová and Schneider, 2004: 15).

Legitimacy is thus always conditional, in need of maintenance and susceptible to challenge. This is particularly so when both social norms and institutional structures are changing, and so opening up the possibility of a ‘legitimacy gap’ which requires deliberate effort to close and so establish a stable, generally accepted system of policy- and decision making (Krell-Laluhová and Schneider, 2004). Arguably the present change in rural governance is just such a period, characterised by the shift towards partnerships and in societal values away from reliance on trusted representatives towards demands for more direct engagement in decision making. So, how can these new structures secure their legitimacy?

Processes of decision making shared between state and non-state institutions, elected and non-elected actors, clearly cannot appeal for legitimation to the ballot box, which traditionally conferred substantial legitimacy on decision makers more-or-less regardless of the policy making processes which lay behind their decisions. The diffusion of authority requires a refocusing of scrutiny onto these processes as a whole, not simply onto the formal, explicit exercise of power at decision making time in, for example, a council chamber. At stake is the legitimacy of the processes through which discourses are brought into contest and become institutionalised and engrained in practices and material outcomes.

This requires a modification of the classic formulations of legitimacy in terms of rulers and ruled. The interest has to shift to those engaged in a process and those affected by it, the ‘stakeholders’, both inside and outside the process in question. The fundamental question for stakeholders becomes not the classic ‘do we accept this body as appropriate to make decisions that affect us?’ but ‘do we accept this process as an appropriate way to make policy - here, now?’ and therefore ‘how seriously should we treat its outcomes as a guide to our actions and decisions?’¹ - the task for those promoting or supporting particular ways of developing policy is to establish adequate and convincing positive answers to these.

But on what grounds can such judgements be made? Beetham (1991) convincingly shows that the widely-accepted Weberian formulation - that power is legitimate if those subject to it believe it to be so – is only partially adequate. While consent is important, he argues that

[f]or power to be fully legitimate, then, three conditions are required: its conformity to established rules; the justifiability of the rules by reference to shared beliefs [of the dominant and subordinate]; the express consent of the subordinate, or the most significant among them, to the particular relations of power (Beetham, 1991: 19).

Legitimacy thus rests on the three dimensions of legality, justifiabilityⁱⁱ and consent (Parkinson, 2003), all of which have to be maintained to sustain legitimacy, and any of which are open to challenge.

Of critical importance is the recognition that legitimacy is not just about (democratic) process, and that justification in particular is also dependent on substantive issues. The ‘shared beliefs’ are both about acceptable process *and* about whether a process delivers adequate, and adequately distributed, benefits. Scharpf (1999) usefully defines these as ‘input’ and ‘output’ criteria of legitimacy, which in a purportedly democratic process essentially rest on stakeholders’ evaluation of whether a process allows them to influence the process and if it delivers acceptable results. While the two elements are to some extent separable and substitutable (Scharpf, 1999), there is a continuous, dialectical relationship

between them, and in practice, ‘although democratic standards can in principle remain separate from the assessment of output legitimacy ... such an uncoupling is not possible in regimes that claim to be democratic’ (Papadopoulos, 2003: 484).

In consequence, legitimacy judgements, claims and challenges are thus not only context specific in the sense of resting on different norms for different processes in different places, but are also issue-dependent. The question set out above thus needs to be modified, becoming ‘do we accept this process an appropriate way to make policy - here, now, about this issue?’ with the subject of analysis a contextualised, real process concerned with a particular issue. This clearly raises major problems for any attempt to evaluate new governance structures *per se*, an issue which will be returned to below.

It is on the ‘input’ side that perhaps the most significant changes in legitimacy norms have taken place in recent years. O’Neill (2001) identifies three ways in which stakeholders’ interests can be brought into a process:

- a) through representatives whose actions are legitimised by authorisation and democratic accountability;
- b) through actual presence, or representation by those with a shared identity; and
- c) through representation by those whose knowledge, expertise, or judgment is accepted to give them the right to speak or act on others’ behalf (i.e. holders of shared ‘epistemic values’) (O’Neill, 2001: 489-90).

In response to the perceived problems of a representative democratic system based largely on the first and last of these, practice and policy have shifted towards the second, supported by an account of how legitimacy can be sustained drawn from theories of deliberative democracy. The core claim is that ‘outcomes are legitimate to the extent they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question’ (Dryzek, 2000: 1). The key element in guaranteeing legitimacy is inclusivity, both in terms of who is present and in how they are involved – deliberative democratic theory draws here on the Habermasian notion of communicative rationality, with an ideal of unforced, undistorted debate amongst equals.

In a pure form this is clearly problematic both in principle, as it fails to address all the dimensions of legitimacy (Parkinson, 2003), and in practice, since it relies on the involvement of all those affected. The impossibility of this forces a reliance in deliberative practices on representation, justified through arguments from shared identity (Dryzek, 2001; O’Neill, 2001), and so in potential competition with justifications for representation on the other grounds noted above.

In any real situation, then, particularly one in which patterns of governance are changing, we can expect a number of legitimacy discourses to be present, used to sustain, establish and challenge ways of making policy and decisions across the dimensions of conformity to rules, justification and consent. Further, given our conception of discourse as more than language, we would expect a rhetoric concerning legitimacy *and* to be able to identify a range of discourses being enacted in practices and embodied in institutional forms, in ways which may correspond to the dominant rhetoric or, alternatively, be in tension with it.

Analysis of the legitimacy of a deliberative process thus involves a linked series of questions:

- what rules and practices govern deliberation?
- are they established (and challenged) through explicit appeal to existing rules, by establishing new rules, or are they simply enacted? By whom?

- by what wider principles (of correct process or desired outcomes) are the rules and practices justified/challenged? By whom? Or are they accepted without justification or challenge?
- who consents and who does not?

This provides an internal analysis of legitimacy *within* a process, which will be used to address the deliberative arenas of the case study. At each stage, however, the process can be compared against wider social norms: do these rules and practices conform to widely accepted rules? Would the proposed justification be accepted outside the process under consideration? Is consent limited to those involved? This broader analysis is beyond the scope of the current work, though it will be touched upon in the case analyses and in the conclusions.

A study of legitimacy in practice

INTRODUCTION TO THE CASE STUDY

We turn now to our empirical research on a case in which new governance structures were established to provide effective and sustainable solutions to some knotty transport problems which lay beyond the capacity of existing state bodies. The research was carried out during 2003-4, through a mix of in-depth interviews with participants in three deliberative policy arenas (some forty in all), observation of meetings – both public and the ‘behind-closed-doors’ meetings of officers – and examination of minutes and policy documents. A more detailed description and analysis of the deliberative processes is presented in Miles *et al.* (2004). Here a summary must suffice, drawing on the analytical concept of ‘story lines’. These were conceptualised by Hajer (1995: 61) as simplifications of common problems – often to a catchy ‘one-liner’ - which are used as ‘common currency’ to bind together certain interests within the decision making arena. Story lines provide different actors with a symbolic reference that suggests a common understanding, and thus form a basis for coalitions in support of or opposition to particular story lines in order to gain argumentative advantage. Story lines both define the relations between actors in the deliberative arena and their *interests*. Some actors are able to create and apply leverage to story lines themselves, others may not: their interest is defined by their positioning relative to existing story lines. Story lines - produced and reproduced through speech, documents and the assumptions embodied in practices such as technical studies - thus provide the language and ideas through which wider discourse conflicts are played out in a discursive policy making process. As an intrinsic part of this process, we suggest that legitimacy claims are deployed to support and challenge the various story lines, and policy and decisions are made in ways which are justifiable in the various ways outlined in the preceding section.

The case studied is located in the Peak District National Park in the southern Pennine hills of central England. Here the National Park Authority (NPA) has a statutory duty to promote sustainable development, but with the condition that conservation interests take precedence over both public access to the Park and the social and economic well-being of the Park’s communities. In doing this it has some but not all of the powers of a local authority, sharing these with the local authorities which fall within the Park and extend beyond its boundaries.

The issue of traffic restraint has been particularly problematic for the NPA. The Park is located between major urban centres and presents a barrier to cross-Pennine travel, and so affects regional and national economic development. It is also the most accessible national park in the country, resulting in car borne traffic having a correspondingly great impact on the Park’s internal economy and environment. Managing traffic flows has thus brought up

the tensions within sustainable development planning particularly forcefully at a number of levels, including strategic issues in relation to the economic regeneration needs of neighbouring authorities, balancing environmental concerns with the economic need for accessibility within the Park, and details of local traffic management to protect the natural environment and residents' quality of life.

In response to two particular longstanding conflicts between interests the NPA established very different deliberative arenas in order to break through the policy impasses and create consensus around policy outcomes. In order to be effective, these arenas not only had to produce policies acceptable to the range of governmental and civil society groups involved, but establish their legitimacy a) with those participants and b) with other stakeholders not directly involved, in particular the decision makers in the participants' parent organisations whose approval was required in order for implementation to occur.

The first arena was an inclusive consensus-building process, the Stanage Forum, developed as a holistic approach to the management of a small, intensively used area – the cliffs of Stanage Edge and the surrounding countryside. This was a response to opposition by some stakeholder groups to the NPA's introduction of charging measures to manage car access, and aimed to bring together the authority and all groups with an interest in the area to draw up a management plan with the assistance of an external facilitator.

The second was a partnership, the Peak Park Transport Forum (PPTF), between the NPA and other local authorities established to develop a strategic approach to transport planning (Banister *et al.*, 2000: ;Richardson and Haywood, 1996). This emerged as the 'South Pennines Integrated Transport Strategy' (SPITS) - a package consisting of limited road improvements on one trans-Pennine corridor, traffic restraint in the rest of the South Pennines sub-region and strategic public transport improvements.

At the same time transport issues were also being dealt with through the representative democratic structures of the NPA, which were broadened in 1996 to include representatives from parish councils (the lowest elected tier of English local government) in an attempt better to engage local interests. Analysis of this process thus allows some comparison between new deliberative processes and the qualities of deliberation within the 'old' structures.

THE STANAGE FORUM

The Stanage Forum was set up by the NPA to be open to participation at any stage by any interested stakeholders, including members of the general public. The process brought together a very wide range of groups, including recreational users, schools and nature conservation groups, with constituencies ranging from the very local to national organisations such as the British Mountaineering Council (BMC), the principal rock climbers' organisation in England and Wales. At the centre of the process was the Forum itself, at whose open meetings debate over problems and solutions took place, and from which a Steering Group was nominated whose recommendations were brought back to the full forum for debate and approval, as was the final estate management plan. The Steering Group, of twenty representatives spanning the range of stakeholders and interests, met more frequently than the full Forum, acted as link between the Forum and the NPA, advising both and acting as a conduit for information. They also commissioned 'Technical Groups' to provide specialist advice. The entire process was facilitated by an external consultant, with no perceived interest beyond ensuring the process ran effectively, according to ground rules which set out the consensus-building ideals of the process (see Table 1) and achieved the aim of producing a management plan which was seen positively by all, rather than a weak compromise.

Table 1: Ground rules for the Stanage Forum (Connelly and Richardson, 2004)

-
- explicit process
 - commitment to abide by outcomes
 - openness, honesty, trust
 - inclusiveness
 - shared responsibility for success
 - common information base
 - building capacity
 - multiple options are identified
 - building common ground
 - decisions made by consensus
 - shared responsibility for outcomes and implementation
-

Deliberation at the Forum itself was through a variety of exercises intended to encourage discussion of the issues at hand rather than allowing debate to take place from entrenched positions, while within the steering group discussion was less structured, as they sought consensual decisions. At all times voting was discouraged as non-consensual.

A number of story lines emerged. The two principal competitors were those of ‘environmental limits’ – based on the idea that the estate was reaching or had exceeded its ‘capacity’ in terms of private vehicles – and of ‘free access’, embodying the right to unrestricted, cost-free public access to the estate, principally for recreational purposes. The conflict between these – espoused principally by the National Park and the climbing community represented by the BMC respectively – prompted the establishment of the Forum. However, the explicit and agreed aim of reaching a consensus drove the reframing of the problem as one of allowing car-borne access without negatively impacting on the environment, neatly bridging the conflicting positions and pushing discussion towards practical ways of achieving this task – a new story line centred on the idea of an integrated package of improved public transport and limits on car parking. This was not, however, straightforward, as operationalising this had the potential to reopen conflicts with either of the two original story lines. The underlying assumption that a shift to public transport use required both the ‘carrot’ of public transport and the ‘stick’ of parking restrictions was challenged by the continued dominance of the free access story line, while a subsidiary story line, of ‘visual amenity’ and the negative visual impact of signs, cars, car parks and ‘pay-and-display’ machines on the ‘wild’ landscape, was deployed in support of both principal story lines in order to shape the development of the integrated package. At the time of writing little practical progress had been made, as key implementing organisations – the bus companies and relevant highways agencies – were unwilling to support the Forum’s plans, and, as will be discussed below, NPA officials active within the Forum were rejecting its transport proposals.

This evolution reflects the interplay of the constraints imposed by the deliberative and consensual ethic of the process with the balance of stakeholders – there was a preponderance of recreational, as opposed to conservation, groups involved, with the BMC in particular being vocal in the wider Forum and the Steering Group. Keeping all parties on board and sustaining the process stimulated the creation of the ‘bridging’ story line – an outcome whose legitimacy appears at first sight to be guaranteed by the explicit and transparent rules of the deliberative process, and reciprocally was a response to the demands of maintaining that legitimacy.

However, more detailed examination show that both internally and externally the situation was more complex. While the process was framed by a set of legitimising principles –

necessarily explicit, since these principles were not those which govern traditional decision making processes – other legitimacy claims and challenges were made, and other legitimatising norms relied upon, as part of the process of promoting and challenging the various story lines.

The dominant rhetoric describing and shaping the Stanage forum process grounded its legitimacy on the principle that decision making would be by consensus, supported by a set of ground rules guaranteeing inclusivity, open, unforced debate and so on – rules clearly justifiable by deliberative democratic principles, and apparently consented to by all stakeholders, whether they chose to participate or not. Even such a limited process, circumscribed in both the area it was concerned with and the task it addressed, faced the perennial problem of organising deliberation within large groups – a problem purportedly solved through establishing the Steering Group, whose functions were legitimised through excluding decision making from its remit and ensuring that it was accountable to the parent body through a detailed reporting-back process.

Much of the practice approximately reflected such claims. However, dissent was expressed by stakeholders within and outside the process, and practice deviated from these explicit norms. The following specific challenges were raised, challenging the Forum's inclusivity of participants and issues, the consensus principle itself, and the acceptability of its outcomes:

- by an actively involved NPA official, that the participants were too self-interested, and that the outcomes consequently reflected their bias towards recreational rather than conservation interests, conflicting with the legally-prescribed functions of a National Park;
- by sports utility vehicle user groups, who believed that despite the purported open-ness of the Forum that their views would not be acceptable; and moreover
- that seeking consensus would challenge their legal rights of access; and
- by Forum participants, who felt that the structured, consensus-oriented discussions excluded the consideration of more important, contentious issues.

Observation of the process also suggested that the consultant played a large role not simply as a neutral facilitator, but in actively steering the process, through the design and conduct of Forum meetings, and so organised the inclusion and exclusion of issues and voices from the debate.

There was also disquiet over the functioning of the Steering Group. The over-representation of the BMC, despite the general process principles, was justified by the organisers on the grounds of the organisation's major interest in the estate and its ability to render the whole process pointless by withdrawing – a position which they occasionally used to impose their will on the Steering Group. More generally a tension developed as the Group took on a decision making role, and relied on different justifications for making its judgements. Thus, for example, on one occasion it rejected technical and legal advice in favour of ideas generated within the Forum – so favouring deliberative over epistemic justifications for their decision – while on another it resorted to voting as a way of resolving deadlock, justifying this abandonment of the consensus principle by the overriding need to reach a decision, and breaking its own rules without internal dissent, as Group members clearly felt at ease with this more familiar approach to decision making.

Thus within this arena we can see complexity, with tensions existing between the demands of the deliberative process and the acceptability of the outcomes to some participants, and epistemic and representative norms for decision making being drawn on as well as the

(rhetorically dominant) deliberative ethic. These tensions were manifested in public challenges and privately expressed disquiet, but, crucially, did not disrupt the process – the participants ultimately consented to it, granting it legitimacy from their perspectives. However, despite the process having been established by the NPA, there were clearly stakeholders outside the process itself who did *not* view it, or its principles, as legitimate. Publicly, the Forum’s proposed mission statement was repeatedly re-written by officials within the NPA but not actively involved in the Forum, and agencies more remote from the Park have simply not accepted the Forum’s proposals as guidance for their own planning. Privately some senior Park officials were disparaging about the process as a whole – from their perspective their own expertise in land management gave them a legitimacy as planners which was not realistically challenged by any deliberative democratic legitimacy claimed by the Forum, and they did not view it as a model for future planning processes.

THE PEAK PARK TRANSPORT FORUM (PPTF) AND SOUTH PENNINES INTEGRATED TRANSPORT STRATEGY (SPITS)

In contrast with the Stanage Forum, the PPTF was initiated by the NPA as a closed partnership (Connelly and Richardson, 2004) – a forum in which it and the local authorities which have responsibility for transport policy in the region could attempt to resolve longstanding conflicts over their respective interests¹. The partnership has a two-part structure, with a Members’ Group comprising representatives from the elected membership of the local authorities across the South Pennine sub-region and an Officer Working Group (OWG) of officers from these authorities, the public transport executives, two rail companies and (as observers) the four regional Government Offices. There are additionally participants from external bodies such as the environmental non-governmental organisation, the Campaign to Protect Rural England (CPRE), who attend the Officer Working Group on an *ad hoc* basis. The partnership has no implementation powers – strategies approved by the members must be ratified by their parent bodies, which then responsible for implementation. Policy development is principally carried out by the officers, whose meetings and minutes are closed to the public, before presentation to quarterly Members’ meetings. The OWG process has been supplemented by several workshops for a wider range of invited stakeholders - including environmental interest groups - organised on an *ad hoc* basis to canvass a wider spectrum of views when the officers have felt this would be useful.

Since its inception in 1994 a single story line has dominated the PPTF’s deliberations, encapsulating the fundamental assumption on which the strategy has developed, and supplemented by evolving story lines relating to operationalising these assumptions. This story line relates to the wider economy, stressing the importance of improved cross-Park roads in stimulating economic growth in the surrounding depressed urban areas. Closely allied is the story line of ‘pragmatic compromise’ - a common understanding that the benefits and disbenefits of any transport package can be distributed equitably around the South Pennines sub-region, provided all stakeholders are willing to make some compromises. Linked closely with the idea that traffic ‘restraint’ means traffic diversion, this story line has been given practical form in proposals for restraining traffic across the area in order to divert it onto a single improved cross-park road – the principal compromise thus being the sacrifice of environmental quality in this corridor to make gains elsewhere in the Park. A recent

¹ Transport planning is shared between the central government’s Highways Agency and local authorities. This leaves NPAs in the unenviable position of having a major interest in transport – being responsible for land use planning and the overall conservation and development of their Parks - but without transport planning powers.

further elaboration is the emergence of a story line that promotes road user charging as the most appropriate measure to deliver the required levels of restraint.

The policy process within the PPTF thus appears remarkably non-conflictual, characterised instead by the construction of a rather fragile consensus around a story line which meets the interests of the major local authorities – the partners to whom the NPA went in order to make progress on a transport strategy. Subscribing to the ‘wider economy’ story line as the basis for deliberation has led inexorably to acceptance of ‘restraint as diversion’ and so of the pragmatic compromise – arguably a shift away from the NPA’s aim of protecting the environment, which never emerged as the basis for a viable story line in this arena. This outcome was enabled by the private nature of the process – which allowed officers to explore new, potentially uncomfortable positions away from political or public scrutiny – and the reliance on a succession of technical reports, whose assumptions and language became the unchallenged basis for debate. Currently, however, the physical implications of the strategy are being elaborated and taken to the political decision makers for approval – the point at which the legitimacy of the PPTF as a policy development arena will be judged.

As with the Stanage Forum, a preliminary judgement would be that the process has successfully established its legitimacy on output grounds – the PPTF has managed to devise a strategy where none was possible before. However, there are two clear problems: the strategy was devised by unelected officers, without broad stakeholder involvement, and the outcomes appear to be biased towards the interests of the urban authorities rather than the NPA, despite the NPA’s involvement. Those involved were well aware of the potential challenges, and we turn now to their attempts to secure the legitimacy of the process.

The public discourse of legitimacy for the PPTF was that of representative democracy – institutionalised in the structure of separate elected member and officer groups and the associated processes, in which the elected representatives made decisions guided by advice from the officers, and then took those back to their parent bodies for ratification and implementation. At a formal level this ideal was largely followed, although officers also shared the role of promoting SPITS within their parent bodies. However, it is clear that the policy making process was in fact driven by the officers, who presented policy options to the members which were the products of deliberation between the officers, supported by technical reports commissioned by them from external consultants.

This de facto policy making role – which is clearly at odds with the public discourse - was justified on two, tightly linked grounds. The first was that only the officers possessed sufficient expertise in what was presented as a technical and complex field – a position reinforced by their reliance on technical reports (concerning traffic forecasts and so on) to inform and shape their deliberations. The second was the straightforward appeal to output, rather than input or process-based, legitimacy: the PPTF process was legitimate because it managed to produce SPITS. Moreover, the involvement in deliberation of a wider range of participants – whether elected members who could give the process legitimacy from a representative democracy perspective, or a wider stakeholder group who could give it more deliberative legitimacy – was viewed by the officers as potentially disruptive. The key to success lay exactly in the private nature of their deliberations, which allowed creative exploration of new positions and policies, such as road user charging and the ‘sacrifice’ of the environment in one road corridor, without the interference of scrutiny or broader political agendas.

This deliberation was governed by the discourse embodied in the two dominant story lines that roads would promote economic growth and the consequent need for a ‘pragmatic compromise’ over environmental impacts. Acceptance of these was an unchallengeable rule,

whose legitimacy appeared to stem from its self-evidence, in turn sustained by technical studies based on the same premises. Arguably, however, this ‘truth’ was a manifestation of the power of the urban local authorities which played an important role in shaping the entire process – the acquiescence of the NPA to the need of compromise was not mirrored by shifts in the urban authorities’ positions, and the policy innovations were correspondingly one-sided.

The process was thus legitimised on a mix of representative, epistemic and output grounds, and had an interestingly fraught engagement with wider participation as a way of augmenting legitimacy. On the one hand, officers rejected the need for engaging with a wider range of stakeholders on the grounds given above, reinforced by an appeal to over-riding legitimacy of the elected members as representatives of the public. On the other, the weakness of this position, particularly when challenged from within the process, led them rather reluctantly to seek legitimacy through engaging directly with stakeholders from outside the original partnership. Two ‘stakeholder workshops’ were held, to which a limited number of organisations were invited. However, these were acknowledged privately by officers to have had no influence on the development of the Strategy. Further, the PDNPA representative persuaded the other officers of the need to involve the CPRE in the OWG’s deliberations – a move which could have strengthened the NPA’s position as the ‘pragmatic compromise’ was worked out. Although initially resisted by other participants, on the grounds that the CPRE would be a ‘rogue, potentially disruptive element’, its presence became accepted as legitimising and helpful through providing ‘inside information’ on the position of a potential opponent of SPITS, and (partially) neutralising this threat through incorporating the organisation into the process. This acceptance was undoubtedly helped by the partial and limited nature of the CPRE’s involvement – which was imposed by the OWG and which the organisation only grudgingly accepted – and its inability to challenge the fundamental assumptions of the process, despite its opposition to these. Participation implied consent, and so legitimised the process – the CPRE could not challenge the fundamental assumptions without attacking the legitimacy of the PPTF, which was impossible from within.

Overall, the development of SPITS through the PPTF was a deliberative process cloaked by its formal conformity to representative democracy norms, but which in practice operated by a very different set of rules, justifiable on ‘output’ and expertise grounds. Despite the imbalance of interests inherent in the output, the process was granted legitimacy in the eyes of those involved, reflecting judgements that the compromise achieved was better than no strategy at all. The CPRE were the exception to this consensus, yet even they were compromised, caught in the conflict between the desire to influence the process and simultaneously legitimising outcomes with which they disagreed. As with the Stange Forum, however, the ‘consent’ (i.e. recognition of legitimacy) of those outside the process is more conditional. Although so far the process has been supported, there are signs that as physical implementation nears and the implications of process’s outputs become clearer this consent may weaken. This directs attention again to the role of the officers in representing the PPTF in their parent bodies, in itself a curious and non-legitimised practice, which has become a significant issue for the legitimacy of SPITS in the eyes of the NPA. It is to this third deliberative arena that we now turn.

THE NATIONAL PARK AUTHORITY

The decision making body of the Peak District National Park Authority currently consists of thirty-eight Members, none of whom is directly elected to the authority. Twenty are councillors appointed from the park’s constituent local authorities, while the central government Minister for Environment, Food and Rural Affairs appoints the remainder - ten

for their specialist expertise and eight drawn from parish councils – referred to collectively as the ‘Secretary of State appointees’. The NPA follows the traditional procedures of local government, with members working through a committee structure, advised by a much larger professional body of officers. This research focused on the debates around transport issues in the full authority meetings and those of the park management and policy committees. The format of these was the presentation of officer-drafted reports, followed by relatively informal debate amongst the members and a final decision through voting by a show of hands.

These debates have involved a number of story lines, none of which has been established as hegemonic, leaving NPA transport policy in a state of indeterminacy and flux at the time of the research. The ‘pragmatic compromise’ story line was imported directly from SPITS and provided the starting point for recent debates. In reaction to this a story line of the need to prioritise the environment has developed, rejecting the proposed compromise as too environmentally damaging to be compatible with the statutory purposes of the National Park. Associated with this was a positive story line encapsulating the long standing aspiration of the NPA to achieve ‘modal shift’ away from car use by promoting public transport. However, this in turn has been challenged recently by the emergence of a loose consensus amongst some members around a new story line of the NPA’s institutional ‘impotence’ in effecting modal shift and a consequent need to concentrate on making car use more sustainable. As an alternative, and in parallel with developments within the PPTF, a story line has developed which purports to solve the public transport problems facing the park through road user charging to fund public transport improvements. Finally, a second competitor for the pragmatic compromise story line has arisen - a *local needs* story line which contests the former on the basis that it focuses on strategic, cross-park issues and does not sufficiently address local or tourist traffic (and therefore local economic) issues.

The introduction, development and relative success of these various story lines has been tied to the activities of shifting coalitions of members and officers. The pragmatic compromise was promoted by a close grouping of transport policy officers and members, both ‘expert’ Secretary of State appointees and local councillors. The ‘prioritise environment’ challenge to this has come from a new group of appointed members, with strong environmental concerns and expertise in sustainable transport, whose views are accorded considerable weight in debates. As this story line gains ground, it calls into question the approval of SPITS by the NPA, promoting its proponents to support the road user charging story line, around which potentially all but the champions of local; needs could coalesce. This is very much officer-led, promoted in both the PPTF and NPA by a transport policy officer as *the* sustainable solution to the park’s transport problems. The local needs story line has, unsurprisingly, been articulated by the parish councillors, and linked rhetorically to the recognition of Park impotence in the face of rising car use. This has yet to make much headway, as the parish representatives have been unable to form an effective grouping and, as individuals, are largely excluded from effective impact in the debates.

Thus, as with the PPTF, a *prima facie* representative democratic process was actually far more complex. Firstly, the representative credentials of the members were not straightforward. The local authority members rely for their legitimacy on their indirectly elected status, having been elected to their authorities, not to the NPA. The expert appointees’ position is justified on epistemic grounds – they contribute to the pursuit of the park’s statutory purposes through their expertise and bridging, perhaps, a wider, national interest perspective. The parish appointees position was officially justified by the need to strengthen the representation of local interests, and the appointees themselves claimed to have a well-founded electoral legitimacy, being not only elected to their own parish councils

but subsequently elected by the Park's parish councils as a group before formally being selected by the Secretary of State.

In practice the formalities of the representative democratic system were largely adhered to, with no need for explicit justification and tacitly consented to by all concerned as the expected form of local governance. However, the complexity described above allowed challenges to the legitimacy of the different groups of members. The parish appointees saw themselves as *more* legitimate than any other group, while their local interest focus, and that of some local authority members, was viewed by some officers and expert appointees as reducing their legitimacy to engage in policy making for a *National* Park.

Secondly, these formalities were supplemented, sometimes supplanted, by other, less obviously legitimate, policy- and decision-making processes. The ideal of open debate between equals was compromised in two principal ways. Transport policy was developed in small groups, to whom the majority of members deferred. Initially there was just one of these, who successfully dominated the process with their SPITS-derived proposals. This was justified, and explicitly acquiesced to, on the grounds of their expertise in the field and the 'ordinary' members' lack of knowledge and experience. There was also an apparent hierarchy perceived within the membership, with the expert appointees referred to by some of the others as 'senior', and so justifiably more influential in debate. To an extent this situation persisted after this group had been joined in the process by the second expert group, the SPITS-sceptical proponents of prioritising environmental protection. The second problematic aspect was the presence in the first group of officers, who clearly worked very closely with members, in particular to promote SPITS within the NPA. This was only defended, and defensible, on output grounds, since it clearly flouted the 'rules' of a traditional representative democratic process.

These aspects gave rise to legitimacy challenges from within the NPA, both prompted by concerns about the substance, the outputs, of the deliberative process, but articulated also as criticisms of its legitimacy *as a process*. The perceived exclusion of local interests in SPITS gave rise to criticism by the parish councillors of the limiting of policy formulation to the small expert groups which had resulted in SPITS dominating the policy debates. Unease with the content of SPITS, and with the underlying rationale that the Park's purposes were served by the proposed 'pragmatic compromise', also prompted the second expert group, along with the parish representatives, to challenge the role of the transport officers in developing and promoting this policy. In contrast to the parish representatives, the rising – and arguably tendentious – influence of the newer expert group has re-opened debate on continued NPA support for SPITS.

The issues of consent are rather different for this arena, compared with the other two. As the legally constituted authority for the Peak District Park, the NPA has an overall unassailable legitimacy in the eyes of its members, although as seen above they argue over the legitimacy of different factions and processes as part of the policy making process. Similarly, it can assume the tacit consent of the inhabitants of the Park and of the population as a whole, to its role as the legal and legitimate authority, though this has been weakened by both the shifts in public attitudes and in institutional structures referred to at the outset. The extension of the authority membership to the parish representatives was intended to tackle the first of these – its success on this front was not assessed in the research, though the lack of influence of the parish representatives within the observed policy making suggest that this has not been entirely successful. It was the second issue that prompted the creation of the other deliberative arenas discussed here, as the NPA sought new ways to re-establish a legitimate and effective policy making role. However, more generally it might be expected that this

would be still an appropriate body to take at least a lead role in transport planning, yet it has been curiously reactive until recently, having apparently delegated its transport policy making role to the PPTF.

Conclusions

A number of summary points and tentative conclusions about the legitimacy of new governance processes can now be drawn.

The importance of establishing legitimacy as a condition for effective governance was recognised by the participants in all three arenas, who consequently made conscious efforts to do this, and to challenge the legitimacy of elements of the processes – legitimacy discourse was an important element of the deliberative processes. A common pattern was observable, in that each arena had a public rhetoric of legitimacy, which provided a dominant legitimising rationale governing its explicit rules and accepted procedures. This rationale was different in each case, and established differently, reflecting their varied grounding in tradition and political theory: the representative democratic nature of the NPA was embodied in its formal processes, while in contrast the deliberative democratic principles of the Stanage Forum were explicitly set out and the conformity of the PPTF to representative norms was taken for granted.

In each case some of the practice followed these rhetorics, while some did not. However, in most cases there were norms underlying the ‘rule breaking’ practices, providing alternative legitimising rationales which were either explicitly invoked or could be summoned up as justification on challenge or under scrutiny by a researcher. There were very few cases of unjustified, or unjustifiable, action - the threat by the BMC to leave the Forum and so effectively end its ability to function stands out as a rare example of *force majeure*. In terms of the basis of its legitimacy, each arena was a hybrid, relying on a complex, shifting and often opportunistic mix of input and output, representative, participatory and epistemic justifications for a set of changing practices of decision- and policy-making. This did not constitute the successful construction of single, coherent legitimacy discourses, but rather reflected a continuous state of contest, in which legitimacy arguments were used by actors to promote ‘their’ story lines and simultaneously shaped the discursive processes through which these debates took place.

Within these mixes, however, the strongest legitimising principles still appeared to be those which appeal to the traditional processes of representative democracy, whether used as the public cloak for less justifiable practices, or as the ‘default’ to which participants appealed when other legitimating arguments failed. In contrast, it seemed that reliance on output criteria was a weakness, providing opponents of story lines’ content with the opportunity to challenge their legitimacy on input grounds as a complementary strategy to opposing their substantive implications.

A consequence of this ‘hybridity’ was that each arena and its processes, taken as a whole, was of dubious legitimacy judged against any single norm, and therefore open to challenge. It should be stressed that this was true of all three, both the new governance structures and the old, with the differences between them in the rhetoric of the processes and in the balance between different justifications drawn on for the actual practices. Thus, as suggested by Papadopoulos (2003: 492), the new forms of governance are not necessarily so different from the old, and should not be compared unfavourably with them. Where the difference lies, perhaps, is in the degree to which the processes have the consent of the wider population. Despite their perceived faults and the weakening of their legitimacy, the traditional forms still command consent, if only tacit, from the mass of the population, while the new rely on norms

which may only be accepted, or even known, within the relatively limited circle of stakeholders directly involved.

It is thus not possible to come to a clear judgement, either on the legitimacy of the new governance forms we studied, or of how they compare with the system they were intended to supplement. Strengths and weaknesses can be identified in the way the different arenas constructed legitimacy, and so where they are particularly vulnerable to criticism. This suggests that in practice those establishing new governance structures should pay attention to establishing legitimacy across all its dimensions. In particular, if the change is instrumental, intended to increase the effectiveness of policy making, then care should be paid to the input legitimacy of the processes - increasing capacity to act through processes which are justifiable *only* on output grounds leaves them vulnerable to challenge. Proponents of processes based on deliberative democracy should also take care. The theoretical problems identified by Parkinson (2003) and O'Neill (2001) were manifested in practice in the case study, and opened up the explicitly principled Stanage Forum to challenge. Given that such processes are probably *necessarily* hybrids of different legitimating norms, these other aspects should be explicitly attended to. More generally, if the norms of deliberative democracy are to take their place as accepted principles for legitimate governance, then a great deal more work will have to be done to discursively establish their acceptability both in the networks of governance and with the wider population.

References

References

- Banister, C., J. Turner and T. Richardson (2000) *Unravelling the transport web: delivering the new transport realism in a complex policy environment*. Report to the Rees Jeffreys Road Fund, Landor Publishing.
- Beetham, D. (1991) *The Legitimation of Power*. Macmillan, Basingstoke.
- Bloomfield, D., K. Collins, C. Fry and R. Munton (2001) Deliberation and inclusion: vehicles for increasing trust in UK public governance? *Environment and Planning (C)* **19**(4), 501 - 513.
- Cheyne, C. and M. Comrie (2002) Enhanced legitimacy for local authority decision making: challenges, setbacks and innovation. *Policy & Politics* **30**(4), 469-482.
- Connelly, S. and T. Richardson (2004) Exclusion: The necessary difference between ideal and practical consensus. *Journal of Environmental Planning and Management* **47**(1), 3-17.
- Dryzek, J. (2000) *Deliberative Democracy and Beyond*. Oxford University Press, Oxford.
- Dryzek, J. (2001) Legitimacy and economy in deliberative democracy. *Political Theory* **29**(5), 651-669.
- Edwards, B., M. Goodwin, S. Pemberton and M. Woods (2000) *Partnership working in rural regeneration: governance or empowerment?* Bristol: Policy Press/JRF.
- Foucault, M. (1979) *Discipline and Punish: the birth of the prison*. (translated by Alan Sheridan), Vintage, New York.
- Foucault, M. (1990) *The history of sexuality: Volume 1 - an introduction*. Penguin, Harmondsworth.

- Goodwin, M. (1998) The governance of rural areas: Some emerging research issues and agendas. *Journal of Rural Studies* **14**(1), 5-12.
- Gualini, E. (2004) *Politicizing territorial governance: embedding the 'political economy of scale' in European spatial policy*. Paper for presentation at the ECPR Joint Sessions of Workshops, University of Uppsala, Sweden, April 13-18, 2004.
- Hajer, M. (1995) *The politics of environmental discourse: ecological modernization and the policy process*. Clarendon Press, Oxford.
- Hajer, M. and S. Kesselring (1999) Democracy in risk society? Learning from the new politics of mobility in Munich. *Environmental Politics* **8**(3), 1-23.
- Krell-Laluhová, Z. and S. Schneider (2004) *Legitimacy and the democratic quality of the political order in Britain, Germany, and Switzerland: A discourse analytical perspective*. Paper for presentation at the ECPR Joint Sessions of Workshops, University of Uppsala, Sweden, April 13-18, 2004.
- Miles, T., S. Connelly and T. Richardson (2004) *Stakeholder involvement and sustainable development in National Parks*. Paper given at Planning Research and Development Conference, Aberdeen University, March 2004.
- O'Neill, J. (2001) Representing people, representing nature, representing the world. *Environment and Planning (C)* **19**(4), 483-500.
- Papadopoulos, Y. (2003) Cooperative forms of governance: Problems of democratic accountability in complex environments. *European Journal of Political Research* **42**, 473-501.
- Parkinson, J. (2003) Legitimacy Problems in Deliberative Democracy. *Political Studies* **51**, 180-196.
- Petts, J. (2001) Evaluating the Effectiveness of Deliberative Processes: Waste Management Case-studies. *Journal of Environmental Planning and Management* **44**(2), 207-226.
- Richardson, T. and R. Haywood (1996) Rethinking transport planning: lessons from the English Pennines. *Transport Policy* **3**(1/2), 43-53.
- Saurugger, S. (2004) *Representative versus participatory democracy? France, Europe and civil society*. Paper for presentation at the ECPR Joint Sessions of Workshops, University of Uppsala, Sweden, April 13-18, 2004.
- Scharpf, F. W. (1999) *Governing in Europe: effective and democratic?* Oxford University Press, Oxford.
- Schmitter, P. (2001) What is there to legitimize in the European Union ... and how might this be accomplished? In Symposium: Mountain or Molehill? A critical appraisal of the Commission White Paper on Governance, Jean Monnet Working Paper No.6/01, pp., NY University School of Law, New York.
- Shortall, S. (2004) Social or economic goals, civic inclusion or exclusion? An analysis of rural development theory and practice. *Sociologia Ruralis* **44**(1), 109-123.
- Yarwood, R. (2002) Parish councils, partnership and governance: the development of 'exceptions' housing in the Malvern Hills District, England. *Journal of Rural Studies* **18**(3), 275-291.

ⁱ Stakeholders thus also include some amongst ‘the rulers’, as well as others in the policy making process who are affected, *as well* as ‘the ruled’ i.e. stakeholders outside the process. This means that legitimacy judgements will be made by decision makers about the policy formulation processes that lead up to their decisions.

ⁱⁱ Note that this is ‘justifiability’, not ‘justification’: what matters is that the exercise of power can be justified if such a demand is made, not that explicit justification must always be put forward.