

A COMPARATIVE ASSESSMENT OF DELIBERATIVE CLAIMS: THE HEALTH  
SERVICES COMMISSION, THE OREGON WATERSHED ENHANCEMENT  
BOARD, AND NEW COMMUNITY MEETING I AND II

by

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A DISSERTATION

Presented to the Department of Political Science  
and the Graduate School of the University of Oregon  
in partial fulfillment of the requirements  
for the degree of  
Doctor of Philosophy

December 2009

**University of Oregon Graduate School**

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An Abstract of the Dissertation of  
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in the Department of Political Science to be taken December 2009

Title: A COMPARATIVE ASSESSMENT OF DELIBERATIVE CLAIMS: THE  
HEALTH SERVICES COMMISSION, THE OREGON WATERSHED  
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Considerable interest has emerged recently within U.S. policy scholarship toward deliberative democracy and its potential viability as a form of alternative democratic governance in resolving persistent policy dilemmas. Despite these claims, the deliberative scholarship is an empirically understudied field. Instead, deliberative theory is usually normatively articulated as an alternative and preferable form of governance. Secondly and to a lesser extent, deliberative scholars assert that deliberative governance can work and does exist. In these cases, often extensive deliberative claims are made but not carefully tested according to explicitly identified deliberative criteria and measures.

This dissertation contributes to the systematic testing of deliberative theory that has only recently begun. Theoretically, this dissertation fits within the gulf between ideal

and non-ideal deliberative scholarship. This dissertation draws from multiple sources, such as interviews, direct observation, meeting minutes, and secondary sources, to systematically evaluate and then comparatively assesses the evidence in four untested exemplar deliberative cases that took place within seemingly intractable policy issues. These cases are Oregon health care reform (OHCR) surrounding the Health Services Commission (HSC), watershed restoration and management in Oregon surrounding the Oregon Watershed Enhancement Board (OWEB), and the New Community Meetings in Lane County and the greater Eugene-Springfield metro area surrounding the issues of “gay rights” and sustainable development (NCMI/II). These cases exhibit significant variation along explanatory and outcomes variables.

Overall, the findings in this dissertation suggest that at times ideal deliberative scholars establish criteria and measures that are impractical or even unnecessary for robust deliberation. The evidence in these cases suggests that non-ideal deliberative standards appear capable of yielding deliberative outcomes that are perceived by participant stakeholders in adequate terms.

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## ACKNOWLEDGMENTS

An extensive support network enabled me to successfully complete this dissertation. I would especially like to acknowledge the support and mentoring of Dr. Gerald Berk. I am forever grateful for Gerry's genuine interest in this project and in my intellectual development generally. I can say with certainty that without Gerry Berk's patient and insightful guidance I would have never completed this project. I would also like to thank Ronald Mitchell, Priscilla Southwell, and Richard Margerum for their contributions to my committee. I would especially like to acknowledge the prompt and specific feedback given by Ronald Mitchell.

I would also like to thank my parents, Richard Smith and Katherine Pedersen. My father's infectious love of learning planted and nurtured the seed of intellectual curiosity when I was very young. My mother's unwavering faith in my ability and emotional support throughout *all* of life's challenges sustained my drive in this and other endeavors. I would be remiss if I failed to acknowledge Jennifer Hehnke and her unwavering emotional support and eagerness to read draft after draft and offer extensive and productive suggestions. I would also like to thank Sean Parson, Bruno Anili, and Courtney Smith. As members of our "dissertation survival group," your different yet always rich perspectives helped immensely in guiding my project. I also found your accepting and collaborative exchange of ideas one of the most intellectually rewarding experiences of my graduate experience.

I would also like to thank Mansir Petrie, Clark Bacon, Joseph Schuermeyer, and Ben Crandall. You actively believed in and supported me no matter how busy or far away our lives have taken us. Finally, this dissertation is submitted with gratitude for the generous, eager participation and extensive assistance of so many participant stakeholders. I would especially like to thank Gayle Landt and Bonnie Ashford, who were always willing to go to extensive measures to help me in my data gathering endeavors. Thanks to all of you and so many others!

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## CHAPTER I

### INTRODUCTION, LITERATURE REVIEW, AND METHODOLOGY

#### **I. Introduction**

Recent and considerable scholarly interest has emerged toward deliberative democracy and its potential viability as a form of alternative democratic governance in resolving persistent policy dilemmas such as those involving crisis, contentiousness, and complexity (Innes and Booher, 1999).<sup>1</sup> Deliberative theory is also widely discussed and celebrated by numerous scholars as a supplement to more conventional forms of electoral democracy (Habermas, 1987, 1996; Gutman and Thompson 1996, 2004; Cohen 1996, 1997; Bonham, 1997; Dryzek, 2000; Benhabib 1996, 2002; and Chambers 2003).

Despite these claims, deliberative scholarship is a relatively understudied field. The lack of empirical development is acknowledged by critics and deliberativists themselves (Fung and Wright 2003; Rosenberg, 2007; Sanders, 1997; and Pincione, 2006). Numerous deliberative scholars and critics claim that the deliberative literature lacks rigor. According to Jane Mansbridge, “The observation and theory of deliberation are also in their infancy. At the moment, we know relatively little about what makes for

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<sup>1</sup> Recent U.S. theory and policy scholarship has taken the classical western notion of a grass roots democracy and evolved the basic framework. More currently, deliberative democracy has evolved most notably with authors such as Habermas (1971) or Lindblom (1990), and continued with Dryzek (1990), and currently is explicated by authors such as Fischer and Forester (1993), Fung (2003), Dorf and Sabel (1998), as well as many others.

good deliberation in a democratic assembly” (Mansbridge in Fung and Wright 2003, 178).

In Shawn Rosenberg’s recent deliberative work, *Can the People Govern?*, Rosenberg states that “despite the interest in deliberation, relatively little systematic research has been done...In fact, only recently has research of this kind begun” (Rosenberg 2007, 3). In only roughly the last 10 years has any significant effort begun to systematically identify and empirically test deliberative scholarship. As a result, this means the extant deliberative scholarship *does not explain or even attempt to address many empirical questions.*<sup>2</sup>

Instead, deliberative theory is usually articulated as an alternative form of governance by drawing on normative appeals that seek to persuade stakeholders, policymakers, or theorists to seek deliberation (Habermas, 1984; Dryzek, 1990; Pincione, 2006).<sup>3</sup> Secondly and to a lesser extent, deliberative scholars assert that deliberative governance *can work and does exist*. Deliberative “proof of life” is usually substantiated through extensive case studies across numerous issue areas such as community level organizing in development, environmentalism, and public health (Sirianni & Friedland, 2001).

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<sup>2</sup> Fung and Wright support the lack of careful empirical study in the following passage: “most work in political science and sociology has not been helpful in bridging the gulf between proponents and critics of participatory collaboration. As has been often noted but seldom addressed, [political science] focuses on formal avenues of participation and influence – voting and interest groups – usually in centralized venues while social movements scholars focus squarely on informal methods such as protest and disruption. Participatory collaboration lies between these two domains, and so has largely escaped the analytic gaze of social scientists” (Fung and Wright 2003, 285).

<sup>3</sup> Deliberative normative argumentation generally asserts that genuine deliberation can better overcome problems of pluralist or instrumental politics along concerns of citizen inclusion and increased sense of efficacy and legitimacy (Fisher & Forrester, 1993). See the work of Habermas (1984) or Dryzek (1990) for a very cogent critique of pluralist thought.

The largely untested state of deliberative theory arguably results from a lack of basic consensus regarding deliberative criteria and measurement.<sup>4</sup> Numerous deliberative scholars present implicit and explicit definitions of deliberative democracy that vary widely from one another even when they share the same basic criteria (Elster, 1998). Partially because of this disagreement, when exemplar deliberative “proof of life” claims are made and presented in various scholarly studies, evaluative criteria generally remain undefined and explicitly tested (Elster, 1998; Mansbridge in Fung and Wright 2003, Fung and Wright, 2003; Rosenberg, 2007). These and other deliberative scholars often lament the fact that few studies have rigorously tested along explicit and generally accepted criteria even in cases where exemplar deliberative claims are made.

A focus on normative questions and a theoretical lack of consensus along basic deliberative criteria means the extant deliberative scholarship *does not tell us much* empirically. *Deliberative theory cannot explain many important questions* such as why policy issues such as state level environmentalism as opposed to health care reform consistently exhibit success along deliberative criteria. Or, more generally, why or when will stakeholders seek out deliberation as opposed to exit or manipulation? When might we expect deliberation to work? How do policymakers know when deliberation exists or is “good enough?”

Instead, deliberative studies often make exemplar deliberative claims without explicit, shared, or minimal evaluative deliberative criteria and careful application within

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<sup>4</sup> For example, in their article entitled “Consensus building and Complex Adaptive Systems: A framework for evaluating Collaborative Planning,” Innes and Booher state that “neither planning professionals nor the academic community has a clear idea of what they should expect from consensus building” (Innes and Booher, 1999).

the cases examined. Importantly, this has led to a distinct gap in the deliberative literature between ideal (theoretical) and non-ideal (policy based) deliberative scholarship. Ideal deliberative scholarship leaves little practical ability to implement and measure deliberative forums while non-ideal deliberative policymakers lack the appropriate theoretical standards to continue to improve deliberative standards and results. This lack of practical application tells policy-makers and practitioners little about how to implement and measure deliberative institutional standards and procedures. Finally, the lack of empirical development also engenders critics of deliberation to question the practical viability of deliberative theory (Sanders 1997; Pincione, 2006).<sup>5</sup>

These are valid critiques that deliberativists themselves readily acknowledge. Accordingly, the central concern of this project is to continue efforts that are just beginning to address the lack of empirical rigor and subsequent questions about the practical implementation and viability of deliberation itself (Rosenberg, 2007). Does deliberative democracy actually lead to better outcomes? If so, what outcomes are better and under what conditions? This dissertation undertakes a systematic analysis of extensive deliberative claims within four cases (in three chapters) with the goal of moving toward answering these aforementioned questions. These cases include Oregon health care reform (OHCR) surrounding the Health Services Commission (HSC), watershed restoration and management in Oregon surrounding the Oregon Watershed Enhancement Board (OWEB), and the New Community Meetings in Lane County and

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<sup>5</sup> The most vociferous critics (often social choice theorists) argue that deliberation is pitched at a high level of abstraction. That is, deliberation's idealized normative claims are largely untested in any "real" political arena. This leads critics to then assert that the viability of democratic theory as a viable or even desirable alternative form of governance remains largely questionable.

the greater Eugene-Springfield metro area surrounding the issues of “gay rights” and sustainable development, respectively (NCMI/II).

By explicitly hypothesizing, justifying, then setting and testing standards for deliberation, this project ultimately seeks to begin to reconcile ideal and non-ideal deliberative scholarship and ultimately argues for a better appreciation of the conditions that are more likely to facilitate adequate non-ideal deliberative institutions and behavior. Accordingly, in this chapter I will begin by briefly outlining and then reviewing the extant relevant deliberative literature. First, I will briefly outline normative deliberative claims and “proof of life” case studies. Next, I will show the state of current disagreement amongst deliberative scholars. Then I will present two basic and shared central deliberative criteria and their thresholds that I will use to assess the empirical evidence in each case study. In the last section of this chapter I will discuss methodology. In this section I will identify my method of analysis, justify the cases for selection, and then discuss data collection methods.

## **II. Normative Deliberative Claims: Why Deliberation?**

Recent attention to deliberative theory has emerged partially as a response to the “aggregate” view of democracy advanced by rational choice theorists and the conservative attack on the affirmative state.<sup>6</sup> In this “rational” view of democracy, the individual is conceived as rational in a limited sense. That is, the individual is postulated

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<sup>6</sup> Fung and Wright 2003, 3.

to have a set of preferences that are ordered according to his/her desirability.<sup>7</sup> In this model of political behavior, autonomy and equality are best understood as existing under conditions where every individual enjoys equal access and is equally capable of political influence. Therefore, *when* sufficiently interested or affected, an individual can and will influence the political arena at a level proportionate to the extent an individual's preferences are affected.

In this light then, governmental institutions are best designed to allow and even encourage this free and equal pursuit of interest, as the *aggregation of these interests equate to the public good or at least a notion of fair governmental process and decisions*. "Losers," that is, individuals that do not see governmental choice reflect their individual preferences, still accept the outcomes and give legitimacy and compliance due to a perceived fairness about the "rules of the game," where no one group receives unfair governmental treatment and all are allowed to freely enter and compete equally. While the losers might have lost an election, they will abide by the result in the hopes that they can win the next (Rosenberg 2007, chapter 1).<sup>8</sup>

In these orthodox political models, conceptions of "democracy" largely consist of organizing and legitimizing the state as largely limited to and defined in narrow terms such as free, fair, regular and competitive elections that chose representative leadership

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<sup>7</sup> "Taking into consideration constraints and opportunities present, he/she is then assumed to make choices that will lead to the satisfaction of these preferences" (Rosenberg 2007, 5). Each individual agent is a self-directing political actor who makes decision and acts in the political arena to best maximize their individual interest (Rosenberg 2007, 5).

<sup>8</sup> Critics suggest this works under ideal conditions but are unlikely in most real political arenas. Minority groups have little hope of ever winning an election, and forced compliance to governance in this manner may become quite expensive and ineffective that ultimately undermines and reinforces social cleavages, eroding legitimacy for the disadvantaged or otherwise excluded, less powerful social groups or interests.

(Fung and Wright 2003, 3) as a way of organizing the state. The resulting notion of the proper role of the state is then largely encompassed by theories such as interest group liberalism (Lowi, 1979).

According to deliberativists, these increasingly removed or unavailable participatory mechanisms do not facilitate active public stakeholder involvement or consensus based politics. As routinized political parties and interest groups substitute for participatory democracy, society is increasingly administered at a level remote from the input of public citizens. This yields a less understood and therefore legitimate state. Most importantly however, theories of interest group liberalism seem incapable of generating and implementing public policies that “solve” larger and long term public policy problems and instead generate a sub-optimal political process and output (Rosenberg, 2007).<sup>9</sup>

As an alternative, deliberative theory normatively presents itself as a more rational, legitimate, directly democratic, practical, and sustainable response to the shortcomings of democratic governance inherent in elite, statist, or orthodox pluralist theory that do not adequately cope with problems like social and political fragmentation, shared power, and conflicting values (Rosenberg, 2007). Political participation and for that matter appropriate governance is not necessarily most effectively based in self-interested, instrumental calculus associated with social choice theory (Arrow, 1951).

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<sup>9</sup> By solve I mean securing state level policy decisions that secure a productive, sustainable economy and citizenry through broad based citizen stakeholder participation and understanding, or at a minimum satisfaction with major state policy decisions (Fung & Wright, 2003).

When deliberativists *begin* to make these normative assertions they first offer a different view of individuals, then a different understanding of basic political values, and at times normatively assert how to best realize deliberative values in the design of political institutions. The discussion that follows will briefly outline these respective normative assertions.

*Individualism-* Deliberativists assert ideas of participatory deliberation which are premised on a very different understanding of political equality than the “aggregate view of democracy advanced by rational choice theorists” (Rosenberg 2007, 4). Behind these assertions lies an optimistic view of potential human behavior. Deliberative theory begins with and is normatively driven by the notion that individuals are not only capable of but in fact actively make judgments or act according to a larger sense of fairness and justice that is not necessarily driven by a individualistic instrumental calculus. In the deliberative view, an individual is not only a rational actor making choices that act to satisfy personal interests, he or she is “also an ethical and moral agent who reflects and collaborates” (Rosenberg 2007, 7). Contemporary deliberativists insist that a fully developed, healthy democracy revolves around the *transformation* rather than simply the aggregation of individual preferences as in an orthodox pluralist political model.

This recognition of an increased capacity or broader basis of preference identification and formation also leads deliberative theory to a different normative conception of political equality. Equality and autonomy require each other. “Equality is a necessary precondition for autonomy” and equality itself requires autonomy (Rosenberg,

2007, 7).<sup>10</sup> Only equals are able to fully engage in truly independent reasoning that is genuinely open and cooperative. Also, without equal autonomy, reflection and taking another's other position becomes difficult and less likely, thereby reducing equality in deliberative interaction. Positions remain static and therefore replicate existing hierarchy (Rosenberg 2007, 7-8). Deliberativists stress that this relationship between equality and autonomy stress cooperative processes that promote standards such as equal participation and influence within a policy process. In turn this engenders stakeholders to behave in a manner which subsume neither the self nor the notion of the public good defined beyond immediate and narrow individual gain (Rosenberg 2007, 7-9).

*Institutions-* Deliberative democracy is normatively presented as “a partial remedy for social and political deterioration of established democracies and as a measure of preventative governance for emerging ones” (Rosenberg 2007, 2). Deliberativists insist that non-instrumental behavior is readily possible when the desired reflection and orientation to “the other” is realized under not isolation but through actual interaction with the beliefs, values, and judgments of other people that hold these positions (Rosenberg, 2007). Therefore, deliberative governance seeks to engender a more robust and healthy civic capacity and engagement.

To facilitate an actively engaged citizenry, deliberativists espouse a positive role for the state apparatus. That is, deliberativists believe the state is a viable, affirmative institution and remains an essential tool for democracy. In response to the attack on the

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<sup>10</sup> In this case, equality is important in relationship to power among political actors. That is, the more similar social actors are in terms of condition (resources, education, influence) the more likely they are to engage in genuine deliberation due to the absence of inability of any actor/s to manipulate, coerce or exclude. Autonomy refers to the capacity of a rational individual to make informed, un-coerced decisions.

affirmative state, deliberative scholars call for reformed state institutions, not necessarily less government. Deliberativists maintain that institutional reforms serve as a viable mechanism to effectively shift tractable human behavior and motivations outside of the realm of mere self-interest by re-designing social and especially governmental institutions to rebuild social capital and to re-invigorate civic virtue (Manin, 1987; Fishkin, 1991). Deliberative reform, with its potential for a more humane and just society, can be facilitated with value driven, deliberative notions of community discussion and consensus (Habermas, 1984).

However, in contemporary society, this capacity to collectively solve problems is suppressed or weakened by the way in which major domains of social life, such as the market, the state, and organizations are removed from direct citizen participation or continue to be guided by notions of instrumental rationality.<sup>11</sup> The transformative, non-instrumental capacity of individuals is facilitated and replicable when deliberativists recognize the collaborative and social dimensions of value and preference formation. Accordingly deliberativists often espouse extensive participation in governance as paramount.

Furthermore, numerous deliberativists normatively insist the effects of participatory deliberation rather than isolated political action enhances our marketplace of ideas. Appropriate participatory deliberation results in political decisions that are more

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<sup>11</sup> Not unlike the Jeffersonian notion of civic republicanism, these contemporary deliberative theorists assert that democratic public life only thrives where institutions enable citizens to debate matters of public importance. Habermas and Dryzek attempt to describe "ideal speech situations" that many other deliberative theorists have also suggested and developed, where actors are equally endowed with the capacities of discourse, recognize each other's basic social equality and in which their speech is completely undistorted by ideology or power (Dryzek 1990, Habermas, 1984)

logical (Gutman & Thompson, 1996), rational (Benhabib, 2002), just, considerate of others (Cohen 1997), self-critical (Dryzek, 2000), and oriented toward the common good (Cohen, 1997; Benhabib 2002). Ultimately, however, a deliberative policy process must be interactive if it is to be more likely in bridging differences and produce policy decisions that are “both perceived as more legitimate and in fact more consensual, rational, and just” (Rosenberg 2007, 2).

*Deliberative Governance Criteria-* Although the “rationality project” has brought increasing efficiency in administration and decision-making, governance decisions are becoming increasingly removed from lay participation and thus, satisfaction and a sense of legitimacy are being eroded.<sup>12</sup> Democratic institutions like elections or referenda alone are not considered adequate according to ideal deliberative standards. Deliberativists agree that institutions must, when possible, generate full and equal participation in a joint, cooperative process between citizens in order to realize the best political decisions (Rosenberg 2007, 7-8).

As a member of the more recent critiques of positivism, deliberative post-positivist frames argue that positivist theory, like interest group liberalism, encourages instrumental behavior and as a result is undemocratic.<sup>13</sup> To engender an alternative form of political behavior (meaning citizens that are fully engaged with Jeffersonian civic virtue) that is required to make fully rational and just decisions, some collective notion of

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<sup>12</sup> These deliberative theorists might include, among others, Habermas, 1987; Gutman and Thompson, 1996, 2004; Cohen, 1996, 1997; Bonham, 1997; Dryzek, 2000; Benhabib, 1996; and Chambers, 2003).

<sup>13</sup> Anglo-American deliberative theory began its most recent resurgence and development in the 1990s with foundations in critical theory or critical legal studies (Welsh, 2000; Rosenberg, 2007).

decision-making that facilitates extensive citizen participation is usually an important principle for building successful deliberative institutions (Rosenberg, 2007).

However, Anglo-American conceptions of deliberative governance often strive to enlighten the political community (or generate better political processes and decisions) by getting us closer to a shared understanding of “truth.” By constantly probing into alternative hypotheses, a political community (in the spirit of the science) moves closer in the direction of a cumulative body of evidence or “truth.” That is, moral and empirical progress is possible. Therefore, we can and should seek out continual discussion, revision, and refinement of our moral or scientific beliefs through practical reasoning, leading in turn toward more correct and virtuous behavior. By engaging a similar process, deliberative governance enables society to reach cumulative shared understanding or moral truth as well.

While deliberative governance is arguably still aligned with the tradition of the philosophy of science—specifically to the extent that deliberativists often advocate a type of criteria to structure political discourse and decision via persuasion and argumentation (e.g. argumentation and evidence as the proper way to conduct and evaluate public discourse and decision-making)—deliberative theorists from various schools or frames (such as Continental European alternatives) *also* at times partially or completely attempt to escape orthodox positivist notions of discourse and decision-making that assert a “right” way to think and communicate, or that value certain forms of expertise or groups that communicate using this expertise over others (Habermas 1987; Stone 2001; Rosenberg, 2007).

However, both Anglo-American and Continental European deliberativists often tend toward refuting de facto assertions about correct or incorrect assumptions about political behavior (e.g. instrumental rationality) or epistemological frames (e.g. economic rationality) in order to enhance the capacity of citizens and government to not only allow for greater inclusion and legitimacy but also to better probe and utilize multiple forms of expertise. Ultimately, the reasoning goes, refuting assertions about correct political behavior will continue to produce better political process and outputs, thereby reducing political exclusion and manipulation of multiple real or potential stakeholders.<sup>14</sup>

In sum, the normative deliberative literature presents persuasive, moral arguments that propose alternative assumptions about individuals, the role of institutions, and alternative standards of appropriate governance predicated on ideas like some measure of equality.<sup>15</sup> To the extent that deliberative scholarship suggests practical policy oriented

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<sup>14</sup> This is a development expanded from Habermasian thought and includes Mansbridge, Young, Aronowitz, Bickford, Sanders, and others. To the extent these authors demand any speech related evaluative criteria making that rely on the better argument, they use the term “argumentation” to mean something approximating Habermasian “communicative action” or arguing that participants should ascribe to the norm of “reasonableness” or an effort to understand one another. How this is to be measured is unclear.

<sup>15</sup> It is important to note that at times and increasingly deliberative scholars do propose partial but usually only theoretical reforms rather than necessarily make a purely normative case for deliberative governance. At times, institutional reforms are proposed to shift group preferences toward deliberation seeking. For example, Fisher and Forrester, Dorf and Sabel, and Lindblom insist that institutional reform, whether it is ideally making institutions completely open and reflexive (Lindblom, 1990), or having these same values pragmatically bounded with specific institutional suggestions (Dorf and Sabel, 1998 & Fisher & Forrester, 1993), ensures that most if not all groups see the process as generating “better solutions,” which in turn leads to increased levels of more genuine participation as it is perceived as more inclusive and fair, and therefore ultimately more legitimate. Or, Dryzek, Mansbridge, and Cohen believe that groups must perceive they have a stake in the process to seek deliberative strategies. As institutions are properly reformed, less powerful groups perceive real access and genuine opportunity to have more influence or power in the decision-making while more powerful groups ostensibly are persuaded by the normative framework provided by deliberative theory for enhancing the overall good of the decision-making community and seeing beyond their short term interests. This in turn will increase the likelihood that all these groups will seek out more deliberative strategies of interaction.

theoretical reforms—rather than necessarily making a purely normative case for deliberative governance—deliberativists have not usually attempted to operationalize or test their theoretical propositions. Under these circumstances we *cannot actually know anything* or make any evaluative claims about the accuracy of these ideas. Accordingly, the largely normative stance of deliberative theory engenders vociferous critiques of social choice theorists who insist that deliberation is too unrealistic, unstructured, and chaotic.<sup>16</sup>

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<sup>16</sup> The largely normative, untested nature of deliberative theory makes it a popular target and arguably leads to numerous other theoretical critiques as well. Rational choice theorists (among others) argue a neglect among deliberativists in recognizing real incentives and behavior patterns among political actors that arguably contradict the ideals of deliberative theory, such as immense material differences, fixed preferences, rational public ignorance, and elite posturing that suggest that deliberation will either not escape the instrumental political environment or will lead deliberative actors to engage in suboptimal decision-process and decision-outcomes, where deliberative behavior will only create a political realm with exploitable deliberative “suckers” where any rational instrumental actors also cohabitate. Rational choice theorists also point to rational public ignorance, elite posturing, and the claim is made that mostly citizens will not invest time in careful deliberation. Therefore, theories of deliberation are utopian (Pincione 2006, 14). Small “1” liberal or difference democrats (as Dryzek refers to them) - or those conceiving of just governance in terms of individual rights - worry that deliberative processes lack of clear standards for discussion and decision making give competitive advantage to morally objectionable positions. For example, deliberative decisions are ideally made through consensus whenever possible to help ensure that the broadest and therefore most valid reading of the public good is reflected in subsequent policy decisions (Cohen & Rogers, 1983; Jane Mansbridge, 1990). However, is consensus appropriate when a majority position emerges concerning a minority group that is not morally defensible? There is also the issue of deliberative theory and its potential for exacerbating existing power imbalances when asserting that *persuasion and argument can substitute for epistemological authority*, by “offering reasonable, morally justifiable arguments openly to all,” or that “deliberation can be judged by the quality of the participation – as gauged by the degree to which participants’ opinions and proposals are informed” (Fung and Wright, 27). Lynn Sanders and others raise concerns that argument and persuasion is or at least often can be a form of political competition results in political exclusion as this suggests a superior language of decision-making that many elite or status quo groups have disproportionate capacity to engage in. The valuing of argument and persuasion likely ensure that existing power arrangements are perpetuated if not exacerbated (Dryzek, 2000). Accordingly, this project rejects the deliberative theorists that define consensus as convergence.

### **III. Exemplar Deliberative Case Studies**

To the extent that careful empirical work has been undertaken, it has generally been limited to attempting to prove that deliberation does exist and can work. The deliberative literature focuses on attempting to prove the existence of actual real deliberation often through informal observation of single cases where citizens participated in some form of political or policy deliberation according to often unclear or even non-deliberative evaluative criteria (Forester, 1999; Fung & Wright, 2003; Rosenberg, 2007).

Numerous case study examples are cited both nationally and globally, across multiple issue areas, and range across vertical layers of government. These cases have generated both direct and representative democratic authority which devolves substantial administrative and fiscal development power to individual villages, communities, and diverse stakeholder interests. These so called “exemplar” or evidentiary deliberative case studies include everything from local deliberative U.S. case studies such as neighborhood governance councils in Chicago that address the fears and hopes of many inner-city Chicago residents by re-structuring urban bureaucracy by devolving substantial power over policing and public schools to local residents; to the U.S. based ecosystem management projects that have proliferated since the 1990s; civic environmentalism in Sierra Nevada country of California between environmentalists and timber harvesting interests in Quincy; or federal habitat conservation planning under the U.S. Endangered Species Act which empowers stakeholders to develop governance arrangements that will satisfy the goals of both human development and the protection of endangered species; to

Panchayat reforms in West Bengal and Kerala India (Fung & Wright 2003, 5).

Unfortunately, the deliberative claims in these cases are not clearly defined and then explicitly tested (Fung and Wright, 2003). Shawn Rosenberg reiterates that what little systematic research has been done in deliberative studies has been generally limited to “a number of case studies were conducted that involved more or less informal observations of single cases where citizens participated in some form of political or public policy deliberation” (Rosenberg 2007, 3). This type of statement been supported by other deliberative scholars as well (Mansbridge, 1980; Button and Matteson, 1999).

Furthermore, to the extent that empirical “proof of life” case studies do exist, deliberativists such as Fung and Wright caution that the lack of adequate systematic research means that specific deliberative propositions can neither be confirmed nor falsified:

A large caveat needs to be entered on the kinds of inference that can be supported by these cases. In selecting their cases [in *Deepening Democracy*], the editors sought to find illuminating illustrations of empowered participatory governance, not to test a theory about it. In effect, they have sampled on the dependent variable. Given the immature state of theory and data in this area, this judgment made sense. Its downside however, is that we lack the variation needed for testing hypotheses. (Fung and Wright, 243)

Even when evaluative criteria are stated or can be inferred in exemplar deliberative single case studies, these claims may focus on outcomes or apply non-deliberative evaluative criteria (Sirianni and Friedland 2001; Pinkerson, 1992).<sup>17</sup> For example,

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<sup>17</sup> For example, deliberativists such as Sirianni and Friedland (2001) point to actual outcomes that leave the less powerful or poor better off as proof that deliberation is being sought out by some if not most or all

Why then might we expect these deliberative democratic institutions to produce effective outcomes? First, these experiments convene and empower individuals, close to the points of action, who possess intimate knowledge about relevant situations. Second, in many problem contexts, these individuals, whether they are citizen or officials at the street level, may also know how best improve the situation. Third, the deliberative process that regulates these groups decision-making is likely to generate superior solutions compared to hierarchical or less reflective aggregation procedures (such as voting) because all participants have opportunities to offer useful information and to consider alternative solutions more deeply...(Fung and Wright 2003, 25)

Additionally, deliberativists like Fung and Wright cite increased legitimacy, a shortened feedback loop, and enhanced learning capacity as support for the usage of outcomes as measuring the deliberation process itself. As a result, deliberative empirical findings are not capable of disconfirming ideal deliberative theoretical assertions.

#### **IV. Deliberative Disagreement**

A widespread lack of theoretical consensus is common in deliberative theory. They disagree about “values, status, aims, and scope of deliberation, and their disagreements yield different views of democracy” (Gutman and Thompson 2004, 21). This lack of consistency problematizes and further explains the frequent lack of deliberative empirical analysis (Fung and Wright, 2003).

This means that one deliberativist’s deliberation may be another’s instrumental behavior more rightly associated with interest group liberalism (Fung and Wright 2003, 187). Deliberative criteria are usually either undefined or widely divergent in

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interested and affected groups in a policy area. Fung and Wright state that “choices will be fair if groups adopt reasonable proposals rather than those that garner the greatest self-interested support or political influence” (Fung and Wright 2003, 18).

interpretation at times. Are participant stakeholder supposed to change their minds during or after participatory forums and should stakeholders only worry about the common good (most deliberativists), or should they retain their original positions but come to respect the opinions (while not agree with) of other positions (Jane Mansbridge, 1980)? “We do not even know exactly which transformations and deliberations should occur or are ‘better’ and why” (Mansbridge in Fung and Wright 2003, 187). Gutman and Thompson state “the disagreement among deliberative democrats who seek consensus and those who accept pluralism is more intractable than the disputes we have so far considered” (Gutman and Thompson 2004, 26).

Deliberativists also disagree about whether deliberation has only “instrumental value” or “expressive value.” That is, do we gauge deliberation by outcomes, or by whether “good” policy outcomes were reached? Or, do we measure it by whether it generates mutual satisfaction and respect among citizens? As mentioned, Fung and Wright (2003) as well as Sirianni and Friedland (2001) assert that outcome measures are important to gauging whether deliberation has occurred. For example, Fung and Wright state that “choices will be fair if groups adopt reasonable proposals rather than those that garner the greatest self-interested support or political influence” (Fung and Wright 2003, 18). However, later in chapter 6 Jane Mansbridge insists that we must judge separately “the quality of the deliberation...the quality of the decision procedure...and the quality of the outcome” (Mansbridge in Fung and Wright 2003, 180).

Another related disagreement among deliberativists concerns whether deliberative theory should be predicated on procedural or substantive grounds. That is, pure

proceduralism holds that “the principles should apply only to the process...and not prescribe the substance of the laws, but only the substance by which the laws are made and the conditions necessary for the procedures to work fairly” (Gutman and Thompson 2004, 24). Substantive deliberativists insist that procedures (majority rule) can produce unjust outcomes (discrimination against minorities).<sup>18</sup> The assertion of basic rights and standards that demand all citizens are treated as free and equal citizens presuppose and facilitate any minimum guarantee of deliberative procedures. This contrast is sometimes thought to be reflected in the tension between Habermas and Rawls, where Habermas is said to favor democratic deliberation over rights and Rawls would favor rights over deliberation (Gutman and Thompson 2004, 26). In practice however, both perspectives recognize the need for democratic principles articulated within and by a deliberative process (Gutman and Thompson 2004, 26).

Finally, at times scholars agree certain criteria (e.g. procedural and substantive standards) are important for deliberation in principle but remain vague about defining and bounding these concepts and establishing appropriate thresholds or measures. While deliberativists ideally ascribe to extensive participation (especially by traditionally marginalized populations or by those most affected by the decision at hand) when practical and ethical constraints are introduced they begin to gravitate toward either representative or participatory criteria for participation (Gutman and Thompson 2004,

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<sup>18</sup> Deliberative disagreement on substantive and procedural criteria can also lead to different assertions about the proper role of deliberation. Should deliberation occur in government or in civil society? The answer to this question is partially driven by substantive or procedural concerns. After all, if minimum constitutional standards are required for minimum deliberative guarantees and an informal civil institution cannot ensure these minimums then a governmental role might be more a more appropriate forum for deliberative institutions.

30). Deliberative lack of cohesion is made worse though theoretical vagueness and resulting difficulty in testability and ultimately undermines its own direct democratic intentions with such underdevelopment. For example,

Since the empirical study of alternative institutional designs is too immature to reveal whether these features are necessary [state centered devolution and centralization] to deliberative arrangements, we offer them as observations and hypothesis about design features that contribute to institutions that advance, stabilize, and deepen democratic development (Fung and Wright 2003, 20).

Again, as a result, answers to important deliberative questions remain equally absent and confused. While Elster (1998) and other deliberative scholars assert there is some basic agreement among scholars on a core set of deliberative criteria, there still remains substantial disagreement over a) the actual meaning of many of the identified deliberative criteria, and b) to what extent or in what combinations these criteria should be present in order to meet deliberative thresholds, i.e. to know when deliberation emerges to the extent that agreement exists over the meaning of each criteria.

## **V. Shared Deliberative Criteria**

While varying at times in exactly how to best accomplish this, deliberative theorists nonetheless see deliberation as a crucial democratic tool toward finding legitimate and viable solutions to policy issues that have proven resistant to statist, pluralist, or elite based frameworks (Fischer and Forrester 1993; Welsh, 2000).

However, the deliberative literature *does* clearly establish the need for the following as basic criteria of deliberation: power imbalances must be within certain thresholds; groups must seriously encourage, listen to, and respect all valid perspectives;

and institutions should be designed to meet the participation requirement or genuine inclusion of as many interested and affected actors as possible, especially the previously less powerful. The absence of or reduced presence of any one these factors, according to deliberative theory, illustrates that the process is not fully deliberative. To the extent that these thresholds are exceeded, more robust deliberation is expected.

Deliberative theorists such as Dryzek and Habermas, while each hailing from American and Continental schools respectively (Rosenberg, 2007), share central commonalities that reflect the core theoretical agreement that exists within deliberative theory. These and other notable deliberativists maintain that facilitating genuine and robust deliberation requires that citizens be brought together publicly to discuss public policy in a setting that emphasizes equal influence and participation as well as mutual respect. Deliberative scholars are universally hopeful for and in fact optimistic toward a revival of the public sphere and see the affirmative state as central to achieving this vision.

Ideally, this new deliberative political community would transcend a system of manipulation, exclusion, or coercion, and is based on the equal rights and obligations of legally vested citizens, again, in a manner not unlike Jeffersonian civic republicanism. A discursive theory of democracy requires a political community which can collectively define its political will and implement it as policy, and it requires an activist public sphere, where matters of common interest and political issues can be discussed, and the force of public opinion can influence the decision-making process at a minimum (Dryzek 1990, Fisher & Forrester, 1993).

This usually necessitates an acknowledgement of resolving criteria of relative parity and respect as central to any claims about standards of deliberation or deliberative claims. Claims of relative parity or respect usually begin then, at a minimum, with some measure of perceived stakeholder legitimacy. In order to make grand claims of widespread satisfaction and appeal, however, deliberativists often suggest decision-making models that seek inclusion and consensus or as close to consensus as possible. In this case, Cohen and others do not mean that genuine deliberation leads to convergence (Elster 1998, 197-98). Consensus instead refers with satisfaction with the process and acceptance of the decision, whether all stakeholders agree with the substance of the agreement or not. This idea of consensus turns on the perceived adequacy of the deliberative process (as even an ideal deliberative procedure will not produce consensus) and helps ensure some measure of relative parity.

However, consensus requires some measure of perceived legitimacy. Legitimacy necessitates that all stakeholders must perceive they are being treated with respect, meaning “open-mindedness and a willingness to listen” (Fung and Wright 2003, 178) and that their voices have some measure of influence within participatory forums. If these conditions are not met then stakeholders are less likely to seek out deliberative forums and engage in deliberative behavior.

This means that assertions about serving the public good or achieving public consent cannot rest merely on the satisfaction of the dominant interests in a participatory process or decision, nor can the will of the majority necessarily be enough to argue that the public good had been ensured, if the traditionally marginalized poor or minority

populations have not been included somehow (Cohen and Rogers 1987; Jane Mansbridge 1991). If properly included, “even people who disagree may then accept the results of a deliberative procedure as legitimate” (Cohen in Elster 1998, 197-198). Therefore, the process must be as extensively inclusive as possible and must strive to produce consensus decisions.<sup>19</sup>

The existence of criteria for making participatory decisions is inevitable. However, in order to claim legitimacy in the decision-making process, deliberativists rightly expend considerable effort in coping with issues of parity in participatory decision-making. Cohen and Rogers (1983) assert that access to basic material resources is a precondition for genuinely free and unconstrained deliberation. The existence of serious material inequalities is likely to erode free and equal public deliberation by translating into drastically unequal capacities for political action. Legitimate collective action is not the product of the will of a dominant interest/s or the sum of individual self-interested behavior that may result in some sort or majority preference, but a “property of intersubjective discourse” (Dryzek, 1990).

Following Habermas, critical theorists are concerned with the tendency for power or force and subsequent resulting domination by a small group of stakeholders onto others. Critical theorists ideally seek to achieve equality within a deliberative forum and within broader society, to the extent possible.<sup>20</sup> The exception to this is the force of the

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<sup>19</sup> This is the notion of consensus that deliberativists such as Cohen and others postulate and that I will utilize.

<sup>20</sup> Deliberativists like Cohen and Rogers would urge the elimination of gross material inequities by recommending things like free public education and state-financed child care, for example (Cohen and Rogers in Fung and Wright 2003, chapter 10).

better argument, itself a controversial assertion among deliberativists (Habermas, 1984). A truly deliberative forum, therefore, must adopt the principle that it must be constantly at work to mitigating the capacity of group or actor domination or potential domination through an imbalance of power. Accordingly, even a process that appears deliberative or a decision that is based in consensus is suspect until the relationship between subjects along formal and informal dimensions are assessed.

Critical legal theorists place emphasis on the state as an instrument of facilitation and enforcement of minimum standards (centralization) to ensure deliberative measures are undertaken and to reduce local cooptation and also voluntarily devolves state authority for more appropriate and legitimate affected community decisions. Critical legal theorists assert the proper type and scope of collective action by generally locating power as close to the issue area itself and in this process governance moves closer to the affected and interested actors themselves and away from centralized authority at the hands of a removed state agent. The focus is on the immediacy of the connection between discursive forums and their agreements and the actual implementation of resulting deliberative decisions. This makes discussions about what should be done immediately linked to what is currently being done (Dorf and Sabel 1998; Sabel 1994, 138; Welsh 2000).

This means political or policy decisions are removed from a centralized and remote governing unit. These units of governance are situated locally and given the full extent of authority possible. Deliberative theory attempts to produce dialogue that is

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traditionally facilitated through an administrative state agency (voluntary top down devolution), deliberative theorists increasingly argue for dialogue that does not allow for any one frame to be considered dominant, such as so called “expert” knowledge, or other positivist frames. To ensure this and other forms of domination are constrained, the central governing agent retains an important but modified role relative to the familiar centralized statist role of a federal governing structure, for example (Dorf and Sabel, 1998).

That means locally empowered governmental units are to be granted adequate capacity to preempt and mitigate local elite co-optation of deliberative decision-making, extra-constitutional behavior, and are to mitigate severe violations of basic self-imposed goals or best practice standards. This is to be accomplished through the setting of minimum standards that directly seek to cope with inequity and help facilitate respect.

These minimum standards should include things like rigorous requirements for full community inclusion and participation, for example (Cohen & Rogers in Olin Wright, 1995; Dorf and Sabel 1998). After all, the relationship between theories of deliberative democracy and theories of liberal democracy or basic centralization standards. While these may assume various forms in the existing deliberative scholarship most deliberativists declare deliberation to be compatible with traditional liberalism, such as Dorf and Sabel (1998) or other critical deliberative scholars and deliberative legal theorists. Critical deliberativists insist deliberative theory that assume and enforce minimum legal and constitutional principles actually enhances the legitimacy of laws and

policies.<sup>21</sup> In a deliberative arrangement with basic minimum standards, organized interests and private groups would continue to exist, but are ideally moved away from seeking only to influence policy for purely instrumental gain.

However, while uncommon among Anglo-American theorists, some deliberativists such as Continental European critical theorists like Jürgen Habermas, go further, and question the attempt by traditional liberal philosophers to establish the priority of rights or justice over democracy as another form of epistemological control through the attempt to force others to ascribe to a western notion of individual rights over community self-determination, for example. According to Pincione, this is often implicitly established in Americentric, small “I” liberalist notions of deliberative justice and rights (Pincione, 2006). The legitimacy of political decisions (and perceptions about power and respect) primarily depends on the satisfaction of deliberative principles (such as rights, justice, consent, inclusion, and collective will).

In sum, while scholars may disagree over exactly what each of these criteria entails regarding deliberation seeking and emergence, the deliberative literature *does* clearly establish the need for the following as basic criteria of deliberation: power imbalances must be within certain thresholds; groups must seriously encourage, listen to, and respect all valid perspectives; and that institutions must be designed to meet the participation requirement or genuine inclusion of as many interested and affected actors as possible, especially the previously less powerful. The absence of or reduced presence of any one these factors, according to deliberative theory, illustrates that the process is

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<sup>21</sup> Also notably Amy Gutman, Dennis Thompson, and Carlos Ninos.

not fully deliberative. In the next section, I will define basic deliberative terms and establish the central shared theoretical deliberative criteria, their measures, and the minimum thresholds I will use to assess the evidence in each empirical case.

## VI. Theoretical Deliberative Variables

Before proceeding to test deliberation it is important to establish a working conceptual definition of deliberation itself. According to deliberativists, what exactly is deliberation? Deliberative scholars would agree, at a minimum, that *deliberation can be understood as a decision-making process where all relevant stakeholders are allowed and encouraged to discuss and influence public policy through mutually respectful dialogue.*<sup>22</sup>

What specific theoretical criteria and actual institutional standards are suggested by this definition? The core assumption behind deliberative theory rests on making decisions that are arrived at by interested and involved stakeholders such as local citizens or other relevant political actors.<sup>23</sup> Implied in the notion of incorporation is the idea that

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<sup>22</sup> Deliberative scholars agree, at the very minimum, to the criteria contained in this definition of deliberation (Rosenberg, 2007). This type of definition also implies certain additional minimum standards such as making decisions through interested and involved groups such as local citizens and political actors and some minimum level of parity to facilitate genuine participation and influence among multiple stakeholders. To the extent these indicators are not present, we do not expect to find full deliberation occurring.

<sup>23</sup> Determining where one stakeholder or group ends and another begins is crucial to dealing with measurement issues surrounding deliberation. At the most basic definitional level, a group can be considered a recognizable collection of individuals who seek to act in a coherent fashion in pursuit of a political goal. A group can be measured either subjectively (that is, what group do you consider yourself a member of or where would you place a given group), or by establishing generally understood, explicit measures. For our purposes, a group is a political faction or grouping of individuals within a political organization, such as a political party, a trade union, or other group with some kind of political purpose

deliberation respects and is actually strengthened by diverse opinions that bring different types of expertise to bear upon an issue. This means that deliberation seeks consensus but *does not attempt to generate sameness*. This definition of deliberation necessitates that decisions do not usually select on goals or ends, only on an agreed upon, shared process of interaction without primacy being given to one group, type of knowledge, or a particular policy outcome. Additionally, this definition of deliberation implies some measure of equality and respect.

In this section I will draw from the extant deliberative literature to identify central and shared theoretical deliberative criteria and their measures in the next section in order to more systematically predict and measure deliberation against the evidence in each of the examined cases. These criteria will then be expressed respectively as independent and dependent variables. First I will identify the independent variables parity and respect and their associated minimum thresholds and measures. If sufficiently present, these variables cause deliberation to occur. To the extent that these minimum standards are exceeded, more robust deliberation is expected. Next, I will present the dependent variables, which are referred to as stakeholder perceptions of parity and respect. I will then present and discuss the minimum thresholds and measures of these dependent variables. If minimum perceived parity and respect thresholds are met then deliberation is occurring. To the

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(e.g. a power bloc, or a voting bloc). The individuals within a faction are united in one common goal or set of common goals for the broader organization; although not all goal/s are always shared by its members (hence the subjective measure to account for in group view divergence). There is the problem of overlapping membership or shared goals by numerous groups, making group identification messy and imprecise at times. In fact, from an ideal deliberative perspective, the actualization of deliberation might be an end to any definitional utility behind the term itself as groups may no longer see each other as distinct units with very narrow goals or ends but united behind a transformative concern for a deliberative process itself. However, in orthodox political environments of interest group politics, and or contentious and polarized environments which deliberation is initially presented as most needed as a governance strategy, identifying different groups is often quite obvious.

extent that these perceived thresholds are exceeded then more robust deliberation is occurring. The following formula illustrates the deliberative conceptual model I will first discuss and then employ against the evidence in each case:

$$\square AP+AR= D (PR+PP)^{24}$$

*Deliberative Independent Variables: Parity and Respect-* The aforementioned definition of deliberation implies and deliberativists often explicitly address the issue of relative parity and mutual respect are central to most if not all deliberativists. *First, perhaps no general deliberative principle is considered more important to deliberation by deliberativists than the concept of power.* Joshua Cohen (1989) was the first theorist to specify criteria by which one might judge the democratic legitimacy of deliberation and his first criterion of deliberation was that deliberation is to be free, reinterpreted as the Habermasian ideal of “freedom from power” (Macedo 1999, 224).

*What is power?* Power, according to Jane Mansbridge, from a deliberative standpoint, is understood as “the threat of sanction or use of force and in practice should ideally be absent in a deliberation, though in reality this is impossible” (Mansbridge in Fung and Wright, page 183, *Deepening Democracy* or Mansbridge in Macedo 1999, page 224, *Deliberative Politics*).<sup>25</sup> Mansbridge and other deliberativists do not demand that

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<sup>24</sup> Adequate Parity + Adequate Respect are independent variables. If sufficient at minimum thresholds then deliberation is thought to be occurring. Perceived Adequate Parity + Perceived Respect are dependent variables and therefore serve as measures of deliberation. Again to the extent that these minimum adequacy measures are exceeded, more robust deliberation (or higher values in the above formula) is expected.

<sup>25</sup> Power is more like the capacity to influence, exercise control, or bring about change. However, deliberativists are concerned with the exercise of power to alter participation, discourse, and to influence decisions and their larger perceived legitimacy *due to an ability to coerce rather than by merit or consent.*

deliberation be fully free from power (as this is impossible), nor do they demand equal influence or even equal participation (Mansbridge in *Deliberative Politics* 1999, 224-225) as some may care or be more affected than others and some ideas may somehow be more viable than others.

While disagreement exists as to the actual boundaries of power and the level of parity necessary for deliberation to occur, deliberativists agree that without *either* some sort of existing minimum background parity *or* institutional conditions are needed before and during relevant stakeholder interaction to effectively generate at least momentary conditions of relative parity. If not, it is likely that more powerful actors will simply dominate those with less power.

Subsequently, it is also more unlikely that less powerful groups will perceive or seek out deliberative forums as legitimate, ultimately making true deliberation unlikely. After all, according to Fung and Wright (2003, introduction), real deliberative output is only possible through a genuinely collaborative processes that is inclusive, fair, and free from domination. Ultimately, a full expression of deliberation is not possible in ideal terms without relative parity. In other word, the relationship that is suggested here is that the more extreme the discrepancies in the potential or actual use of power among groups in a given issue area, the less likely genuine deliberation will occur or be sought out.<sup>26</sup>

To establish measures of power and minimum thresholds to evaluate deliberative claims, institutional deliberativists often assert that issues of relative parity include

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<sup>26</sup> Power is a central concern of deliberativists. The basic proposition of relative parity can be drawn from the deliberative literature and yields the following basic hypothesis: a group that has relative equality of power with other groups will be more likely to seek deliberation over exit or manipulation (Fung & Wright 2003, 23; Cohen & Rogers 1987, 248).

specific requirements such as devolution and centralization (Dorf and Sabel, 1998; Fung and Wright, 2003). In practice, deliberative theorists insist that full inclusion often requires some localism or what legal deliberativists call *devolution* at a minimum.<sup>27</sup> In attempting to institutionalize deliberation, deliberativists like Fung and Wright or Dorf and Sabel (1998) assert the importance of voluntarily devolving state authority to ameliorate power inequities among local groups in a given issue area. Adequate devolution is hypothesized as facilitating greater deliberation among all involved local groups.

Specifically, this devolution means the *creation of a local governance council that has the power or means to set, redefine, and then accomplish its goals.*<sup>28</sup> That is, a central state authority that voluntarily devolves substantial authority to local decision bodies yet retains some minimum oversight to better protect and utilize local knowledge are institutional factors that cause deliberation, therefore if any of these indicators are

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<sup>27</sup> “Effective government is first and foremost local government...The freedom of maneuver accorded local jurisdictions in directly deliberative polyarchy and the obligations of mutual regard that are its precondition both favor exploratory problem solving and become the more effective for it. Above all, an experimentalist regime gives locales substantial latitude in defining problems for themselves...Instead of arguing the relevant matters at long range through the institutions of representative democracy, local jurisdictions in directly deliberative polyarchy can in such cases initially act on their own best understanding of ends and means” (Dorf and Sabel in *Democratic Experimentalism*, 322-323).

<sup>28</sup> This means a governance unit is not a fixed geographical or functional unit. It must be able to delegate and or federate to other units of government, for example. To do this effectively, they must be able to combine expertise in their respective areas of specialization with the ability to collaborate closely with citizens or other interested or affected parties who have a stake in the decision activity (Dorf and Sabel 1998, 316-317).

absent then claims of deliberation emergence are reduced (Dorf & Sabel, 1998; Fisher & Forrester, 1993).<sup>29</sup>

Deliberativists also insist that while devolution is crucial to generating effective deliberation *there must also simultaneously be accompanying centralization standards*. Appropriate centralization standards are also postulated as leading to greater deliberation among relevant stakeholders.<sup>30</sup> Centralization generally consists of setting of basic minimum standards and assistance in facilitating local priorities (Dorf & Sabel, 1998).<sup>31</sup> Minimum governance standards must be required and practiced to ensure that deliberation is most effectively working toward the public good and is ensuring that local cooptation or some other forms of manipulation or exclusion is not taking place.

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<sup>29</sup> Inclusion requires that shared, community relevant, and legitimate decisions are incorporated and largely arrived at locally; they are not made entirely from distant areas and from vertical layers of government by a few groups.

<sup>30</sup> “If local knowledge and simultaneous engineering are indispensable to government under diverse and volatile conditions, there is no reason to assume, and many to doubt, that they are sufficient” (Dorf and Sabel 1998, 315).

<sup>31</sup> Facilitating the necessary minimum features of a deliberative environment demand centralizing standards that must “address both the Madisonian concerns about the self-aggrandizing tendency of government and the equally Madisonian concern about the menace of oligarchy in the closed communities of small republics” (Dorf and Sabel 1998, 284). This means generating practical governance standards that “show respect for individual rights that, in the American constitutional tradition, provides crucial protection against both the tyranny of the majority and the tyranny of entrenched interests” (Dorf and Sabel 1998, 284). More specifically, on pages 316-317 of “Democratic Experimentalism,” Dorf and Sabel articulate an ideal set of centralized, institutional minimum standards that consist of: inclusion standards that seek to incorporate experts as well as interested participants and especially seeks to actively solicit feedback from those actors affected in a given issue area. Additionally, power must be devolved within an institutional apparatus that is partially independent from a central agent. Next, whenever possible, this institution should be largely open in its sharing of information as well as inclusive in its decision-making whenever possible meaning the decision body shares power with and encourages interaction with multiple stakeholders. Finally, the decision-making apparatus is evaluated through locally pre-established goals as well as by a central agent that generates accountability through shared best practice standards and other relevant information that exist in the policy area.

For example, are there basic minimum or best practice standards codified in governing documents that are also implemented by a central authority such as decision and inclusion standards at meetings? Are there inclusion standards and are overtures made towards inclusion of previously less powerful groups in meetings? Do participants agree with these assessments? If not, then centralization is also less likely to be occurring along deliberative guidelines (Dorf & Sabel, 1998; Fisher & Forrester, 1993).

*What are the objective minimum conditions for relative parity then?* Cohen states that the criterion of equality requires that participants are somehow “substantively equal in that the existing distribution of power and resources does not shape their chances to contribute to the deliberation” (Cohen 1989, 23). In other words, while relative parity before and outside deliberative forums is usually impossible at a minimum, this necessitates the creation of a deliberative forum, and its rules and practices must control some of the pre-existing and durable differences in power at least regarding their ability to participate and have their positions incorporated, in order to facilitate conditions for genuine deliberation (Fung and Wright 2003, 266).<sup>32</sup> To accomplish this, deliberativists should explicitly attend to issues of group dynamics and try to develop ways to undercut the dominance of higher-status individuals (Sanders, 1997).

How can institutions accomplish this level of equality? What conditions are required, assuming that relative parity does not exist outside of these institutional spaces?

*Deliberative institutions require perceptions of legitimacy, fairness, and substantive*

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<sup>32</sup> According to Anne Phillips in *Democracy and Difference*, “Robust democracy becomes possible only when economic inequalities are substantially reduced” (144, Benhabib). Many deliberativists realize this ideal condition is unrealistic and have come to rely on institutional mechanisms to approximate this standard.

*equality by the most marginalized groups and can be measured by inclusive efforts and results.* For example, “equity and fairness stems from the inclusion of disadvantaged individuals – residents and workers – who are often excluded from public decisions.” (Fung and Wright 2003, 17 and 26) In Joshua Cohen’s classic statement, inclusion is defined in slightly more specific terms. “Deliberative legitimacy is to be found in *all* those subject to a decision participating about its content” (Cohen in Dryzek 2008, 484).

In sum then, alleviating relative parity specifically involves focusing on resolving concerns about control and domination in a policy area and begins when deliberative institutions *first possess minimum levels of institutional authority and assert or operate under minimum basic standards* in order to establish relative equality and to be perceived as legitimate by the relevant actors (Fung and Wright 2003, 36-37, and Thomas in Fung and Wright, 150).

Specifically, at a minimum, all major stakeholders and affected groups must have a) formal access, b) a real stake or influence in the deliberative process to ensure that no stakeholders can dominate the decision process, and the HSC must c) be open to and actively solicit and acquire unstructured feedback, especially from the most marginalized and affected populations.<sup>33</sup> If the interactive process, decisions, or stakeholder

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<sup>33</sup> What are ideal deliberative participatory standards? To claim genuine deliberation, deliberativists often require participation by all groups including the most marginalized groups if they are affected, or by *all* individuals affected. In *Deepening Democracy*, Fung and Wright assert that “For deliberative democracy to succeed in real-world settings, it must engage individuals with little experience and few skills of participation” (Fung and Wright 2003, 32). Or, “Deliberative legitimacy is to be found in all those subject to a decision participating about its content” (Joshua Cohen, 1989). Now, given that extensive participation of all interested and affected stakeholders is unlikely, how can non-ideal policymakers be certain that a given participatory forum acts sufficiently as a representative institution in meeting deliberative requirements that stipulate granting substantive policy input to all relevant stakeholders? What do we mean by representative and how can we measure whether an institution meets this standard? Standards of representation are contestable in the deliberative literature. However, institutional deliberativists like

participation is dictated by one or more stakeholders we do not expect to find full deliberation. These independent institutional variables are expressed as indicators or minimum standards for robust institutional deliberation. To the extent any of these indicators are not present, deliberativists expect to find reduced deliberation occurring. To the extent that these minimum indicators are exceeded, we expect to find more robust deliberation occurring. These minimum independent institutional variables are illustrated in Table 1 below.

Table 1: Indicators of (Xs) Relative Parity

Xs	Indicators of Xs
Power	Decisions are not dictated by any stakeholders; no stakeholders excluded
Devolution	State voluntarily grants authority to local unit/s, substantial authority is given
Centralization	Written or implemented minimum standards: formal access, formal influence of relevant stakeholder interests, open to and actively solicit feedback from all relevant stakeholders

*Dependent Variables: Perceived Adequacy along Respect and Parity Criteria-*

The previous discussion postulates institutional independent variables that predict deliberation and suggests minimum thresholds for the theoretical deliberative independent variables parity. However, how do we know deliberation when we see it? A

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Archon Fung believe that deliberative representativeness is not possible without real access. At a minimum, often the most readily attainable and most common basic indicator of representativeness is institutions that incorporate voluntary self-selection. Ideally, an institution will actively attempt to identify and solicit all stakeholders and interested members of the general public (Fung in Rosenberg 2007, 163). Alternatively, participants may be chosen that demographically mirror the general or affected population. Third, institutions need to take steps to aggressively identify and actively solicit feedback from all affected or interested stakeholders to ensure better facilitate robust deliberative participation. For example, Fung suggests structural incentives for low status and low income citizens to participate (Fung in Rosenberg 2007, 162).

review of the extant deliberative literature suggests criteria and thresholds for deliberation that serve as dependent variables. Policymakers, deliberative participatory stakeholders, and to a lesser extent non-ideal deliberative theorists postulate that satisfactory stakeholder perceptions are a strong indicator of deliberation (Gutman and Thompson, 2004). Do stakeholders report (at minimum) adequate conditions of relative parity and respect, both considered essential deliberative criteria for any real measure of deliberation? Accordingly, perceived adequacy along both respect and parity criteria and thresholds will each be used as an indicator of or dependent variable for deliberation.

Perceived respect is considered crucial by deliberativists for and as a measure of genuine deliberation (Fung and Wright, 2003). If a given stakeholder perceives they are not being treated with respect they are less likely to seek out deliberative forums and engage in deliberative behavior. What is respect? Respect is considered an essential measure of deliberation and is a process defined as the practice of civility, an economy or limitation of moral disagreement which should ultimately lead to helping recognize the merits of their opponent's claims (Macedo 1999, 10).<sup>34</sup> Another necessary but not sufficient prerequisite, deliberation requires some degree of mutual respect, a major component of Gutman and Thompson's reciprocity, and requires listening (Barber, 1984) and putting yourself in another's place, or empathy (Benhabib, 1991).<sup>35</sup> It also requires

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<sup>34</sup> "Informally and in theory so far, we currently judge good deliberation on the basis, among other things, of the degree of mutual respect" (Mansbridge in Fung and Wright 2003, 178).

<sup>35</sup> Gutman and Thompson (1996, 2004) define reciprocity as part of a process to find mutually acceptable ways to resolve moral disagreement. Ideally it consists of "acting fairly, following the rules in the spirit that one expects others to adopt, as opposed to acting in one's self-interest, say taking advantage of a legal loophole or lucky break" (1996, 2). Under non-ideal conditions, "Citizens who reason reciprocally can recognize that a position is worthy of moral respect even when they think it is morally wrong" (1996, page

recognizing the differences between you and others that make it impossible for you to fully put yourself in their place (Young, 1997).

*What are the objective minimum conditions for respect?* According to deliberative theorists, respect means that *participants must all a) feel included, b) genuinely heard, and c) that their perspective is taken seriously and into account by all group members* in order to seek out and engage in deliberative behavior (Macedo in *Deliberative Politics*, 1999).<sup>36</sup> To the extent that these conditions are not met, at a minimum, deliberativists do not expect full deliberation to be occurring. To the extent that these minimum indicators are exceeded, we expect to find more robust deliberation occurring. This is illustrated in Table 2 below:

Table 2: Indicators of Perceived Respect

Y1	Indicators of Respect
Respect	Relevant stakeholders are included, heard, taken seriously, and incorporated

Next, do involved stakeholders (or other relevant stakeholders that can be measured, especially the least affluent) perceive minimum conditions of relative parity are met (a-c) and are in fact adequate?<sup>37</sup> To the extent that relevant stakeholders perceive

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3). Some might call this accommodation or an economy of moral disagreement and in practice this means interaction with others by appealing to morally and mutually recognizable reasons.

<sup>36</sup> A synthesis of the deliberative literature yields a basic respect hypothesis: a group that reports respectful treatment by other groups will seek deliberation over exit or manipulation (Mansbridge in Fung & Wright, 2003).

<sup>37</sup> For a review of the discussion on parity see the previous section. In addition however, these conditions are not exhaustive or necessarily universally agreed upon by deliberativists in these terms. However, a synthesis of the recent deliberative literature such as Walsh in Rosenberg, 2007 or more specific and

fair treatment and real influence, deliberation becomes more likely. If these conditions are not met and deliberation follows, then the proposition that relative parity or respect must exist along deliberative institutional measures does not hold.

To the extent that a deliberative forum does not meet these standards deliberative theory would predict reduced deliberation seeking and behavior. To the extent that these minimum indicators are exceeded, we expect to find more robust deliberation occurring. Relative parity and mutual respect, as dependent variables, are illustrated in Table 3 below.

Table 3: Perceived Adequacy: Parity and Respect

Dependent Variables	Dependent Variable Indicators
(Y1) Parity	Stakeholders view the process as open, are given a stake, and are not dominated by any other stakeholders
(Y2) Respect	Stakeholders report feeling included, heard, taken seriously, and incorporated

## VII. Method of Analysis

Before proceeding further it is important to identify and discuss a few specific methodological points. This study is a cross case analysis and consists of multicase designs utilizing a mixed methodological approach (Miles and Huberman 1994, chapter 7). According to Miles and Huberman, a cross case analysis serves two important purposes: to increase generalizability or to “ensure that events and processes in one well-

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applied deliberative literature Dorf and Sabel (1998) suggest these minimum conditions for meeting a threshold of “relative parity” that have been consistently confirmed in case study interviews as well.

described setting are not wholly idiosyncratic” (Miles and Huberman 1994, 172).

Additionally, the aim of a cross case analysis is to “understand how processes and outcomes across many cases are qualified by local conditions, and thus to develop more sophisticated descriptions and powerful explanations” (Miles 1994, 172). A cross case analysis then, “must have a theory of social explanation that both preserves uniqueness and entails comparison” (Miles 1994, 172).

This project seeks to accomplish both of the goals of cross case analysis (the particular and universal) by utilizing a mixed method approach that draws from case oriented strategies and variable oriented strategies, both of which are a methodological subset of cross case analysis (Miles 1994, 173-176). While I test each case by preconceived theoretical deliberative variables (parity and respect), I will first examine each case according to these explanatory variables separately. In each case chapter section and conclusion I will present and then assess the particular empirical findings and relate each case separately to the deliberative literature. In the concluding comparison chapter I will compare aggregate variable scores across case, identifying and then assessing themes that cut across case.

### **VIII. Case Selection**

The cases chosen for this study are as follows: the Oregon health care reforms beginning in the late 80s and early 90s (OHCR), viz. the prioritization process and the Health Services Commission (created by SB27 in 1989); the Oregon Watershed Enhancement Board (originally created as GWEB in 1987 then OWEB in 1999); and the

New Community Meetings I and II between fundamentalist Christians and “gay rights” activists in Lane County (1994-1996) as well as the New Community Meeting II which concerned issues of growth & sustainable development in Central Lane County (1997-1998).

In order to test deliberative assertions regarding parity and respect I sought out cases where deliberative claims have been made but have not been carefully evaluated according to explicitly identified deliberative criteria and measures. Accordingly, all four deliberative cases I have selected for study have all been referred to as exemplar deliberative cases. These cases represent an opportunity to explicitly test along deliberative criteria both comparatively across cases and over time within cases along the aforementioned ideal and perceived deliberative criteria and thresholds of parity and respect.

I sought to control as many *fixed* explanatory as possible in order to allow for a controlled comparative assessment of my case set. For example, existing state innovation and diffusion literature as well as the deliberative scholarship itself assert that geography, political culture, and historical time as well - as other explanatory variables - are all important factors that influence policy innovation and deliberation respectively. This scholarship considers these factors (and others) important to predicting the viability of as well as the shape of innovation and diffusion (e.g. deliberative) reform (Walker, 1969, 1973; Berry and Berry, 1999; Rogers 1995).

As a result I selected cases where these explanatory variables remained as close to constant as possible. Oregon’s recent history is rich with claims of deliberative

governance reform (Clucas, 2005). That is, selecting these cases allowed me to roughly control multiple important, explanatory factors such as geography, political culture, and historical time. By holding constant these fixed explanatory variables I am able to focus on the role of portable institutional variables. Restated, policymakers cannot readily replicate or alter successful deliberative explanatory variables like political culture, geography, or larger historical circumstances. Isolating or holding these important but fixed explanatory variables constant is crucial to assess the role of these replicable institutional factors in deliberative governance.

With a few exceptions in non-ideal deliberative studies, a discussion of the role of issue area in influencing deliberative governance reform is largely absent from extant deliberative literature (Rosenberg 2007; Beirle & Cayford, 2002). As a result, the distinct issue areas served as a contributing factor for case selection. That is, OHCR surrounds the debate over state-wide health care reform in Oregon, OWEB is concerned with environmental issues, NCM I is based on a local community and its internal disagreement over gay marriage, NCM II is concerned with balancing growth and sustainability issues primarily in Eugene and to a lesser extent the immediate surrounding area.

The primary justification for selecting NCM I and II (excepting perhaps extensive deliberative claims) was the fortuitous existence of two cases that were nearly identical along numerous explanatory variables excepting issue area and deliberative outcomes. The accidental good fortune of such a comparison in NCM I and II within Oregon (which also allowed a controlled comparison with OHCR and OWEB) justified NCM selection in order to assess the role of issue area itself in deliberation.

Additionally, preliminary research was conducted to confirm that these cases exhibit significant deliberative variation on the dependent variables perceived parity and respect. In *Designing Social Inquiry* King, Keohane, and Verba state that variation in the dependent variable is often overlooked by social scientists but is crucial to test and assess the influence of the “explanatory variables” in a study and to better account for the variation across the selected cases (1994, 109). That is, these cases were selected that exhibited variation along the dependent variables parity and respect in order to “obtain an unbiased estimate of the impact of the explanatory variables” (King 1994, 109). Finally, I selected cases that are local or within Oregon. Selecting local or statewide cases considerably facilitated data collection and direct observation.

## **IX. Data Collection**

To assess the theoretical deliberative assertions regarding theoretical deliberative measures of parity and respect, I gathered primary and secondary data from a wide variety of sources in each case. I actively recruited and interviewed key figures and diverse representative stakeholder participants in each case. However, my interview sampling procedure was not random. That is, at a minimum, in each case I was able to identify a complete list of either board members (HSC and OWEB) or a list of core participants in NCMI and II. I originally attempted to contact as many members of each list as possible. For a number of reasons, I was unable to secure an interview with many of the individuals on these lists. These limitations included the private listing of contact information, relocation, or repeated failure to return my request for an interview.

Despite these limitations, I secured semi-structured interviews with all major divergent identifiable stakeholder interests in each issue area. However, this was not a random process. To ensure all major identifiable stakeholder perspectives were recruited I asked interview respondents to identify all relevant stakeholder interests and to suggest representatives and contact information for each stakeholder group. This led to and helped me locate and recruit interviews with individuals that were stakeholders but were not always identified as either board members or core participants in both HSC and OWEB.

I also used the referral process in NCMI and II when I was having difficulty locating core participants. However, in an effort to avoid the “circle of friends” or snowball interview sample bias I recruited at least one participant from all major identifiable stakeholder positions. Additionally, I also successfully recruited participants in each case that either publicly self-identified or were identified in interviews as somehow unhappy with the participatory forums in each case in order to secure a more representative sample along the dependent variables - perceived parity and respect - in order to “capture the tails.” This represented part of my efforts to avoid selection bias or interviewing only a limited set of stakeholder perspectives. As a result, this yielded 28 extensive semi-structured interviews with key participant decision-makers and stakeholder representatives in each participatory forum.

These interviews were used to verify the accuracy of reports and statements from other sources regarding the empirical reality of the participatory events themselves. These interviews were then utilized to assess ideal and perceived deliberative claims along

parity and respect issues and to identify and to assess the interview respondent's own subjective deliberative criteria. I did not share my own personal opinion unless explicitly asked (this clearly occurred in one instance). However, at times I asked unscripted follow-up questions. Accordingly I would characterize these interviews as more than entirely scripted "objective" question and answer sessions.

However, I did have a general question set and I usually asked each question on that list. However, as I progressed through my interviews in each issue area, if I received the same response to a given question after several interviews I would generally not ask more than one follow-up question to further clarify these responses. Also, if a question that appeared later in the interview was answered in an earlier question, I would still ask every question on the list but would state the respondent could add to their earlier response if the respondent felt they had anything to add to this question.<sup>38</sup> This yielded a relatively even mixture of additional information and no further elaboration. This strategy was adopted to minimize further data saturation at the expense of gathering new information or clarifying unclear or inconsistent responses. That is, follow-up questions were limited under this set of circumstances in order to spend the limited time allocated for each interview asking follow-up questions that were not yielding matching responses.

The ordering of my questions moved from the specific to the general in order to facilitate confidence and comfort in the interview process. This meant I would begin each interview by asking the respondent to talk about their involvement in the participatory

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<sup>38</sup> In my last interviews with policy elites that I had difficulty securing an interview of limited duration (e.g. Kitzhaber most notably) I dropped the respect questions due to time constraints and in order to focus on questions that were not yielding consistent responses and to allow follow-up questions about Kitzhaber's initial involvement with OHCR that were not a part of the public record.

forums through their organizational capacity, for example. I would then move to more general questions about their perceptions regarding the participatory forums along ideal respect and parity measures. Finally, I would ask them to identify their own assumptions about deliberation. How did each participant define deliberation? How well did the meetings ascribe to their standards? Also, when asking questions about power and respect, I would ask them to clarify the criteria used to make their evaluations if interview assumptions remained unclear.

My overall approach to the interview process was often scripted but was also at times interactive. This does not meet strict positivist standards of scientific objectivity. However, according to Miles and Huberman (1994) my interview process does meet criteria of scientific validity as these interviews involved observation, replication, and falsifiability. I decided to largely employ interviews as a supplemental tool of analysis rather than more rigorously consistent methods such as survey instruments partially because of the rich contextual narrative that could more accurately capture events in these cases than either archival research or survey administration alone.

Additionally, I was initially unsure of my conceptualization, prioritization, and testability of ideal deliberative hypotheses initially employed in this project. As a result, in the initial interviews I used the initial interview process (as well as data from other sources examined) to help initially assess the scope and testability of the ideal deliberative hypothesis and then discard and refine untestable or unclear deliberative propositions. For example, initially I had considered testing hypotheses involving increased alternatives and polarization as leading to reduced deliberation. However,

interviews suggested that these concepts were difficult to accurately assess and at times were not clearly distinguishable from other measures (such as polarization and respect) across all selected cases.

Restated, utilizing a partially open-ended, iterative interview process I was able to find instances of poor questions or particularly unclear measures. Due to the initially extensive scope of this project this was a fortuitous process. This allowed me to drop and refine hypotheses due to important limitations in testability and data acquisition availability in all cases examined rather than attempting to pursue the original project in its entirety or by paring the project by making random choices due to limitations in scope and expediency.<sup>39</sup>

In each case I also gathered and examined archival data in the form of newspaper articles, meeting minutes, publicly accessible information on state run websites, and policy reports drafted by state agencies (e.g. The Secretary of State, OWEB and HSC) for legislative and gubernatorial officials (for OWEB and HSC), legislative bills and statutes (OHCR and OWEB), as well as previous scholarly studies.

In OHCR, I acquired the entire Health Services Commission's statewide public meeting minutes from 1989-1990. These meetings immediately preceded the formation of the original HSC list and were used by the HSC to incorporate public values into the prioritization scheme. I also drew from the previous extensive study by Mary Pinkerson (1992) and the reports and secondary information provided by previous scholars, journalists, and policymakers.

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<sup>39</sup> Specifically, alternatives and polarization measures were left out and devolution and centralization measures were placed within ideal deliberative parity measures as an explanatory variable.

In OWEB, I acquired a year's worth of meeting minutes in OWEB (2007). I also directly observed 3 days of Oregon Watershed Board public meetings in Salem, Oregon in May of 2007. These meetings were audio recorded. Also, a survey was administered via email to a random sample of 10 local watershed councils in the spring of 2009. Additionally, extensive public records and general information on OWEB is kept and maintained by OWEB online. This allowed convenient public access. Finally, I also drew from the work of previous studies involving local watershed councils as well as the reports and secondary information on OWEB provided by previous scholars, journalists, and policymakers.

In NCM I and II, extensive internal archival documentation carefully outlined the NCM model and its specific implementation was provided over several meetings with Gayle Landt. I was also able to secure the meeting minutes from NCM II (1997-1998). My study of NCM II also included the research of Oregon Survey Research Laboratory and Patricia Gwartney's longitudinal content analysis of NCM II which measured and tracked changes in outside respect over time. In both NCM I and II, I also drew from the previous secondary research and reports provided by previous scholars, journalists, and policymakers.

The following four cases are broken down into three chapters. These cases consist of the Oregon Health Service Commission, the Oregon Watershed Enhancement Board, and New Community Meeting I and II. Since both NCM I and II roughly vary only by issue area, I will discuss NCM I and II in one chapter in order to compare and discuss each case by variable simultaneously and to avoid a replication of evidence. Each chapter

contains four major sections: an introduction, an examination of ideal and perceived power within and outside each participatory forum, then an examination of ideal and perceived respect inside and outside each participatory forum, and a finally a chapter conclusion.

I begin each empirical chapter with an introduction, where I introduce the issue area as well as the factors which led to an adoption of deliberative governance reform and the justification of each case along exemplar deliberative claims. In sections two and three I present and assess evidence along ideal and perceived parity and respect. In section four I summarize and assess the major chapter findings and their relevance to the deliberative literature according to theoretical propositions regarding criteria and thresholds along ideal parity and respect.

CHAPTER II  
CASE STUDY I. EVALUATING EXEMPLAR DELIBERATIVE CLAIMS  
SURROUNDING OREGON HEALTH CARE REFORM

**I. Introduction**

**1. Background**

Oregon's health care experimentation in the late 1980s and early 1990s represents the nation's most far-reaching health care reform attempt to date (Fisher and Forrester 1993, 105; Pinkerson 1992, 22). OHCR has generated extreme national and even international interest.<sup>40</sup> Scholars, journalists, and Oregon policymakers often make extensive deliberative claims concerning Oregon's health reform process.<sup>41</sup> Despite the

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<sup>40</sup> In *Civic Innovation*, Sirianni and Friedland mention that "Representatives of health ministries from countries with universal coverage, ranging from Canada and Australia to Germany and England, were visiting Oregon to learn how to address similar cost pressures besetting their own systems" (Sirianni and Friedland 2001, 153 and 162).

<sup>41</sup> Most claims surrounding the Oregon Health Care Reforms generally concern three major criteria: innovation, deliberation itself, and outcomes as a measurement of deliberation. Innovative claims are based in describing a reform process was very different than previous health care reform attempts and was far reaching despite the complexity presented in health care as an issue area and the expected resistance encountered among health care interests in preserving their substantial livelihood potentially threatened by significant change in the status quo. According to extant deliberative process claims, the HSC generated a more satisfactory, legitimate, as well as fair and just process of decision-making through an explicit, open, and inclusive decision-making process where the public is aware of and has real authority over the allocation of their tax dollars and state decisions over public health care provision. Outcome based claims generally assert that a more directly democratic decision-making process actually generates objectively and normatively better outcomes, that is more expertise is brought to bear upon the problem of health care provision amidst a scarcity of health care dollars and decision outcomes more closely and efficiently drive and are linked to health care decisions. In this chapter, deliberative process claims will be evaluated.

durable failure among other national and state level health policy reforms (and ultimately within the Oregon case as well) Oregon's drastic health care policy innovation initially generated extensive success. That is, the Oregon reforms were responsive to individual and collective interests (through prioritization), controlled costs, and provided universal access at the same time (Jennings in Fischer and Forrester 1993, 101)<sup>42</sup>

The deliberate attempt to create universal state-wide health care through the explicit and public rationing of health expenditures and service provision in Oregon formally began with the Oregon Basic Health Services Act. The object of these legislative bills was a formal statewide attempt to settle the disagreements about priorities in health care insurance under conditions of difficult choices that public budget constraints invariably impose (Prioritization of Health Services, 1991). OBHSA consisted of three pieces of legislation. First, Senate Bill 935 which requires all employers to offer health insurance to their workers by 1994 which was later dismantled. Second, Senate Bill 534 established a risk pool for the coverage of persons who are uninsurable because of pre-existing conditions.

Finally, Senate Bill 27 whose purpose was to "permit expansion of Medicaid to all Oregonians up to 100 percent of the federal poverty level, and to do so by covering only those services judged to be of sufficient importance or priority" (SB27). Oregon

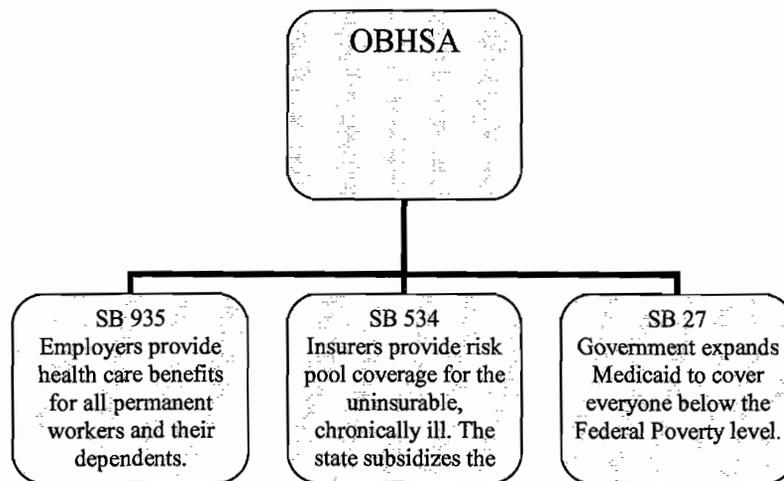
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<sup>42</sup> The Oregon reforms were particularly innovative. Oregon health care reform (OHCR) institutionalized an extensive and explicit state level policy making process. This process utilized an explicitly institutionalized deliberative prioritization or rationing scheme. This prioritization of care included all relevant stakeholders and ultimately led to improved outcomes measures. These innovative reforms also generated widespread state level support among the state legislature, policymakers, the health care industry, and even strong support among most of the general public.

chose to provide limited coverage to every poor person, as measured by the federal poverty standard (Morrow, 2003). SB 27 was adapted to the federal Medicaid system. It designated that everyone who falls below the federal poverty level is eligible for health care through the Medicaid program. In terms of adjusted coverage, this meant 160,000 additional eligible individuals (Morrow, 2003).

In many ways, the extensive interest in and deliberative claims surrounding the Oregon Health Plan originate with and surround SB27. Passed in 1989, SB 27 is the legislative centerpiece of this case study as this bill represented health reform legislation which directly led to the creation of the HSC, the central deliberative mechanism of the OHCR process. Through SB27, the Oregon legislature intended and in fact demanded that the HSC encourage public involvement in the prioritization of health service provision. SB27 mandated that the HSC “actively solicit public involvement in a community meeting process to build a consensus on the values to be used to guide health resource allocation decisions” (Oregon Basic Health Services Act, Senate Bill 27; Jennings in Fischer and Forrester 1993, 108). These three pieces of legislation were the centerpiece of the Oregon Health Care Reforms and are represented in Figure 1 below:

Figure 1: Oregon Basic Health Services Act



## 2. Why the Oregon Case? Untested Deliberative Claims

Oregon health care reform is referred to as a successful exercise in deliberative governance experimentation. Numerous policy researchers and political scientists such as Fischer and Forrester (1993), Friedland and Sirianni (2001), Mary Pinkerson (1992), various lobbyists, elected representatives, and state level policymakers most closely involved in the reform process, such as those serving on or closely involved in the Health Services Commission (HSC report 1991)—among many others—*all treat the Oregon health reform process via the HSC and its initial list prioritization as an exemplar of local populist and progressive deliberative experimentation that reflects a successful deliberative process*. Specifically, the citizen participation in policy making via the actual rationing process of health care services embodied within the Health Services Commission (HSC) is most commonly referred to in substantiating the deliberative claims that surround the Oregon Health Care Reforms (OHCR) discussion.

For example, Mary Pinkerson extensively researched the Oregon health care reform—including the HSC—and believes that the Oregon case shows us real deliberation and consequently deliberative potential in policy-making, as she writes in “Oregon’s Health Plan: An Experiment in Governance”:

[Oregon] exemplifies the public as expert and demonstrated that civic minded people are capable of talking about rationing and are willing to consider not only what is in their interest, but what is the common good...indicating a movement toward greater accountability, community involvement and awareness of the common good...competing interest groups need not paralyze the area of health care legislation, as has largely been the case on the national level. Beyond health care, it suggests that people can be empowered to reach past narrow self interest and work together to solve common problems. (Pinkerson 1992, 321)

Ellen Pinney was the director of Oregon Health Action Campaign in 1988 and was closely involved in the Oregon reform process and an active participant in the Health Services Commission meetings. Pinney believes the HSC meetings were as deliberative as any she has ever seen across the state. Pinney articulates to this day that “those were the best public hearings (within the HSC) I have ever participated in. Never, ever, have we seen public hearings like that in Oregon at any other time” (Interview with Ellen Pinney, November 2007).<sup>43</sup>

Due to the vague, and broad, largely unexamined deliberative claims surrounding this case, the Oregon health care reforms of the late 1980s and early 1990s provide an

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<sup>43</sup> Deliberative claims are extensive and are made by numerous other scholars, policymakers, and journalists, among others. For example, Bruce Jennings, in Fisher and Forrester’s “Argumentative Turn,” states that the Oregon Health care reform case “provides an interesting case study of the prospects and possibilities of counsel and consensus...it appears that the Oregon experiment has been unusually successful in bracketing the normal, politics-as-usual approach to Medicaid funding and in creating a novel kind of self-consciousness about how decisions should be understood and made. The rhetoric of openness and accountability won the day, and this policy experiment has been thematized as a communal and civic process (Jennings in Fisher & Forrester, 105 and 112).

opportunity for more careful examination of a case with strong deliberative claims. A more careful understanding of the features of the Oregon case may shed some light into designing deliberative forums that increasingly attempt to push policy analysis and decision-making process toward, as Bruce Jennings states, a deliberative turn in policy studies (Jennings in Fisher & Forrester, 1993).

## **II. Evidence: An Accounting of Power**

### **1. Power within the HSC**

Findings: Deliberativists claim the HSC was able to achieve relative parity between groups within the HSC meetings and during the HSC prioritization process. These claims assert the HSC itself was able to avoid being unduly influenced by any particular stakeholder (such as the insurance industry of hospital associations). In support, the HSC granted the public a real stake in the decision-making process and aggressively pursued formal and informal measures to take public preferences into account. However, extensive efforts by the HSC to solicit participation and achieve relative parity failed according to ideal deliberative criteria and even the HSC's own goals. The evidence examined does not readily indicate that relative parity was generated by or within the HSC nor practiced among the various groups involved at any point in the prioritization process. Importantly however, this evidence also suggests that *a large gap in relative parity does not necessarily mean genuine deliberation will not be sought and cannot occur*. The nature of participation coupled with participant satisfaction with the efforts to ameliorate this lack of parity expressed by representatives of the medically poor

suggest the HSC itself may have reached acceptable deliberative thresholds. Evidence such as interview data and meeting minutes will be examined to confirm that genuine deliberation was actively sought out (despite the lack of stakeholder parity).

#### A. Institutionalized HSC Access and Influence

What was the role of institutional design in facilitating deliberative participation among the various actors associated with health care reform? According to deliberative theory, appropriate institutional levels of devolution and centralization are necessary to facilitate deliberative response among interested and affected actors. The HSC design, creation, and HSC process itself are examined in this section.

OHCR reforms conform to devolution along theoretical orthodox deliberative standards. The HSC did and continues to have real autonomy and authority over health care decisions in the state. Power was *voluntarily* devolved from the state level by the legislature by SB27 and given to the HSC in substantively autonomous terms the SB27. In generating a prioritized list, the initial requisite deliberative institutional step involved devolution, or creating the HSC and giving this body authority.<sup>44</sup>

Specifically, the HSC was given the task of constructing a prioritized list of health services to the legislature and then recommending how many of those services should be funded over the next two years. After an independent accounting firm projected the cost

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<sup>44</sup> Devolving state authority to the HSC is central to deliberative theorists like Dorf and Sabel (*Democratic Experimentalism*, 1998), policymakers, HSC meeting participants, as well as secondary sources, which at a minimum implicitly suggest and at times overtly demand that the devolving of authority as central toward lending legitimacy to deliberative claims and broadened participation. These and other ideal deliberative (e.g. centralization, parity, or respect) standards can be reviewed in the previous methodology section.

of all the services on the list the legislature decides the amount of money to allocate to the Medicaid program. The Health Service Commission itself was given final authority to determine the constitution of this list and its order through SB27 (Prioritization of Health Services, 1992). Once the legislature accepts the prioritized list, a line is drawn on the prioritized list of services; services above the line will be covered by Medicaid, services below it will not (Prioritization of Health Services, 1991). Most importantly, while the legislature ultimately decides the amount of money to allocate to the program, once the legislature accepts the list and the appropriation is made, “legislators are *not* permitted to rearrange the order of services, they can only decide how far down the list to fund” (Jennings in Fisher and Forrester 1993, 108).

The HSC never dealt with or controlled what the overall state budget should be or how health care resources should be traded off against other state treasury demands. Nonetheless, this devolution nonetheless grants substantial autonomous leverage and power to the HSC according to ideal deliberative standards. Deliberativists assert that this type of devolution results in insulated authority which shifts the locus of power and argument from the advocacy arena of the legislature. “Medical expertise and value driven public input and deliberation that is incorporated into assessing the relative worth of health care services is no longer subject to and driven by a political process of legislative lobbying, bargaining, and compromise” (Jennings in Fisher and Forrester 1993, 108).<sup>45</sup>

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<sup>45</sup> For example, if a lobbying group favors a service that the HSC has ranked low on the list, it cannot attempt to get that service moved higher by the legislature. It can only try to get the line drawn below that service. This is more difficult to achieve politically (Pinkerson, 1992; Fischer and Forrester, 1993).

The HSC often conformed to centralization standards articulated by Dorf and Sabel in structure and often in practice. The HSC was empowered with significant authority to generate the prioritized list, this devolution was also mandated to occur under a minimum but specific set of centralized deliberative standards.

Senate Bill 27 required Oregon to expand health care coverage (Medicaid) to cover all those below the federal poverty level. To do this, SB27 mandates a prioritized service list. The HSC was also to come up with a method of and actual ranking of medical services. This ranking was to be accomplished according to “notions of fairness and equity as determined by public values and the best medical science and information available” (Oregon Basic Health Services Act, Senate Bill 27; Coffman, Darren. Personal Interview. 14 March 2008).<sup>46</sup>

An empowered yet bounded HSC was mandated to independently draw on and determine which services to rank and how to rank a list of health services ranked by priority from most to least important. The HSC was mandated to undertake a specific process to accomplish this. To ameliorate real or perceived power imbalances in creating community forums, extensive participatory goals were set. To accomplish this, numerous community forums were mandated. These forums were open and transparent. These

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<sup>46</sup> The key policy entrepreneur, former Senate Leader and Governor Dr. John Kitzhaber, and other key actors such as the grassroots bioethics work, community meetings, and health care parliaments catalyzed by the previous work of Oregon Health Decisions all worked together and acted to reframe the issue from one of an uncaring government to one of fair and ethical, explicit allocation of existing state resources with the ultimate goal of the plan being universal coverage. This meant insuring an additional 450,000 Oregonians. (Sirianni and Friedland 2001, 156-157). The OHP was also driven by the goal of the greatest good for the greatest number. “Among the emerging goals of Oregon Health Decisions (OHD would later contribute substantially to the process of setting health care priorities in Oregon) was a concern with discovering a public good which goes beyond the aggregation of self-interest” (Pinkerson 1992, 55).

forums generated and took into account extensive public participation and were perceived as legitimate by the public and the major involved stakeholders (Prioritization of Health Services, 1991)

To accomplish this ranking scheme, the HSC process would begin by establishing a general set of values driven by the public (as mandated by SB27).<sup>47</sup> Prioritizing of services was then to proceed by further ranking services within a general cost effectiveness ranking scheme. This led to the development of an elaborate formula for comparatively evaluating costs and benefits of specific services with an explicit intention of discontinuing services that did poorly on this formula. Importantly, in addition to the use of objective facts, such as cost and longevity, the ranking methodology was generally based on a formula which also included subjective factors such as quality of life or well-being, which were used to help inform how many of those services should be funded. This was accomplished using the best available medical cost benefit information (Prioritization of Health Services, 1991; Coffman, Darren. Phone Interview. 14 March 08).

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<sup>47</sup> To begin with, each Commissioner gave a relative weight to each of the seventeen categories determined by the commission from zero to 100 to the attributes of: value to society, value to and individual at risk of needing the service, and essential to a basic health care package. The values were to be drawn from the community meetings. From these meetings, 13 health related values were generated but not ranked. From these 13 values, the commission grouped them into three equal attributes used to rank categories of health services. These were quality of life, ability to function, and effectiveness of treatment. In addition to weighing the attributes, each commissioner was to assign scores from 1 to 10 (10 being the best) to each of the 17 health service categories determined by the commission. Each of these categories was ranked three times according to values of individual at risk of needing the service, value to society, and whether the service was essential to a basic care package. Before a final ranking was determined, the commissioner reviewed his or her scoring to see if there were major discrepancies between his or her numbers and the numbers of other commissioners. This allowed commission members to change their scoring or argue for higher or lower scores. The staff then summed the weighted scores (11 scores- one per commissioner) and averaged the result (Pinkerson, 1992; Prioritization of Health Services, 1991).

This process was the beginning of what the health care industry now commonly refers to as evidence based medicine. At the time, evidence-based medicine was “in its infancy” according to current HSC Director Darren Coffman (Coffman, Darren. Phone Interview. 14 March 08) and former HSC Commissioner Ellen Lowe (Lowe, Ellen. Phone Interview. 16 November 07). There were no established methods for ranking services. Determining what information would be gathered, and how the information would be used in prioritization entailed considerable original research gathering and analysis using an innovative evaluation process. This resulted in a long, laborious, and carefully considered process (Prioritization of Health Services, 1991; Interviews with former HSC Commissioners; HSC Director Coffman, Darren. Phone Interview. 14 March 08).

OHCR legislation created the HSC as a state appointed and governor approved board to ensure adequate representation. Specifically, the legislature required that the HSC itself be entirely volunteer and representative of health care providers and consumers.<sup>48</sup> The HSC intentionally selected representative that had experience with

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<sup>48</sup> According to HSC Executive Director Darren Coffman, this helped assuage anxiety that “some might have thought if these folks were getting paid for it they might be unduly influenced” (Coffman, 14 March 2008). The commission was required to be structured with multiple medical experts and representatives of the public and individuals from diverse backgrounds and experience to better represent the medically poor. The HSC numbers 11 and was to consist of five state licensed doctors with clinical expertise in several general areas to better understand the needs of multiple life stages and groups (geriatrics and public health) as well as a public nurse, a social services worker, and four consumers of health care. In an interview with former HSC member Yayoe Kuramitsu reiterates the importance of setting standards for representativeness and diversity of the board: “We each contributed to the list based on our knowledge and experience, so together that really helped. Doctors are very disease focused, you know my medical social work background in running programs were more detail oriented. We think about ancillary services and who fixes the wheel chair and how does that person get transportation to the doctor, while doctors might just look at what happens when they come to their office. Each one of use, the nurse had a different perspective, I had a different perspective, but because of what we did we could offer a macro and a micro perspective and I think the physicians did the same thing, (and again we also) had lots of help from the community” (Kuramitsu 8 November 2007).

poor uninsured populations. In fact, all HSC Commissioners had experience working directly with the poor. The HSC included representatives that could directly speak for the medically indigent. The HSC members included a public nurse, a social services worker, and four consumers of health care. Together this gave the lay public real voting rights and represented a majority of the eleven Commissioners.

Ellen Lowe, a long-time HSC Commission member and original Health Services Commissioner, supports this when she says “there was not a one of us that had not worked with the populations that we were asked to provide a benefit plan to serve... We all had had very direct contact in both our personal lives and work experience with the Oregonians we were asked to represent” (Lowe, Ellen. Phone Interview. 16 November 07).

To ensure proper deliberation and incorporation of public values, SB27 and the legislature set a number of explicit and public goals or deliberative standards in which the HSC was to operate in populating and ordering the prioritized list. SB27 contained mandates that defined the basic goals of HSC list constitution and prioritization, such as universal care and service prioritization. While “the legislation did not direct the Commission as to the method to use in setting priorities” (Pinkerson 1992, 169), it was well known that the prioritization process was to be driven roughly by notions like the principle of the greatest good for the greatest number.

Pinkerson states that “Kitzhaber is convinced, for example, that government ought to be focused on the common good rather than the needs of individuals” (Pinkerson 1992, 39). Later, Pinkerson speaks to the direction of OHCR when discussing Oregon Health

Decisions and the organization's concern with the public good: "Among the emerging goals of OHD was a concern with discovering a public good which goes beyond the aggregation of self-interest" (Pinkerson 1992, 55).

The notion of the public good was actively brought to bear on the composition of and the decision process utilized within the HSC. Former Commissioner Ellen Lowe states that "we are going to prioritize services that did the most good for the most number of people" (Lowe, Ellen. Phone Interview. 16 November 07).

Kitzhaber was only interested in Commissioners who shared this vision and the process of list prioritization laid out in SB27. One former HSC Commissioner recalls that "I remember Kitzhaber saying to me, you know, I can't have anybody on this committee who is not interested in my vision. He said you know, he wasn't looking for people to try to say this is not right, you know, dissenters, and I think we all agreed" (Interview 15).

SB27 mandated and the HSC also explicitly established specific deliberative participatory standards and goals. The Oregon legislature intended and in fact demanded (through SB27) that the HSC encourage public involvement in the prioritization of health service provision. SB27 mandated that the HSC "actively solicit public involvement in a community meeting process to build a consensus on the values to be used to guide health resource allocation decisions" (Prioritization of Health Services 1991, appendix E, page 7). According to HSC documents, the primary and explicit institutionalized goals of the 47 HSC meetings conducted by OHD on behalf of the HSC were: 1) to ensure broad attendance by a cross section of the Oregon public to elicit values pertaining to why Oregonians find health care important; 2) to attempt to ensure that the demographic

characteristics of community meeting participants are representative of county characteristics; and 3) to ensure that the target population of SB 27, those Oregonians who are below the federal poverty level, participate in those meetings (Prioritization of Health Services Report 1991, 26).

The HSC was explicitly required to solicit and incorporate a wide range of the larger potential participatory community and especially those affected by these potential health reforms. These standards of openness and actual lay participation were quite high, especially relative to previous, similar statewide efforts to generate inclusive, egalitarian, and broadly participatory meetings in this and other statewide policy issues (according to phone and personal interviews with Yayoe Kuramitsu, Ellen Pinney, and Joy Marshall).

Additionally, throughout this process there was extensive federal oversight. To ensure national health care basic minimum standards in administering the OHP using federal Medicaid dollars, the OHCR health care delivery was and continues to be tightly regulated through federal Medicaid oversight. For example, the Federal Americans with Disabilities Act and its federal interpretation requires certain types of coverage for disabled citizens whether the HSC and the public agree to prioritize these services or not in order to receive federal Medicaid dollars (Pinkerson 1992, chapter 9).

One of the goals of centralized benchmarking is to help advance polarized groups past blockages in local decision-making. However, state and federal agencies are also constitutionally bound to ensure that, in the Madisonian spirit, minorities are not unfairly disadvantaged. That is, forced to policy made without their consent simply because they lack sufficient political clout to be fully incorporated by majoritarian political will. In

OHCR, the creation of and the specific requirements of the ADA exist to translate this ideal into a specific context, which is to address the unfortunate historical tendency to discriminate against Americans with disabilities.<sup>49</sup>

Once the state legislature had set the funding level for Oregon's prioritized list, implementation required obtaining federal waivers from the Health Care Financing Administration (HCFA) of the Department of Health and Human Services. In a letter written by Louis Sullivan, the Secretary of the Department of Health and Human Services, the Bush administration decided on August 3, 1992, to deny approval of the Oregon waivers. This denial was to stand until violations of the ADA were resolved. Specifically, HHS took issue most directly with using quality of life judgments in the prioritization process itself. The HHS also directly cited "exclusion of liver transplants for patients with histories of alcoholism and the denial of life support for premature babies" (Pinkerson 1992, 312).

#### B. Actual Participation

Existing sources claim the HSC granted real public stake in the decision process, offering formal and informal measures that actively sought out and then took public preferences into account. According to deliberative theorists access is an important first

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<sup>49</sup> Whether politically motivated and appropriate or not, and while certainly frustrating for HSC and members of the health care community of those affected by federal refusal to grant exemptions to the HSC list at times who may feel such oversight contextually inappropriate, this kind of centralization does conform to the Dorf and Sabel's commitment to centralized oversight to protect minorities and to prevent local cooptation by illustrating the willingness of a central agent to set limitations on local experimentation if and when local governance units are not in compliance with perceived basic minimum standards or more specifically (in this case) constitutional or federal law that was in place to attempt to protect minority populations from an unfettered standard of "the greatest good for the greatest number."

step in institutionalizing a legitimate deliberative forum that helps to incentivize broad based participation. However, for these claims to be accurate, ideal deliberativists like Cohen (1989) and the HSC itself (Prioritization of Health Services, 1991) consider *actual* participation levels as a baseline measure of deliberative success.<sup>50</sup> Accordingly, large attendance numbers and representative population diversity at community forums are considered important to build claims of public legitimacy and satisfaction.

The HSC social values subcommittee held numerous meetings in virtually every county. However, the composition of these meetings was *not* representative of the multiple interests and stakeholders concerning poor uninsured Oregonians. Those most likely to be directly impacted by the health reforms under consideration were largely absent from the deliberative meetings. *This is one of the most damaging aspects of the deliberative claims made in the literature* surrounding the HSC. Deliberative participatory standards require eliciting—at a minimum—interest and participation by the most affected and marginalized groups.

In the winter of 1990, Oregon Health Decisions financed and conducted 47 community meetings involving 1048 participants on behalf of the HSC. In addition, 12 public hearings were held and hearings managed to generate 1500 total participants (Pinkerson 1992, 179-180). The number of participants ranged from 3 to 120, with an average of 20. Ideally, the meeting participants were intended to represent, as close as

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<sup>50</sup> The deliberative literature and the HSC itself set minimum deliberative participatory goals that explicitly called for meeting participation proportional to the county population levels in which the meeting was taking place (HSC Prioritization Report 1991, Appendix E).

possible, the actual county demographic characteristics in which the meetings were being held (Prioritization of Health Services Report, 1991).

As it turned out, the participants were a self-selected group, many with a prior interest or background in health care. “OHD encountered considerable difficulty in bringing people out to public settings they were not used to attending.” (Pinkerson 1992, 336) The explicitly stated goals of achieving attendance among a broad cross section of the Oregon public, especially the medically poor and in numbers representative to the county demographics were not achieved despite extensive efforts to do so.

Nonetheless, the HSC worked hard to meet these goals to include all affected potential and real participants. The HSC undertook numerous specific steps to fulfill the HSC mandate to generate extensive participation. Formal efforts to reach these goals included but were not limited to: public hearings, community meetings, HSC and subcommittee meetings, health care provider meetings, a telephone survey of health values, and expertise input to proposed list prioritization methodology and outputs. The HSC and its staff included representatives of the poor and implemented their suggestions as centralized standards within community meetings for generating higher levels of deliberation.

Working with the HSC, Oregon Fair Share (a now defunct non-profit advocacy group for the poor) provided door-to-door canvassing to encourage attendance, supplied the media with public service announcements, and posted flyers. Meeting announcements were also included with Medicaid card mailings. Nearly all the meetings were held as specific locally organized community meetings, though a few were held within the

context as the meetings of other organizations, e.g. the Annual Meeting of the Oregon Records Association (Prioritization of Health Services, 1991).

*Participatory Demographics*- Meeting participant demographic data supports the lack of extensive participation among potentially affected, often politically marginalized populations. Annual household income (over 50% earned more than \$35,000), education level (70% college educated), percent insured (90%), percent involved in health care (69%), and percent on Medicaid (4.4%), illustrate the inordinate participation of those interests least likely to be affected by HSC prioritization. Conversely, the statewide annual household income was approximately \$27,000. 20.7% of the population was college educated, and while many more were and remain underinsured, more than 14% of Oregonians lacked *any* health coverage.<sup>51</sup> Of particular concern is the fact that the groups most affected were present at a disproportionately lower rate when it is arguable that to conform to deliberative standards of inclusion they arguable should have been present at a disproportionably high rate. The following table illustrates some the differences in representation:

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<sup>51</sup> <http://www.ers.usda.gov/stateFacts/OR.HTM#PIE>;  
<http://olmis.emp.state.or.us/olmisj/OlmisZine?zineid=00000005>  
<http://www.statehealthfacts.org/index.jsp>  
[http://assets.aarp.org/rgcenter/health/d18258\\_reform\\_2005\\_or.pdf](http://assets.aarp.org/rgcenter/health/d18258_reform_2005_or.pdf)

Table 4: Representation Comparison: Community Meetings &amp; Statewide Figures

Meeting Representation	1990 Community Meeting Average	1990 Statewide Average	Difference
Annual Household Income	\$33,850 (est.)	\$27,000	\$6850
% College Educated	70%	21%	49%
% Insured	90.6%	84%	6.6%
% Health Care Professionals	69%	9%	60%

Physicians and especially other health care professionals that participated were disproportionately represented. This group was by far the most active and widely represented interest in the community meetings organized by Oregon Health Decisions and in the Health Services Commission's prioritization process. In fact, of the 47 community meetings conducted by OHD on behalf of the HSC to gather feedback on public values, on average 69% of the meeting participants were either physicians or health care professionals (Prioritization of Health Services Report 1991, 28-29). According to Oregon Employment Department data, health care professionals represented only 9% of Oregon's total labor force in 1990.<sup>52</sup>

Dr. Pinkerson supports the considerable role of health care professional in the community meeting process (1992).<sup>53</sup> In formulating HSC decisions and influencing the formation of the HSC, the considerable impact and disproportionate participation of physicians as entrepreneurs on the politics of health care is widely understood in existing

<sup>52</sup> <http://www.qualityinfo.org/olmisj/CES?areacode=41010000000&action=summary&submit=Continue>  
<http://www.bls.gov/iag/tgs/iag65.htm#about>

<sup>53</sup> "Following the example of these leaders in 'civic medicine,' physicians used their considerable power...The Oregon Medical Association supported the legislation" (Pinkerson 1992, chapter 3).

literature and supported extensively by interview subjects. The following section assesses the deliberative cost to the disproportionate role of physicians and the health industry.

### C. Perceived Adequacy

Ideal deliberative participatory standards were clearly violated by skewed attendance and participatory input from health care workers and physicians in particular. However, did skewed attendance affect how the HSC meeting participants perceived the creation, implementation, and process of the HSC? Did stakeholders feel they could access and influence the prioritization process? Non-health care related HSC meeting participants recognized that judging participation consisted of and should be measured by more than simply attending meetings and voicing their opinions on basic prioritization values.

Interview subjects perceived that power was not equal within the community meetings or within the HSC (despite considerable efforts to address power concerns as evidenced by institutional design). Additionally, even though extensive participation by the medically poor remained elusive, interview subjects nonetheless stated that the relative balance of power among participants and decision-makers within the constraints of the community meetings was (to summarize) either *as good as they had seen or as good as could realistically be expected*.<sup>54</sup>

In response to the HSC meetings, when OHAC and other groups requested that unusual but important steps should be taken to really make sure that poor underrepresented people might participate Ellen Pinney states “I give credit to Paige

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<sup>54</sup> This is substantiated through interviews with Ellen Pinney, Joy Marshall, Ellen Lowe, Paul Kirk, Yayoe Kuramitsu.

Metzler (HSC staff helped organize and recruit community participation), as *I don't think there was anything we asked her to do that she did not do*" (Pinney, Ellen. Phone Interview. 16 November 07). Former Commission member Ellen Lowe recalls the efforts of the HSC to incorporate all perspectives:

I think the HSC worked really hard at not utilizing the legalistic, administrative rule framework when we went out to meet with people. We tried to make it less formal. We would do things like being there to answer questions and available with information both in the afternoon and in the evenings other than just interact with them in the structure of the meetings (Lowe, Ellen. Phone Interview. 16 November 2007).

Another former Commissioner recalls efforts to elicit participation through access and transparency:

Every weekend we had public hearings, and we went around the state. I was up in Portland 1-2 times a week, and it went on for 6 years [Kuramitsu's HSC term]. Our whole focus was on the meeting process, nothing ever took place behind closed doors...we had a lot of good publicity, we were on television, we were on the radio, and the media (Kuramitsu, Yayoe. Personal Interview. 5 December 2007).

Additionally, despite the inordinate influence and participation of physicians and other health care professionals, direct representatives of the uninsured, HSC members, and other policymakers also perceive of the role of physicians as invaluable as far as pushing OHCR innovation and providing the necessary medical expertise and heavy lifting necessary to undertake the act of ranking and rationing services. Within the HSC, direct representatives of the poor also reported feeling that physicians behaved in deliberative terms.

In fact, physicians donated literally thousands of hours of pro bono medical expertise and this included extensively sharing opinions and expertise in the community meetings organized by Oregon Health Decisions and in the Health Services Commission's prioritization process (Pinkerson, 1992). The following statement by Darren Coffman statement reiterates the crucial role of health care professionals—especially physicians—and captures the widely recognized sentiment of those involved in OHCR.

[Health care professionals, HSC members, health care advocates] They volunteered thousands and thousands of hours to the process, Commission members who are volunteers, not getting paid, the meetings that they sat through in developing the prioritized list in the early 1990s, that was up to 20 hours a week, have active physician practices and then even beyond then their were other health care providers that we would bring in and request info of them, [HC] advocates that would go out and try to get input from those potentially affected by the reforms (Coffman, Darren. Phone Interview. 14 March 2008).

All interview subjects reported that power was equitably distributed in terms of opportunity to participate and add input into the HSC decision process. HSC members were respectful and open to all members of the Commission over time and regardless of the particular issue under discussion. Ellen Lowe, one of the original HSC Commissioners and voting lay representatives on the HSC certainly perceived equality of power among the HSC members and within its decision-making process:

I can only remember a couple times when we did not have unanimous votes. I call it sort of the nod test. But we used to take the time after the community meetings or listened to testimony or received information from a lot of folks to spend time talking about it. I often thought that maybe one of the things with a great deal of skill, and with the help of the governor's office I know, in choosing those of us that served on the Commission, that were not going to be demagogues. So we listened to one another (Lowe, Ellen. Phone Interview. 16 November 2007).

The initial HSC standards and subsequent changes were generally perceived quite favorably. Anonymous questionnaires administered by Oregon Health Decisions at these community meetings (OHD conducted 47 of the initial community meetings at the request of the HSC) that incorporated responses that specifically mentioned the meeting standards and actual process lend additional support to the perception of the quality of the meeting process. For example, overall “*participants of the community meetings generally felt that the meetings were conducted well,*” despite some suggestions about using the same facilitators for consistency and several participants reporting they were “put off by the health care scenarios worksheet” (HSC Prioritization Report 1991, 27).

Despite actual participatory shortcomings, representatives of the poor that were present at the HSC meetings acknowledge the difficulty in recruitment despite the genuine efforts of the HSC. Joy Marshall reiterates the need but the extreme and inevitable difficulty in recruiting a full range of participants in the real world (especially outside the HSC) of severe inequity:

It is so hard to do but you have to have true consumers, average people and poor people have a real say. To do that you have to find those people. They don't have free time and they are totally intimidated when they are sitting at the table with experts. But to really have genuine input from the spokesperson you need real commitment on the part of the bureaucrats. There is a huge cultural gap, the intimidation factor, and they have to be really committed to respecting and valuing that input and making a real effort to go get it. And I doubt that happens very often. It is just really token or non-existent.

I cannot criticize them [HSC] for the whole culture that keeps people in poverty and uneducated. I think that they had some good values and efforts and it could have been better I guess. But it is easy to be a Monday morning quarterback I think it was a great idea and what they did (Marshall, Joy. Phone Interview. 15 November 2008).

While the community meetings were generally held in high regard, importantly, the “community solidarity” rhetoric at the meetings in some ways lacked appeal for people perceiving themselves as marginal to the community in terms of real influence or comfort with the meetings or solicitation of feedback. For example, “distrustful of the commitment to the benefits under SB 27 on the part of the legislature, the Oregon Human Rights Coalition finally opposed OHP. As welfare recipients, they were dissatisfied with the funding level at 587” (Pinkerson 1992, 226).

Additionally, while there was testimony by Medicaid recipients and consumer advocates at the public hearings, The Oregon Health Action Campaign (including member organizations such as Oregon Fair Share, and Oregon Human Rights Coalition) chose to put its energy into outreach for the public hearings rather than the community meetings, because it was more comfortable with the traditional advocacy format. The public hearings were more relevant to a population that wanted most of all to lobby for its own preferences regarding changes in services affecting themselves as individuals.<sup>55</sup>

*Conclusion-* What ultimately made many groups skeptical was not the meeting process but that Oregon’s prioritization process did not truly represent a community consensus. This is evidenced by the fact that not everyone was affected by the reform. That is, *decisions were made by those largely unaffected by the outcomes and for those largely absent*. Accordingly, it is difficult to claim community consensus and legitimacy based in shared interests. In *Setting Health Care Priorities*, Dr. Dougherty claims that the Oregon Plan will place the non-poor majority in a conflict of interest: their sense of

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<sup>55</sup> Interview with Dana Brown by Mary Pinkerson, August 27, 1991.

decency pulling them one way, their financial interests another. Dougherty believes that achieving just results through rationing in a public process will be likely only if the interests of the middle class are tied to the welfare of the poor through a plan that creates shared coverage (Dougherty, 1991).

Since the legislature and members of the HSC were not directly affected by the plan, some groups found it difficult to believe the concerns of these groups had the same access expressed as consideration in decision-making. Ellen Pinney, OHAC's director, was involved in every phase of the Oregon Plan, yet the group ended up adopting a neutral position to Oregon's prioritization. So did the Ecumenical Council of Oregon, a coalition of Christian churches (Pinkerson, 1992).

Numerous groups ultimately chose to oppose OHCR for these and other reasons. These groups included: the ACLU, AIDS councils, the Children's Defense Fund, the National Association of Children's Hospitals, American Academy of Pediatrics, the National Association of Community Health Centers, the U. S Catholic Conference, Families USA, the American Association of Retired Person, the Oregon Catholic Conference, and other groups. Participation by the most affected (the medically poor) in any part of the OHCR was minimal.<sup>56</sup> However, substantive participation often revolved around policy outcomes and *not* the deliberative process within the HSC meetings.

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<sup>56</sup> Skeptics might argue those most directly affected by the HSC's decisions may not have turned out at meetings due to a perceived feeling of lip service in the meeting process. That is, in reality the uninsured poor felt that in the end HSC process would be dominated by the affluent. The most powerful stakeholders would participate and attempt to influence policy according to their interests rather than by what was best for or what directly affected populations most preferred. As a result, less powerful though directly affected stakeholders may have chosen exit or avoidance of the HSC process rather than engaging in a futile attempt to voice their preferences or participate deliberative terms.

The evidence examined suggests that the HSC met minimum theoretical, institutional deliberative relative parity standards. Meeting minutes, HSC documents, interview subjects, and secondary sources all substantiate ideal and satisfactory claims that a) the HSC was *open to and actively sought feedback from all identifiable stakeholders (especially the medically poor,* and b) the HSC granted *real public stake in the decision process,* offering formal & informal measures that took public preferences into account. *Furthermore,* involved groups (or other relevant groups that can be measured, especially the least affluent stakeholder representatives) felt that these minimum conditions of relative parity were met. This is illustrated in Table 5.<sup>57</sup>

Table 5: Relative Parity within the HSC

<b>Minimum Ideal Deliberative Conditions</b>	Access	Actively Solicit	Public Stake
IV: Institutional Structure and Behavior	Yes: HSC Meetings were public; all HSC information and decisions were transparent	Yes: HSC actively sought public participation, esp. from poor: surveys, public meetings, visiting soup kitchens, etc.	Yes: HSC granted the lay public 4 of 11 votes
DV: Perceived Adequacy	Yes: OFS and OHAC claim HSC was open and tried harder to balance parity than they had ever seen	Yes: OFS and OHAC claim these meetings are the most extensive, best statewide attempts to involve the public they have seen	Yes: OFS and OHC claim the substantive stake given to public was the best they have seen and could expect.

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<sup>57</sup> These findings suggest that for deliberative processes to work, actual attendance appears rather unimportant. What matters is that those designing the process actively set and implement efforts to solicit all interested and relevant stakeholders. This finding will be discussed more in the conclusion of this chapter and in the comparative chapter that follows the empirical chapters (OHCR, OWEB, and NCMI).

## 2. Power and Influence outside the HSC

Findings: The role of powerful interests and their influence *outside* the HSC meetings was a serious concern. The composition of the HSC and prioritization framework was accomplished in a closed political process and its prioritizing framework or prioritizing principles were arguably pre-ordained. In support, numerous questions about ideal deliberative standards that surround representation, influence and legitimacy were raised by interview subjects before the creation of and outside the HSC itself. HSC participant stakeholders reported concerns that the HSC was unduly influenced by a narrow group of outside stakeholders in a closed process. Participant stakeholders expressed concern that real decisions were made before and even outside of HSC forums without adequate public and stakeholder input. The initial process involving HSC inception, framing, and composition is presented; then the perceived concerns regarding this process are presented and evaluated in the following section.

### A. HSC Inception, Framing, & Composition

*Inception & Framing-* The central role of former Governor John Kitzhaber as a health care leader and entrepreneur in Oregon health care reform during the OHCR of the late 1980s and early 90s and continuing today is not easily overstated. The crucial role of Kitzhaber in OHCR is widely recognized in existing health care studies and deliberative scholarship, in interviews with the HSC Commissioners, staff members and HSC

participants, as well as by the media and the general public (Pinkerson, 1992; Interviews with Coffman, Kuramitsu; Lowe; Pinney; Marshall).

For example, I asked current Darren Coffman what made Oregon such a unique and far-reaching experiment in health care possible. Coffman spoke about the central role Kitzhaber's vision and effort in launching OHCR and creating the HSC. For example,

I think a key to it was having a champion of the cause, and clearly that champion was John Kitzhaber. And the fact that he had such a grounded background in HC and at the same time was very influential in the legislature was key and his charisma if you will and being able to bring all the stakeholders, parties involved to the table and in coming up with the original legislation. Also the OR pioneering spirit, doing something that had never been done before. That did not necessarily give us any grief or cause us pause, trying to plow forward (Coffman, Darren. Phone Interview. 14 March 2008).

Kitzhaber was largely responsible for framing the goals and basic institutional framework. According to secondary sources such as media reports and scholars such as Mary Pinkerson, Kitzhaber was instrumental in drafting the bill, passing the reform package, and in the initial creation of the HSC along with its central premise of rationing roughly along conceptions of the greatest good for the greatest number (Pinkerson, 1992). This happened despite initial opposition from fellow Democrats such as Bill McCoy, chairman of the Senate Human Resources Committee. McCoy had already shown he strongly opposed to rationing or priority setting. Later, members of the lay public, representatives of the poor, and numerous federal politicians would join him.

While Kitzhaber's central role in OHCR is readily recognized, the nature of his role in successful implementation in OHCR is less clearly understood. A phone interview with Kitzhaber conducted in the spring of 2008 illuminated Kitzhaber's role through an

insider account of OHCR and its ability to overcome the inertia of conflict over health care funding and delivery. That is, Kitzhaber's unique assessment helps to explain how OHCR was able to avoid the conflict and paralysis endemic to other serious health reform attempts where small but powerful vested interests often seek to maintain the health care status quo.

Kitzhaber partially attributes the initial success of OHCR due to the relatively closed nature of the initial OHCR process. Normally a Medicaid reform bill would have gone through McCoy's committee. However, due to McCoy's resistance, Kitzhaber, who was then President of the Senate, appointed a separate committee, the Committee on Health Insurance and Bio-ethics to move the legislation. To chair the committee, Kitzhaber selected his friend Robert Shoemaker, counsel for the Multnomah Medical Society. Shoemaker had just been elected to the Senate. "Together they handpicked the other members of the HSC." (Pinkerson 1992, 132) Governor Neil Goldschmidt then "followed the recommendations of the Friends of 27 and Kitzhaber's office when he made the appointments in August (to HSC), 1989" (Pinkerson 1992, 171 & 321-322).

While acknowledging the practical steps or necessities of implementation, Kitzhaber nonetheless also drew some criticism from the various stakeholders in the reform process and also raises some ideal deliberative concerns (centralized standards already discussed). Examples include Kitzhaber's role (and the role of other health care elites) in the closed initial meetings between the major health care elites or stakeholders, the closed process of defining the guiding principles of health reform, and the closed HSC selection process.

I asked Kitzhaber the following question: “in your own particular experience in the reform process that began in the late 80s and early 90s, did the most influential stakeholders disagree about what they wanted from health care reform and if so how did you manage this?” In his response, Kitzhaber indicated the necessity and the ultimately the *deliberative viability of preemptively sitting down behind closed doors with the most powerful health care players in Oregon*. These stakeholders were, as Kitzhaber described them, the “most likely to not only have their interests directly affected but also most able to influence the reform process itself.” This was done *in order to gather the necessary momentum and support to engage in substantive health care reform* (Kitzhaber, John. Phone Interview 4 June 2008).

To be clear, there most certainly were enormous potential losses and gains at stake in the reform process. The drastic changes proposed and subsequent potential revenue loss associated with the OHCR rightly concerned physicians. To ameliorate their concerns, Kitzhaber personally approached physicians and other health care interests to help guide the reform process (Pinkerson, 1992). Doctors and hospitals received pre-HSC assurances from Kitzhaber and actual exemption from civil and criminal liability as well as professional and licensure sanction for refusing to treat patients whose illnesses are uncovered by the rationing experiment (Pinkerson 1992, chapter 5).

In order to facilitate agreement among the state’s most important health care interests *before* the formation of the HSC, Kitzhaber brought together a coalition of some of the primary interests in statewide health care. This was done to help forge a basic agreement on a set of principles in order to gather support and move ahead with the

health reforms and the creation of the HSC. Kitzhaber confirms this as evidenced from our phone interview:

The main people at the table were Kaiser, BC, the hospitals, the Hospital Association, the Medical Association, AFL-CIO, and OR HAC which focuses on the medically needy, the low income folks. I think that was the main coalition. The AFL being the consumer groups. And we started out by agreeing on a set of 8 or 9 principles, and I could get you a copy but I am sure they are out there somewhere. And basically the agreement was within the constraint of those principles; you can argue your own economic self-interest (Kitzhaber, John. Phone Interview. 4 June 2008).

This preemptive work with the major powerful interests in Oregon health care proved to be a smart, politically crucial step.<sup>58</sup> The philosophy behind this approach involves working with the most powerful interests currently vested in the status quo to facilitate their “buy in.” This stakeholder buy in facilitates overcoming the largest political roadblocks to reform. This strategy is explained early in the interview by Kitzhaber. According to Kitzhaber, to make real headway in health care reform (or other complex and contentious issue for that matter) is to

Make the politics and economics of the transition explicit. Don’t pretend they are not there. Get them on the table...my point is that the only way you put the politics together to make this happen is first of all you have to get broad agreement and buy in on what the system ought to look like, one that actually produces health etc. And then you have to basically get the, look at all the stakeholders that are going to be affected who can jam up the political process and get their issue on the table. Shift the conversation from where we want to go to how do we get there (Kitzhaber, John. Phone Interview. 4 June 2008)?

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<sup>58</sup> For example, contrast OHCR with the attempts in the mid 1990s by the Clintons at the federal level that did not preemptively sit own with the major players and therefore later encountered numerous roadblocks from national health care elites, such as the now infamous “Harry and Louise” ads run by the health insurance industry.

Kitzhaber allowed the most powerful interests to fashion a platform that would not threaten their livelihood yet would also meet the original goals of the legislative proposals. *While this recognition proved invaluable it was also controversial to multiple stakeholders and does not meet ideal deliberative standards.* To engage in a public process of rationing care with the goal expand coverage to universally cover the medically poor, this political maneuver may have proved to be practical, even essential. Moving the Oregon Plan forward without significant if not paralyzing opposition and creating conditions for HSC deliberation and implementation of its decisions arguably necessitated this step.

*HSC Composition-* The composition of the HSC was not a public or participatory process and was not intended to be. The task of the governor was to name the Commissioner members. These lay members were Governor appointed and Senate approved. During the drafting of SB 27, four of eleven representatives were to be chosen from the lay public. The other seven members were health professionals.<sup>59</sup> These lay members, as a minority and of diverse backgrounds, alone wielded less formal power (minority vote) and were arguably less unified in their preferences than the medical professionals on the Commission in that they shared more diverse experiences and training as well as less medical expertise.

The nominations were not discussed in a public or participatory process. The public was not given any formal access or vote in the HSC composition. Governor at the

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<sup>59</sup> For a listing of the original 11 members of the HSC see HSC prioritization report to the governor and the legislature “1991 Prioritization of Health Services.”

time, Neil Goldschmidt followed the recommendations of Kitzhaber's office and the Friends of 27 when he made the appointments in August 1989 (Pinkerson 1992, 171). The legislative package imposed term limits in order to mitigate the potential stagnation of the committee or interest group influence over time. This was accomplished by requiring the Commissioners to serve staggered four-year terms, and they were mandated to review the prioritization process every two years (Pinkerson, 1992). This is confirmed in an interview with one former HSC Commissioner:

OR Health Association named me a candidate and Senator Kitzhaber came to my office and interviewed me...I remember Kitzhaber saying to me, you know, I can't have anybody on this committee who is not interested in my vision. He said he wasn't looking for people to try to say this is not right, you know, dissenters. (Interview 15)

In sum, the initial meetings among elite stakeholders and process used to create and populate the HSC according to guiding philosophical principles as well as the HSC rationing process itself were largely closed to the public. While perhaps necessary along feasibility issues, whether the HSC was properly composed in the end and whether it made deliberative decisions or not, all this was driven by a handful of powerful stakeholders. These examples do not conform to theoretical deliberative standards.

#### B. Perceived Adequacy

OHP generated broad public support in the legislature and most of the state – even if it was controversial outside of Oregon (Sirianni and Friedland 2001, 153).

Additionally, the plan was perhaps as close to a consensus as possible considering the complex issues and interests at stake in such drastic innovation. Most interested and

affected individuals and groups favorably received the plan and virtually all major stakeholder groups or their representatives in Oregon understood and appreciated the explicit intent of the plan to ration care publicly.

However, the outside political environment clearly influenced HSC participant perceptions of the legitimacy of the HSC itself. These perceptions may have influenced participation among traditionally marginalized stakeholders such as the medically poor. Numerous stakeholders were not entirely happy with OHCR, the prioritization process, or even the HSC. The most significant vociferous exceptions were ecumenical organizations and the disability community (Pinkerson, 1992).

The poor and uninsured lay public and their representatives were aware that the HSC meetings were taking place within a larger, instrumental pluralist political process. Perceived exclusion and uncertainty surrounding HSC formation, composition, and establishing the guiding principles of list prioritization *may* help explain why uninsured and poor representatives were not present. Some stakeholder group representatives point to this exclusion as support for maintaining a skeptical and reduced sense of efficacy. That is, relevant stakeholders suspected they possessed little ability to substantially influence OHP outcomes due to the larger political arena in which this issue was taking place.

Specifically, these deliberative concerns center on exclusion in populating the HSC, in framing the OHCR guiding philosophy or purpose, and in meeting behind closed doors with the health insurance industry. The support for this position includes Marshall's criticism of Kitzhaber's closed health care discussions at Willamette

University, Pinney's critique of the "privileged position" or influence of the insurance industry or other health industry lobbyists, and Marshall and Pinney's assessment of how the OHC process was narrowly framed to cut out important issues and policy possibilities. These are serious external concerns that appear to have influenced perceptions about the efficacy of participation inside the HSC.

A closed process can and did raise questions of inclusion and access in the eyes of those excluded. Stakeholders raised concerns over exclusion, such as those raised by Oregon Health Action Campaign's former director Ellen Pinney. For example, before SB27 had been passed,

Kitzhaber convened a group of bioethicists/thinkers to think about how we would prioritize it [health care]. This was after the OHD meeting. But this group was assembled at Willamette University absolutely off limits to the public and nobody knew exactly what they were doing. And the Senate Committee on bioethics, chaired by Senator Bob Shoemaker as I recall, were having a hearing on SB27, and it referred to this process the public was ostracized from (Pinney, Ellen. Phone Interview. 15 November 2007).

Some participants believed the process surrounding the HSC marginalized them. For example, Dana Brown, past director of the Human Rights Coalition, attributed their board's decision in part to finally oppose the OHP was partially related to discussions board members had with Oregon Fair Share.<sup>60</sup> According to Joy Marshall, a spokesman for OFS, the group was disappointed in the legislator's commitment to public participation in the public process. She said the group had great difficulty making contact

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<sup>60</sup> OFS is a citizen action group which opposed Senate Bill 27. Oregon Fair Share advocates elimination of private insurance in favor of a single payer system run by the government (Pinkerson, 1992).

with Senators Kitzhaber and Shoemaker, and noted they sometimes left the room when the group was testifying at public hearings (Pinkerson, 1992).

Additionally, OHAC expressed “skepticism among OHAC members that the poor would be treated fairly in any system which signaled them out from the general population” (Pinkerson 1992, 264-65). This is reiterated by Ellen Pinney when she states that what was presented did not become reality (the package became a package only for Medicaid enrollees). Joy Marshall of Fair Share echoes this concern. “Unless everyone is on the same boat, as long as you have poor people and regular people health care, poor people get the short end of the stick” (Marshall, Joy. Phone Interview. 15 November 2007).

Dr. Richard Conviser, formerly of Health Policy Research and Analysis in West Linn, Oregon, argues in “Universal Health Care Coverage, Rationing, and HIV Care” believes that the actual policy decisions and implementation are evidence that the HSC was controlled by a narrow group of external stakeholders. Conviser states that the OHCR has benefited private health insurers, their policyholders, and the previously uninsured (Conviser, 1995). Despite the emerging lack of funds over time for more and more expensive services (e.g. late stage AIDS treatments), Conviser asserts the HSC list and legislative funding seems more and more to be geared towards survival and not the original mission of the plan (universal coverage).

While health providers and active minority groups (AIDS and disabled advocates) lobby successfully to maintain and even expand HSC prioritized expensive treatments that yield little improvement in health, the less involved poor have increasingly gone

underinsure. For example, when this section was written, new adult claims were currently being refused.<sup>61</sup> Coupled with actual exclusion in the framing and composition of the HSC, participants have expressed some concern over the motivations and priorities to the medically indigent due to deliberative process concerns and actual outputs and their decreased level of coverage and care for the medically poor.

Speculative but real concerns were also raised by Joy Marshall, then a member of Oregon Fair Share. “It [meeting decisions] probably came down to the head of the hospital and Kitzhaber and maybe three other people who made a lot of the final decisions” (Marshall, Joy. Phone Interview. 15 November 2007). This type of statement, whether accurate or not, is linked to stakeholder’s sense of exclusion and uncertainty exacerbated by events such as the initial exclusion from the framing of the health reform agenda and the lack of voice in the composition of the HSC.

Closed discussions and decision-making does not conform to ideal deliberative theory. Also, it is not clear that this closed discussion was necessary or helpful considering the actual reservations raised in this case about this initial exclusion in interviews with Joy Marshall and Ellen Pinney. Whether practical or even necessary, this confuses deliberative claims such as claims of equal power or lack of undue influence by any stakeholder groups. This lack of transparency before and outside of the HSC makes it unclear whether and to what extent the process surrounding the HSC or the HSC itself was immune to perceived manipulation and control by a narrow set of stakeholders.

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<sup>61</sup> Per legislative mandate, on July 1, 2004 the OHP was no longer accepting new adult applicants. This information was acquired through a phone conversation via a telephone number listed at <http://www.oregon.gov/DHS/Healthplan>

*Conclusion-* Especially in the initial OHCR, there was significant alarm and questions concerning exclusion, bias and a lack of information outside of the HSC or HSC sponsored meetings around inception, framing, and composition.<sup>62</sup> Many anxieties were partially alleviated by those who eventually came to participate in the HSC process. However, these concerns *may* explain some of the continued problems generating turnout among traditionally marginalized groups.

Overall, however, the perceived adequacy within the HSC by participants within the meeting process was relatively high (compared to their ideal standards and previous deliberative experience). Nonetheless, without an ideal outside deliberative environment it is impossible to know for sure why the medically poor chose to remain largely absent. This *may* have served to confirm these potential participant worries about their influence over and therefore the legitimacy of the HSC and its prioritization process for the non-participants. Skeptics may insist that the lack of these initial extensive open deliberative steps could have served to generate perceptions of exclusion or among non-participants deliberative concerns as statements like this these suggest.<sup>63</sup>

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<sup>62</sup> For example, when asked “how deliberative was the HSC?” Joy Marshall echoed the concerns of Ellen Pinney as to 1) the closed nature of the HSC composition and 2) suggests how a different process could make it more legitimate. For example, Marshall states “you hold a certain number of slots on the board and a lot of them are real people” (Marshall, Joy. Phone Interview. 15 November 2007).

<sup>63</sup> Deliberative critics like Lynn Sanders (1997) would argue that a closed, preordained decision-making process -in this case prioritization conceptualized by elites and driven by a fixed value of the “common good” - serves to exclude other marginalized interests or health perspectives and reinforces the status quo. Sanders and others would argue this type of political process that precludes a deliberative forum should raise serious concerns over issues of relative parity. Or, deliberativists like Fung and Wright would also argue this type of political process fails to meet relevant stakeholder’s standards of perceived adequacy

*A closed and fixed framework driven by elites is a valid critique and should be acknowledged.* The process outside of the HSC led participant stakeholders (e.g. representatives of the medically poor) to question the HSC itself. The deliberative concerns raised by the exclusive and closed process that preceded the HSC could be easily mitigated in order to build public trust. *Future deliberative institutional endeavors of this sort would be wise to involve the public and medically poor stakeholders in the process from the beginning.* That is, the HSC case suggests that, to the extent possible, the same ideal and perceived deliberative standards - as accomplished in the HSC's internal deliberative process - should be replicated in the process of conceiving, framing, and populating the HSC. This would increase perceived legitimacy and potentially enhance participation. Increased legitimacy (along thresholds of perceived deliberative adequacy) is more likely to the extent that these stakeholders are allowed to take part and have real and up front input in conceiving, populating, and establishing the guiding purpose of the HSC.<sup>64</sup> Furthermore, the proposition that traditionally marginalized

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along criteria of relative parity. In turn, failing to meet thresholds of relative parity makes genuine deliberation less attractive (Fung and Wright 2003, 23).

<sup>64</sup> While complete transparency at all points in the policy process is often considered necessary to make any genuine deliberative claims (Habermas, 1992; Cohen and Arato; Fraser 1992; Young, 1996; Gutman and Thompson, 1996; Benhabib, 2002; Rosenberg, 2007), policymakers and even some deliberative theorists themselves are beginning to realize this has not been clearly established in this case and may be unnecessary or at least unrealistic to build deliberative legitimacy. In fact, research in this case suggests that in highly contentious and complex issues, a closed discussion among the relevant stakeholders may be quite important in the initial stages of building a deliberative forum (Elster 1998; Macedo, 1999; Williams 2000; Mansbridge, 2003). Successful policymakers such as Kitzhaber and interview subjects in other deliberative forums maintain that while transparency is important and needs to be built into a deliberative process as soon as possible, stakeholders in a controversial issue are initially need a closed forum to state issues that may be necessary to voice in order to establish stakeholder "buy in" but may vilify, be misunderstood, or misrepresented by the general public or the media. To satisfy thresholds of perceived deliberative adequacy, inclusion of all major relevant stakeholders or discourses is appropriate (this did not happen in the OHCR) but should initially be conducted initially under conditions of privacy in order to reach enough understanding and agreement that a deliberative, public forum is a viable option.

stakeholders (in this case the medically poor) will not participate no matter what steps are taken could be fully tested. Table 6 illustrates these perceived and theoretical deliberative institutional shortcomings.

Table 6: Relative Parity outside the HSC

<b>Minimum Ideal Deliberative Conditions</b>	<b>Access</b>	<b>Actively Solicit</b>	<b>Public Stake</b>
IV: Institutional Structure and Behavior	No: meetings were not always public; information and decisions were limited to a small, powerful stakeholders brought together by Kitzhaber	No: neither the public a broad rep. sample of stakeholders were informed or invited to participate in OHCR prioritization meetings in Salem	No: lay public had no formal influence in process
DV: Perceived Adequacy	No: OFS and OHAC reps. felt exclusion shows a few stakeholders received unfair access and influence in OHCR	No: OFS and OHAC reps. felt excluded from important meetings about OHCR prioritization in Salem	No: OFS and OHAC was not informed or allowed in initial OHCR prioritization meetings in Salem

### III. An Accounting of Respect

#### 1. Respect and Perceived Adequacy within the HSC

Findings: Interviews with former HSC Commissioners, HSC participants - such as representatives of the medically poor - and examined meeting minutes demonstrate that all stakeholders reported high levels of respect by and within the Health Service Commission. Interview subjects did not mention any feelings of disrespect by other meeting participants in the HSC meetings when explicitly asked. Additionally, meeting minutes did not indicate any direct concerns with issues of deliberative respect within the

HSC by and among meeting participants. When examples of respect within the HSC were mentioned by interview subjects, responses were positive.

A. HSC Meeting Structure and Process: Perceived Adequacy?

Interview subjects were repeatedly asked specific and open ended follow up questions that attempted to elicit responses concerning respect issues. For example, subjects were usually asked a minimum of three respect questions that included the following: 1) “Do you think all relevant interests within the various communities felt included and taken seriously in the community meeting process AND in the prioritization process that took place inside the HSC as well? 2) Was there a tension in the meetings in terms of making the participants feel their perspective was not shut out despite the need for some real limitations (how many could speak, what about, how long, etc)? Then, at minimum, a final open ended follow up question was asked: 3) were there any problems with respect issues that you were aware of?” Interview subjects did not report any major problems (systemic, intentional, pragmatic) concerning respect questions during the public meetings.<sup>65</sup>

When respect concerns were specifically mentioned by interview subjects, these discussions were positive. Interview subjects praised the work of the legislature to engage in and structure deliberative opportunity via the HSC. Respondents often mentioned the HSC’s willingness to listen and incorporate public values, testimony, and

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<sup>65</sup> In the last few interviews with policy elites such as Darren Coffman and John Kitzhaber some respect questions were dropped due to consistent positive responses concerning respect and in order to focus on other interview questions that were yielding less consistent responses. This is discussed in the previous methods collection discussion.

hard work to provide the necessary resources and structures to solicit a broad range of community feedback. Respect *among* participants was not specifically asked in interviews. While rarely mentioned specifically by interview subjects, when respect among participants was mentioned the conversation usually concerned the general consensus (with some strong exceptions) about prioritization as a valid priority as helping generate agreement which in turn facilitated more respect.

In structuring and conducting the HSC meetings Commissioners felt they were always willing to listen and demonstrated a commitment to solicit feedback above and beyond what was required of them. HSC members would often stay hours over the scheduled meeting time to give everyone a chance to have their say and seemed genuinely concerned and willing to listen as long as participant discussion was relevant to the health care reform. When asked if all members of the participatory community felt respected, Paul Kirk states

Well I hope so. I think we tried to conduct the meetings in a respectful way. We did not rush them. We spent a lot of time listening to people's point of view...we tried to conduct it in a respectful, relatively unhurried manner. We recognized that one of our roles was to sit and listen (Kirk, Paul. Phone Interview. 7 December 2007).

Beyond the assertion of the need to ration care and the explicit charge to produce a list that would benefit the greatest good for the fewest dollars the Commissioners never challenged the manner of expression or the validity of views expressed in meetings. Some of the HSC members such as Paul Kirk or Ellen Lowe reported deliberately structuring the meetings and soliciting prioritization feedback in multiple formats (such

as a telephone survey as well as meeting testimony and focus groups) to accommodate inclusion and respect as fully as possible.

The HSC went about attempting to facilitate respectful inclusion in a number of ways. For example, Ellen Lowe states that the HSC worked hard and undertook numerous steps to make meetings more comfortable by avoiding the legalistic, administrative framework at meetings. Meetings were less formal. Commissioners scheduled time to simply be available to answer questions or provide information one on one. The HSC also structured times in meetings that provide opportunities for exchange and that allowed the HSC to listen “rather than our being there to pontificate” (Lowe, Ellen. Phone Interview. 16 November 2007).

The HSC also conducted meetings in numerous formats and provided resources to facilitate feedback and tried to increase participation by providing child care and food. The meetings were actively advertised to make the community not only feel aware but also that their concerns were important. Meetings were often held during multiple time frames to accommodate working families and in an attempt to yield more representative participatory meeting samples. Speakers were given more time if needed. In an interview with former HSC head Paul Kirk, Dr. Kirk states that “the meetings often went as late as necessary to ensure that everyone that wanted to speak was given time, and to give as much time to speakers as they felt they needed and to grant everyone a speaking slot” (Kirk, Paul. Phone Interview. 7 December 2007). In practice, this often meant the meetings went hours longer than scheduled.

The HSC went above and beyond the most ideal efforts to solicit participation and to include lay participants. Those involved in the HSC and especially *active* meeting participants reported the interests of those most affected *were* truly taken seriously. Ellen Pinney confirms the willingness of the HSC to accept and immediately adopt any and all suggested efforts to include and respect participant needs and views. Additionally, HSC Commission members voluntarily and informally attempted to solicit feedback from the medically poor and other marginalized populations outside of the community meetings in an effort to understand their needs. Former HSC Commissioner Ellen Lowe recalls going directly to laundromats and soup kitchen in an attempt to reach out to Oregonians that might be concerned and affected but unable or unwilling to attend or participate in the meeting format.

On several occasions, I decided that some of the people that I really wanted to hear from would not be able to come to these meetings, and that was young working families. So I went to places like laundry mats on a Saturday and introduced myself when I saw a young mother with children in there or others... Some people didn't want to talk to me but it was amazing how many people opened up, so I did some of my own fact-finding. I also did that at food pantries and soup kitchens, where I could go out on my own and hear from people what they wanted in health care and what was important to them. And I know some people on the HSC did the same kind of thing. (Lowe, Ellen. Phone Interview. 16 Novembers 2007)

These efforts more closely resemble ideal normative notions of deliberative criteria along respect measures. This is an admirable attempt to listen to the underrepresented and represents the remarkable efforts of the HSC to take the marginalized and medically indigent position into consideration *and* show respect for the underrepresented.

High levels of respect were exhibited as far as discussion among meeting facilitators and participants as well as between them discussion. All sources examined

including secondary sources, meeting minutes, and interviews with Commissioners and public representatives support this claim. Within the HSC meeting process, interview subjects reported high levels of respect often without being explicitly asked. Specifically, representatives of the medically poor reported their constituents being taken seriously by the HSC in meeting testimony. Additionally, these interview subjects also reported that suggestions regarding mechanisms to enhance participation of the non-participants, i.e. the medically poor and the community writ large were incorporated.

If respect issues were raised, they usually arose from a small group of participants that perceived a lack of respect over prioritization as a valid operating premise. Additionally, within the prioritization process a lack of respect could be inferred when services were excluded or ranked lower relative to others competing services. For example, former Commissioner Yayoe Kuramitsu summarizes stakeholder frustration with any prioritization evidenced in meeting minutes:

They [meeting participants] did not understand our process and a lot of people did not understand prioritization. It is like how could you limit people and not give them the health care that they need, and we are saying you have to look at getting zero as opposed to getting maybe 5 or 600 different services and a lot of them could not get it, that here's what you would get and here's what you get now. It was what some people referred to as thinning the soup and we said isn't soup better than no soup? You would get down to examples like that and that was very hard for people to grasp (Kuramitsu, Yayoe. Personal Interview. 5 December 2007).

Ellen Pinney confirms the perceived lack of respect over framing the health care reform process around prioritization:

The folks when I came on board were really outraged that the questions predetermined the answer. The questions of course suggesting that we have a limited pool of money and the only decision we have to make within that pool are how the dollars are allocated across populations and services. And they felt there was this whole unnamed expenditure: administration, profit margins, and excess technologies that wasn't even in there and people were not given an opportunity. So I came on, people were mad, and we went to the last meeting and said 'this is a stick up,' there is enough money to fund health services for all these people and where we really should focus is on this waste spending (Pinney, Ellen. Phone Interview. 15 November 2007).

Despite some reservations with the HSC - such as prioritization itself and prioritization outcomes - interview subjects reported feeling taken seriously, genuinely listened to, and reported that the HSC made serious efforts to include and respect all participants. For example, Sirianni and Friedland write that "within the health reform process, advocates for people with disabilities, poor women and children, and mental health and chemical dependency services found the deliberative process to be open to their concerns" (Sirianni and Friedland 2001, 160).

Every request by Ellen Piney and OHAC to structure the meetings to ensure the meeting participants felt included and respected was incorporated into the HSC meeting process. This was done by Paige Metzler, a staffer for the HSC at the time, and OHAC certainly made numerous suggestions and requests. Pinney recounts OHAC's extensive requests in a phone interview on November 11, 2007:

Any public meeting has to have at least 6 weeks notice and that you have to drastic public outreach...developing flyers in Spanish and English...6 weeks notice, the combination of media and grassroots outreach and engagement, the meetings had to be accessible to people with disabilities and had to be in the evening so working families could attend. They had to provide food or something that would make people feel comfortable and like people are getting off of work,

they are hungry, and maybe they have had dinner but maybe we could do snacks or something. We want a daycare on sight, we want an interpreter.

We talked about how most public hearings in the legislative arena, in our state or any other state, the DM sit at a dais, at an elevated platform and they look down on you and you are sitting there all alone, everybody is behind you and you cannot see their comment, there is no interaction at all...if you really want public input you really have to put the public at ease...we don't want these folks sitting on a dais, we want them at our level, we want them in a circular fashion, we want the meeting not to start with the slam of a gavel, but with comments from each one of the HSC about why there are there and why they care about this stuff and who they are so that people in the audience know who they are talking to. We want an opportunity not only for free flowing public discussion about what public benefits are important to people, but we also want an opportunity for people who are uncomfortable doing oral or written testimony to participate by using surveys, or filling out forms, so that there is a multiplicity of tools for gathering public input. *All of that happened* [emphasis added].

This quote supports similar claims of openness and attempted inclusion in secondary sources. Secondary sources assert the HSC meeting process as open and inclusive.

Despite all the aforementioned efforts to include the medically poor, it is important to also note that not everyone was always satisfied with the HSC meeting process. Despite the extensive efforts to include and respect all interested groups or individuals, certain groups nonetheless did not universally feel respected. Some groups did not always feel they were taken seriously as in the HSC meeting process. As mentioned earlier, in an interview with Ellen Lowe she states that the HSC could have been more sensitive to their needs and done better outreach as some members of the disability community may not have always feel included. In addition to the disabilities

community, some members also remained unhappy with any attempt to ration care at all.<sup>66</sup>

Former HSC Commissioner Ellen Lowe reiterates this concern over potential perceived lack of respect when discussing the disabilities community. “I think there were some within the disability community that did not always feel included. I would say people with disabilities are one of those areas where I can think of times where we could have been more sensitive” (Lowe, Ellen. Phone Interview. 16 November 2007).

*Conclusion-* In interviews and meeting minutes, participant stakeholders reported high levels of perceived respect by and within the HSC. Participant stakeholders did not mention feeling disrespected by other meeting participants. When respect concerns were raised, individual members of the public, OHAC, and other individuals such as those with disabilities resisted the HSC’s efforts to frame the provision of state level health care in any rationing terms or in rationing terms used to bound OHCR discussions (according to OFS and OHAC). Some of the participant comments and secondary sources examined provide examples where individuals and several organization representatives perceived framing the debate in rationing based terms as disrespectful. The HSC insisted on sticking to the rationing framework which displeased some, despite the HSC’s accurate insistence that rationing exists whether we explicitly identify it or not.

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<sup>66</sup> For example, Ellen Pinney states “nobody really knew what it meant to provide a package of benefits to everybody that is defined by those service that do the most good for the most amount of people...our biggest concern was always the prioritization of health services and what it meant when you were going to do this. We are going to prioritize services that did the most good for the most number of people (Pinney, Ellen. Personal Interview. 15 January 2008).

Within the HSC itself, meeting participants meet report perceived adequacy along minimum deliberative respect conditions. Participants felt included, genuinely listened to and taken seriously by meeting participants and the HSC Commission itself. This is illustrated in Table 7.

Table 7: Perceived Mutual Respect within HSC

<b>Min. Ideal Del. Conditions</b>	Inclusion	Heard	Incorporated
IV: Structure, Behavior	Yes: HSC's hard provides the extensive, ideal resources and structures to solicit feedback.	Yes: HSC actively structured different participatory formats: go to soup kitchens, stays after hours, etc.	Yes: HSC inc. public values. e.g. stakeholders feel values were reflected in the initial prioritization process & list
DV: Perceived Adequacy	Yes: OFS and OHAC report exemplary efforts to elicit statewide participation.	Yes: OFS and OHAC reps. and public meeting minutes confirm HSC efforts to hear all public commentary	Yes: OFS and OHAC reps. report that public values were incorporated into broad HSC prioritization scheme

## 2. Respect and Perceived Adequacy outside the HSC

Findings- Measurable statements that reported perceived disrespect were repeatedly mentioned in interviews and in HSC meeting minutes. However, these statements focused on issues outside of the HSC meeting process. That is, certain groups and individuals were not included in the initial reform discussions between politicians and the major health care stakeholders. Interview subjects also felt excluded from the creation and population of the HSC and establishing the HSC's guiding principles to be used in making rationing of care decisions. These concerns were reiterated in meeting minutes and will be examined in the following section.

### A. Perceived Adequacy

Some groups chose not to participate and expressed concern with the role of other interests in the process surrounding the HSC and within the community meetings. Concerns about respect were also raised by participant stakeholders in meeting minutes and in interview with questions that explicitly asked specifically about any perceived respect concerns. At times, representatives of the uninsured, disabled, and poor populations expressed frustration leveled primarily at the outside political environment in which this issue took place. These stakeholders were concerned enough to make their concerns a part of the public record. However, these concerns were aimed at the influence the HSC decisions process outside the HSC and not to the HSC itself.

These statements centered on issues outside of the actual design and implementation of the HSC meeting process. That is, certain groups such as Oregon Fair Share and Oregon Health Action Campaign, as well as other organizations and individual members of the public (community testimony) expressed frustration. This frustration was framed as exclusion. This was exclusion from a) the initial creation and framing of the purpose or direction of the rationing experiment and b) with the interests associated with conceptualizing the rationing experiment and c) pushing the OHCR to consolidate around the guiding principle of the HSC's rationing experiment, roughly conceptualized as the notion of the greatest good for the greatest number.

These group's representatives reported a perceived lack of efficacy, due to the initial appeal by Kitzhaber to certain powerful interest groups such as the health industry and not others for example; the ideological bounding that assumed the nature of

prioritization efforts; and the undermining of the HSC process and erosion of decisions regarding standards (most notably universal coverage, level of coverage funding).

Dana Brown, past director of the Human Rights Coalition, attributed the board's decision in part to finally oppose the OHP was partially related to discussions or lack of discussion with the state legislature, viz. Senator Shoemaker and Kitzhaber's office.<sup>67</sup> A few groups reported an inability to contact Kitzhaber or other state representatives (e.g. Senator Shoemaker) and officials with their concerns (Pinkerson, 1992). At times meeting participants perceived a sense of disinterest with their perspectives expressed in hearings or meetings about the formulation of the HSC and the framing of its mission (Kitzhaber and others left the room at times during testimony). This led to some distrust and feelings of "lip service" inclusion and respect (Pinney, Ellen and Marshall, Joy. Phone Interviews. 15 November 2007). This and other actions fueled concern that the HSC was ultimately a creation and a product of elite interest group control.

Joy Marshall states "It definitely came down to the probably the head of the hospital and Kitzhaber and you know maybe three other people who made a lot of the final decisions" (Marshall, Joy. Phone Interview. 15 November 2007). Or, in a phone interview with Ellen Pinney, she mentions lay public and public advocacy concerns over Kitzhaber convening a group of "thinkers" assembled in a closed process meeting ostensibly to discuss framing the proper approach to health care rationing at Willamette

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<sup>67</sup> Oregon Fair Share is a citizen action group which opposed Senate Bill 27. Oregon Fair Share advocates elimination of private insurance in favor of a single payer system run by the government.

University, which was off limits to the public or the press, and where “nobody knew what they were doing” (Pinney, Ellen. Phone Interview. 15 November 2007).

In a phone interview with Ellen Pinney she recalls her perceived exclusion and bias with OHCR when she was first hired by OHAC. Pinney remembers how various stakeholders and members of the public were upset that OHCR was largely pre-determined before the public was really involved. For example, recall Pinney’s concern over questions that were asked throughout health care in community meetings that predetermined the answer while ignoring other health care expenditures such as administration, profit margins, and excess technologies (Pinney, Ellen. Phone Interview. 15 November 2008).

Furthermore, representatives of the lay public (poor or uninsured) felt that the prioritized list was ultimately eroded, under funded, or even ignored in the subsequent political process that took place outside the HSC meetings and its decisions. Joy Marshall says:

How good was the process? Well how good could it be? It is like let’s throw a little bit more money into Medicaid and let’s try to do it rationally. Well that is not a bad thing to do, but how are you really going to solve the (bigger) problem? (110) Costs keep going up and you are going to keep cutting items off the list, start kicking people off OHP, which you know they did. And poor people have little political clout, so once Kitzhaber left government they just kicked people off the program once money got tight...Unless everyone is in the same boat, if you have poor people’ health care and regular people’s health care, poor people get the short end of the stick. And of course if you don’t really control costs seriously, you can’t afford to give health care to poor people, comprehensively (Marshall, Joy. Phone Interview. 15 November 2007).

Other interview subjects also agreed that there were practical policy limitations, related legislative and fiscal concerns, and vested interests (insurance industry and

doctors/hospitals). According to respondents, these stakeholders were not interested in keeping the resulting decisions of the HSC when it meant the new OHP potentially threatened their livelihoods with mandatory employee insurance or limitations on expensive procedures. This may or may not have changed the HSC list and ranking of items. John Kitzhaber, Darren Coffman, and Ellen Pinney (among others) felt that external forces did influence the process in multiple ways that served to erode quality and extent of coverage over time. Darren Coffman, Executive Director of the HSC, in an interview in March of 2008, confirms the outside influence of business interests in affecting the OHCR legislation but not the process of list prioritization.

If you are talking about why did the employer mandate not stick, yeah that is a completely different answer [than the Medicaid reforms] in terms of [addressing changes in OHP over time], yes political forces even more so at the national than at the state level because we had to get a waiver of the ERISA laws in order to implement the employer mandate and while we had the pioneering spirit at the state level there wasn't quite that same spirit at the federal level. That was clearly the reason why *that* piece of the original OHP did not...

In a phone conversation with John Kitzhaber in June 2008 he reiterates his concern in the erosion of the OHCR reforms by interests external. This erosion was contradictory to the intent of the HSC, its participants, and legislative intent.

Here is what happened. AOI, which was a very powerful organization up in Salem, supported the employer mandate in SB 27, it is very interesting. This was in 1989. Because almost all of their members were larger employers that were picking up the cost shift and they got it. They understood that. *What happened then is that the composition of AOI leadership changed and AOI began to compete with NSIV for membership. So it began to try to attract smaller businesses into its fold. So it evolved into an organization that had a mix of people that offered insurers and didn't offer insurers.* And so come the '91 session, they were very interested in getting out from under the employer mandate. So that is when they got that provision stuck in. [emphasis added]

What is important about the changes in the plan over time through the role of outside forces is that this served to generate perceptions among some HSC meeting participants that they were not really taken seriously. Some groups (especially those representing the medically poor) report that they were assured the Oregon Plan would actually cover all Oregonians, resulting in truly universal care. These groups were also assured that the needs of Oregonians would be adequately met. This assurance was based on some sort of minimum package of benefits. This package would provide services that were truly the most important based on the greatest good for the greatest number. Some feel the plan didn't turn out that way. Ellen Pinney states:

If there was any problem it was what they testified to did not become reality. In this proposed package every Oregonian is supposed to receive the same health program. But instead this package became a package only for Medicaid enrollees. That in my mind was the biggest violation of public understanding of what they were participating in the first place. And you know I have to say that that wasn't I don't think there was some intentional manipulation of semantics. I think the private insurance industry... (The prioritization process) has a very innovative way for determining how benefits are the most important and it acknowledges that while there are some practitioners who would always espouse certain treatments they may be *motivated to do that by the money they were going to get by doing that treatment and not by whether that treatment is the most effective* [emphasis added] (Pinney, Ellen. Phone Interview. 15 November 2007).

Representatives of the poor did not feel they were taken seriously. From their perspective promises were made and then broken. From this vantage point, the process *outside* seems to matter more than what takes place within the HSC and its deliberative forums.

Under these conditions, whether intentional or not, it is difficult to expect full deliberation, i.e. that the traditionally marginalized groups and their representatives would genuinely seek out HSC meetings and take the process seriously.

*Conclusion-* All sources examined—HSC members, state policymakers, and representatives of the poor in the HSC meetings, meeting minutes, and secondary accounts examined—were unable to discover any widespread or systematic lack of respect concerning the implementation of and the conducting of HSC public meetings. Interview subjects report and meeting minutes confirm that meeting participants felt the HSC’s genuinely attempted to demonstrate a willingness to listen and genuinely cared about what *all* Oregonians had to say. However, concerns were repeatedly raised about the initial framing, composition, and establishment of the guiding prioritization principles outside of the HSC. Members of the lay public and advocates of the poor stressed that their exclusion from parts of the policy making process that occurred outside the HSC led to feelings that in some ways the process and decisions of the HSC didn’t really matter. This sense of exclusion and outside erosion of the HSC process certainly served to erode the perceived legitimacy of the HSC and may have ultimately influenced participation among the medically needy or other public stakeholders.

Outside the HSC, meeting participants meet report perceived inadequate minimum conditions of deliberative respect. Participants did not feel included, genuinely listened to or taken seriously by the various stakeholders outside the HSC meeting process. This is illustrated in Table 8 below.

Table 8: Perceived Mutual Respect outside HSC

<b>Min. Ideal Del. Conditions</b>	Inclusion	Heard	Incorporated
IV: Structure, Behavior	No: prioritization discussions did not always include public	No: initial prioritization discussions did not always structure public or relevant stakeholder input	No: a public process did not exist to clearly incorporate or measure the incorporation of public or stakeholder input
DV: Perceived Adequacy	No: participants report that Kitzhaber did not provide the necessary resources and structures to solicit a broad range of community feedback in initial prioritization discussions	No: HSC Participants report that Kitzhaber did not allow multiple relevant stakeholders to be heard in initial prioritization discussions	No: participants reported that a closed prioritization discussion excluded relevant public and stakeholder value incorporation in initial prioritization discussions

#### **IV. Discussion: Perceived Adequacy and the Role of Representative Deliberation**

Ideal deliberative theoretical participatory standards require articulation, influence, and robust participation of all relevant groups if not all affected individuals (Cohen, 1989). Despite failing to meet this central deliberative standard, HSC meetings are considered a deliberative success. When examining meeting minutes, HSC documents, interviews, or secondary sources there are no complaints about taking all actors perspectives into account and having real influence in the prioritization process. Neither the medically poor *nor* their advocates are on record as being unhappy about the lack of full participation. In the following chapter conclusion, I will summarize and discuss HSC evidentiary findings to resolve ideal deliberative participatory standards with stakeholder perceived adequacy. The central conclusion of this chapter suggests

representative deliberative or discursive representation as a potential reconciliation between ideal and non-ideal deliberative theory.

### **1. Re-evaluating Deliberative Participatory Standards**

Even by the strictest theoretical deliberative measures, *the failure of representative participation is not for lack of trying by the HSC*. These meetings remain widely cited by representatives of the poor that were present at these meetings as the best example of public state sponsored deliberative meetings in Oregon that exist to this day. In fact, *the strength of deliberative access claims lies not in numeric participatory results but in genuinely active and creative attempts by the HSC to solicit the opinions of the medically needy into a conversation about health care.*<sup>68</sup>

If the process within the HSC somehow excluded the poor it is likely that public testimony or other evidence examined would have revealed this perception.

Representatives of the poor, other concerned members of the lay public, or the poor themselves would have raised concerns about the deliberative process either within the HSC or outside it. Instead, all observable records suggest otherwise (e.g. interview subjects present at the HSC meetings and meeting minutes). The examined evidence

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<sup>68</sup> Ellen Pinney, Joy Marshall, and others believe the creation of and the real and attempted inclusion of lay representatives on the HSC Commission and in community meetings, and especially the structure and conduct of the HSC meetings themselves were of higher deliberative quality overall than other meetings conducted at the community level with other statewide formats. Specifically, within the HSC meetings the Ellen Pinney believes the HSC did a better job of dealing with power discrepancies than had been witnessed in the health care arena before, and was as good as practically possible given the numerous constraints. In fact, Pinney believes that the HSC meetings were the best she had ever seen and are still drawn from an exemplar case by other agencies and organizations when looking to develop deliberative meeting processes (Pinney, Ellen. Personal interview. 15 November 2007). These active attempts to include the public have been confirmed in multiple interviews with original HSC board members and lay reps for the poor including Paul Kirk, Ellen Lowe, Yayoe Kuramitsu and advocates for poor Oregonians such as Ellen Pinney (Oregon Health Action Campaign) and Joy Marshall (Oregon Fair Share) and are supported extensively in numerous secondary sources as well.

supports claims that the HSC undertook serious attempts to solicit and include public opinion and the most directly affected members of the public in the prioritization process. *This lends credibility to and satisfaction with the prioritization process.*<sup>69</sup> Instead of complaints about participation or the meeting process, without specific prompting, each interview subject repeatedly stated that the HSC took many significant and extensive steps, both formal and informal, to solicit participation, despite the fact that a diverse sample did not consistently turn out. Despite these efforts, why did those potentially most affected - the medically poor - not participate in the HSC meetings in substantial numbers? Despite the inclusive efforts of the HSC, was there some sort of perceived power imbalance in the reform process? The most commonly cited explanation for non-participation of the medically poor asserts that the poor and uninsured were simply dealing with more immediate concerns. Many *participants within the HSC* and deliberative critics maintain that the public at large just don't want to and will not participate in the HSC or other participatory forums no matter how well these forums are designed and implemented.

Many of the medically poor are working multiple jobs or long hours to provide for their family. These individuals doubt the efficacy of their political participation and would be intimidated in a public forum dominated by affluent educated groups. Clearly affluent stakeholder groups are more familiar and comfortable with intense issue advocacy or political competition involving public speaking, writing letters, and so forth.

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<sup>69</sup> This evidence includes interview with former HSC Commission members, HSC participants as advocates of the poor (and others directly involved in the HSC) as well as previous research into the OHCR by Dr. Mary Pinkerson, among others.

There are also real differences among stakeholders concerning perceived stakes in a given policy area.

Take for example, the relevant participatory incentives of the poor, middle class, and the wealthy. Experts actively perceive and are willing to fight for concentrated gains to be had from a process that grants, for example, their insurance company more generous payments for common services. Conversely, many uninsured are either unaware of potential gain and losses or unsure about how to navigate and compete with other health industry interests groups (Fung and Wright, 2003). The vast remaining majority of the potential participatory public is either too busy or feels largely unaffected or powerless and therefore has no incentive to get involved one way or another (Fung and Wright 2003, 38). Most members of the middle class have their own insurance. Most do not meet coverage levels for these changes.

This lack of direct impact arguably makes many potential participants view the process as a diffused cost issue. That is, most members of the middle class view OHCR largely a policy issue that affects them only indirectly and with minimal impact (this is an example of the problem of diffused costs - a small percentage of their annual income tax).<sup>70</sup> As a result, at worst this potentially leaves the poor and uninsured no real advocacy. At best, the interests of the medically needy are articulated by unelected “representatives” who may not have necessarily lived or always be able/willing to articulate the experiences they seek to speak on behalf of.

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<sup>70</sup> For a detailed discussion of the logic of diffused costs and concentrated gains is taken from Mancur Olson’s *The Logic of Collective Action: Public Goods and the Theory of Groups*, published in 1965.

When referring to complex or contentious aspects of public deliberation within a given issue area, subjects often reported that *extensive and diverse participation of the poorest or most polarized individuals or groups may not be necessary, realistic, nor even appropriate for genuine a deliberation process*. When asked about recruitment issues, Ellen Lowe states, “I think you always have that” (Lowe, Ellen. Phone Interview. 16 November 2007). While the HSC meetings were not necessarily ideal, Joy Marshall and Ellen Lowe (reps of the medically poor) were both clear that equality of power and participation among the poor could *always* be better. Despite this, interview subjects repeatedly stated and deliberative critics also argue that no matter how extensive the steps to include the medically poor or other marginalized groups *many groups or individuals representing these groups did not and cannot, or will participate little if at all*. Marshall confirms the difficulty in soliciting any participation from traditionally marginalized participants even under ideal conditions.

People who are not already in a position of power or expertise in the field. And you cannot meet until you fill those slots and you have a budget for it because they cannot pay for the gas and take off of work to come. And then you have to overcome the cultural obstacles (193). And you have to have a number of them. Because if you have one person for 5 doctors, you know, then the poor person is suddenly intimidated and doesn't have any clout now (Marshall, Joy. Phone Interview. 15 November 2007).

The non-ideal deliberative literature also supports multiple interview subjects' claim as to the difficulty of full recruitment under unlikely but more ideal conditions. “Leading reformers in each of our experiments realized, or learned through disappointment, that most non-professionals lack the capacities to participate effectively in functionally specific and empowered groups” (Fung and Wright 2003, 29). Critics of

deliberative theory and some deliberativists themselves suggest theoretical participatory standards may be unrealistically high.

Empowered participation demands too much in terms of depth of knowledge and level of participation from ordinary citizens, and the knowledge, patience, and wisdom that they are expected to possess or in short order acquire. It may be that the citizens in contemporary capitalist societies are generally too consumed with private life to put forth the time, energy, and commitment that these deliberative experiments require. (Fung and Wright 2003, 38)

These robust, idealized conceptions of public participation may be unrealistic for practical policy work. Workable standards that satisfy all relevant stakeholders (such as perceived adequacy in the HSC) may meet stakeholder standards of perceived adequacy and therefore be “good enough.”

## **2. Perceived Adequacy and the Role of Representative Deliberation**

Deliberativists still insist that inclusion of the poorest, most marginalized, directly affected is still necessary to legitimize genuinely deliberative claims (Fung and Wright, 2003). *If deliberative participation requirements cannot be met even under the HSC's most ideal attempts to solicit feedback and mitigate inequities within the meeting and prioritization process (according to HSC meeting participants and representatives of the poor), is participatory deliberation really possible or practical at all?* The HSC was also viewed as a deliberative institution in structure and process by the representatives of the poor at these meetings. Additionally, HSC participants felt *the interests of the absent members (poor, uninsured) could be and likely were adequately represented by the Commission members or through the representatives of the poor and marginalized populations that were present at the meetings.*

For example, former HSC Commissioner Paul Kirk says “I think the people who were being excluded from access to health care were quite well represented mainly by advocates” (Kirk, Paul. Phone Interview. 7 December 2007). HSC members had all worked with the Medicaid populations and had lay voting members on the Commission. The HSC meetings included poor representative from groups like Oregon Fair Share or Oregon Health Action Campaign.

By attempting to and actually generating participation that is perceived as “good enough,” HSC stakeholders appear to be willing to genuinely seek our deliberation and behave in deliberative terms. *This suggests a different deliberative standard for participation.* While genuine deliberation necessitates that all affected interests are articulated and seriously listened to and taken into account, it does *not* follow that there must necessarily be high levels of participation by all relevant groups and individuals within an particular issue area. That is, *deliberation may be more impacted not by who participates but how participation occurs.* While all interests and discourses need to be at the table, this case (as the other cases examined in this study confirm) and the most recent findings among other deliberative researchers suggests that *more affluent and less affected direct representatives of marginalized groups can, under certain conditions, advocate successfully in these deliberative forums and generate outcomes that are favorable to those marginalized groups that are most affected.*<sup>71</sup>

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<sup>71</sup> The cases examined in this study and other independent research substantiate this claim and suggest conditions for representative deliberation: drastic changes that generate improved coverage for Oregon uninsured, improved community relations for all members of the gay community, improved watershed, fish habitat, and water quality outcomes or funding of projects for tribal populations or poor Oregonians in rural

The findings from this case and other recent independent deliberative research suggest adequate conditions of representation include: a) extensive institutional steps to identify and solicit participation and feedback among all relevant interests, especially those most marginalized and potentially most affected by proposed policy change; b) extensive institutional steps to achieve relative parity, and finally; c) extensive attempts to identify and then ensure participation and articulation of all relevant discourse *interests* in the issue area. John Dryzek, in his recent November 2008 publication APSR, calls this “discursive representation,” or substantive acting for others in the discourses or interests they represent. Most importantly, d) *satisfaction with steps a-c (above) is required by all relevant interests*, which includes representative and discourse identification and can be measured in a number of different ways.<sup>72</sup>

Interviews and meetings minutes suggest participants were satisfied with steps a-d within the HSC but not outside it. Only when a completely different, more ideal process is created, where lay representatives are firmly in control of the meetings and the HSC itself and only when the outside political environment does not affect a deliberative process (as in the HSC) could test whether extensive participation would be sought by the most marginalized populations. Since these ideal conditions were approximated within

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areas across the state. Proper institutional devolution and centralization increase the chances of representative deliberative success as well.

<sup>72</sup> John Dryzek’s most recent research supports on of the central independent research finding concerning representative deliberation in this case study as well. Importantly, Dryzek suggests a modification of ideal deliberative theory regarding participation. Specifically, Dryzek want to reconceptualize participatory deliberative standards on the identifying and articulation of all relevant discourses rather than the ideal deliberative focus on measuring participatory standards as including all affected (Joshua Cohen 1989) (too many) or ascriptive characteristics such as race, class, or gender (may not represent a discourse). An interesting and cogent discussion on discourse selection methodologies and satisfaction with them is presented in Dryzek’s “Discursive Representation” on pages 487-489 of the November 2008 APSR.

the HSC and remain no more likely in other participatory forums, it follows that *development and testing of non-ideal deliberative participatory standards are not only appropriate but necessary.*

In conclusion, extensive deliberative claims have been made regarding OHCR and other deliberative cases without a clear set of standards, making any evaluation of these claims ambiguous.<sup>73</sup> In the end, Oregon's explicit public debate and discussion over health care coverage within the HSC enjoyed considerable support among actual HSC participants and among major statewide health care actors. Upon closer examination, it appears the HSC structured numerous deliberative opportunities within and to some extent outside the OHD and HSC meetings. Additionally, participants expressed perceived adequacy consistently along numerous theoretical deliberative criteria such as power and respect.

This does *not* mean the HSC itself and especially the OHCR fits the description of an exemplar deliberative case. In the end there are still potential shortcomings along ideal deliberative standards within but especially outside the HSC. While strong attempts were made to bring in the medically poor, they may have been skeptical of the HSC, no matter how deliberative, due to the outside political environment. Ideal deliberative theorists would support this conclusion by citing the fact that the medically poor did not participate widely (at least proportionate to their numbers).

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<sup>73</sup> For example, in extant deliberative literature, the formal openness of the HSC is often cited for deliberative support, a standard that more closely resembles orthodox instrumental theories of behavior. V.O Key's Equilibrium theory (instrumental), that asserts affected and interested actors will activate and mobilize effectively to the extent they are threatened. In the case of the HSC meetings, extensive participation among the most potentially affected actors did not emerge.

However, it is uncertain that meeting ideal deliberative institutional standards or other conditions of relative parity within the HSC would lead to increased ideal levels of participation, considering the participatory efforts in this case. Only when deliberative issues of transparency, inclusion, and influence outside of deliberative institutional space are adequately met can ideal participatory claims be more decisively tested. While unfortunate, it is also shortsighted to expect and assume adequate relative parity outside of institutional deliberative forums. However, as a result, this further reinforces the need for different, non-ideal deliberative participatory standards such as Dryzek's discursive representation (Dryzek, 2008) to begin to better facilitate, measure, and improve deliberative participatory forums.

## CHAPTER III

### CASE STUDY II. EVALUATING EXEMPLAR DELIBERATIVE CLAIMS SURROUNDING THE OREGON WATERSHED ENHANCEMENT BOARD

#### **I. Introduction**

##### **1. Background**

Collaborative watershed management initiatives are not unique to Oregon. Community based, collaborative planning is an established form of environmental policy-making in Oregon and is increasingly used throughout the American West (Bidwell, 2003/6; Rosenberg, 2005; Fox 2007, 9). Watershed management represents one of the most common examples of community based collaborative environmental planning. This is supported by the dramatic increase in collaborative watershed management initiatives over the last 15-20 years. Oregon's watershed management initiative represents one of many state level collaborative watershed management programs currently in existence.<sup>74</sup> These watersheds programs explicitly seek to utilize a cooperative, collaborative grass roots approach with state level authority or capacity devolved to these agencies and their locals.

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<sup>74</sup> The Natural Resources Law Center estimates there are over 400 watershed initiatives in the Western United States (Kenney, 2000). Also, you can find his paper on page 11 at the following web address: <http://www.cde.state.co.us/artemis/ucb6/UCB6582C762000INTERNET.pdf>

Oregon's current watershed management program is associated with the Oregon Watershed Enhancement Board. The state legislature in Salem voluntarily devolved authority in this policy area to a single state agency.<sup>75</sup> Originally referred to as GWEB, the Governor's Watershed Enhancement Board was initially established by the passage of SB23 during the 1987 legislative session (Governor's Watershed Enhancement Board Report 1995, 1997). The bill was a response to "the concerns of environmental groups, private citizens, organizations, and federal and state agencies over the continuing loss of water quality and quantity in Oregon's streams and degradation of fish habitat, forests, and rangelands" (Governor's Watershed Enhancement Board Report 1997, 1).<sup>76</sup>

GWEB is now called OWEB. This state agency evolved from the Governor's Watershed Enhancement Board (GWEB). OWEB was created by the 1999 Legislature (HB3225) to promote the restoration and enhancement of Oregon's watersheds.<sup>77</sup> The Oregon Watershed Enhancement Board is a state agency led by a policy oversight board. Together, these two groups promote and fund voluntary local watershed projects and organizational actions that seek to enhance Oregon's watersheds.<sup>78</sup> "OWEB programs support Oregonian's efforts to restore salmon runs, improve water quality, and strengthen

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<sup>75</sup> The voluntary emphasis of OWEB and the devolution of authority can be found at: <http://www.leg.state.or.us/ors/541.html>. This link contains legislative policy or principles of watershed management and enhancement. These statutes contain legislation that concerns OWEB and the Oregon Plan.

<sup>76</sup> The beginning of the Oregon Plan can be traced to the original efforts to restore salmon and watershed health (referred to by OWEB as its foundational document, originally was originally entitled The Oregon Coastal Salmon Restoration Initiative or OCSRI). This founding document ultimately led to the guiding principles and the actual creation of GWEB and then OWEB.

<sup>77</sup> <http://bluebook.state.or.us/state/executive/watershed/watershedduties.htm>

<sup>78</sup> <http://www.oregon.gov/OWEB/>

ecosystems that are critical to healthy watersheds and sustainable communities.”<sup>79</sup> This support is most readily associated with local watershed council support.

OWEB’s primary purpose as originally legislated, has always been “to grant funds to local watershed councils (LWC), Soil and Water Conservation Districts, or private citizens in support of projects that will restore, enhance, or maintain Oregon’s watershed health” (Secretary of State 2000, 2). To create and maintain healthy watersheds, OWEB funds local projects that restore, maintain, and enhance the state's watersheds throughout the state. OWEB fosters the collaboration of citizens, agencies, and local interests, of which local watersheds are a central focus.<sup>80</sup>

Previous scholars have stated that OWEB exists to promote watershed health by facilitating diverse citizen participation and influence over the outcomes from partnerships that enable citizens to negotiate in trade-offs with traditional power-holders in order to satisfy the various interests concerning economic and environmental positions (Rosenburg 2005, 102).

Precise rationales for seeking to form local watersheds vary to some degree. However, the major response to community-wide economic and environmental polarization has been for community leaders to form watersheds and watershed partnerships. OWEB and local watershed councils are viewed as a partial response to address the various range of conflict regarding issues of the local economic development

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<sup>79</sup> <http://www.oweb.state.or.us/>

<sup>80</sup> <http://www.oregon.gov/OWEB/>

and environmental concerns. Deliberative standards are a primary and explicit goal of OWEB and local watershed councils to help resolve these conflicts and enhance watershed health.<sup>81</sup>

The OWEB Board meets four times a year throughout the state to publicly discuss and act on applications for funds to accomplish watershed restoration activities. OWEB is responsible for establishing Oregon's long-term strategy for achieving sustainable watershed health. OWEB is accountable to the State Legislature and the Governor as OWEB is required to report progress of the Oregon Plan for Salmon and Watersheds biennially.<sup>82</sup>

OWEB's primary mechanism to accomplish watershed restoration involves the administration of a grant program. This program is "funded from the Oregon Lottery, as a result of a citizen initiative in 1998, federal funds and salmon license plate dollars."<sup>83</sup> In

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<sup>81</sup> "The Board [OWEB] fosters the collaboration of citizens, agencies, and local interests." [http://www.oregon.gov/OWEB/WSHEDS/about\\_us.shtml](http://www.oregon.gov/OWEB/WSHEDS/about_us.shtml) "The two primary guidelines provided by the legislature are: 1) that the watershed council be a voluntary, local group, and 2) the council represents a balance of interested and affected persons within the watershed." [http://www.oregon.gov/OWEB/WSHEDS/wsheds\\_councils\\_overview.shtml](http://www.oregon.gov/OWEB/WSHEDS/wsheds_councils_overview.shtml)

<sup>82</sup> [http://www.oregon.gov/OWEB/board\\_main.shtml](http://www.oregon.gov/OWEB/board_main.shtml)

<sup>83</sup> <http://www.oweb.state.or.us/>

<http://www.oregon.gov/OWEB/GRANTS/>

OWEB's budget varies considerably due to its reliance on fluctuating revenue sources and legislative appropriations. The following figures are an example of OWEB budgetary appropriation to local watersheds. As a result of the passage of Measure 66, it was estimated that OWEB would administer nearly 43.4 million in natural resource restoration and protection funds during 1999-2001 biennium. In actuality, grant funding approved for the 1999-2001 biennium will result in an average grant funding of 15.3 million per year. The Oregon Watershed Enhancement Board provided \$31.1 million dollars for watershed related activities that was then matched by 74.6 million (federal and private) in the 2001-2003 Biennium (OWEB 2003). In 2004-2005, total funding was over \$96 million. From 1995 to 2005, the total funding for reported investment in restoration and protection projects exceeded \$388 million. In the 2005-07 biennium, OWEB awarded over \$48 million to landowners, watershed councils, soil and water conservation districts and others for watershed enhancement work.

1998, Oregon voters approved ballot measure 66 that amended the Oregon Constitution and set aside 15 percent of net lottery revenues for restoring Oregon's salmon, watersheds, and state parks to be shared among state parks and salmon, watershed, and habitat restoration. Half of these funds are dedicated to OWEB to administer funds to protect native salmon, wildlife habitat, and watersheds. Other sources include a Salmon License Plate revenues and federal Pacific Coastal Salmon Recovery Funds.<sup>84</sup>

“The grant program supports voluntary efforts by Oregonians seeking to create and maintain healthy watersheds.”<sup>85</sup> Also, “the grant program at OWEB manages how project applications are processed, reviewed, and recommended for funding to the OWEB Board, and how grants are tracked during their implementation.”<sup>86</sup>

To summarize, OWEB functions essentially as a capacity building agency. The primary goal of OWEB is to enhance the capacity of local citizen groups to assess watershed health conditions, and to plan, prepare, and undertake successful restoration projects. *OWEB does this by supporting the “capacity of local watershed-based citizen groups to carry out a variety of restoration projects; promotes citizen understanding of watershed needs and restoration ideas.”*<sup>87</sup> OWEB’s grant program is the central

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<sup>84</sup> This information was gathered from multiple sources, such as the OWEB webpage: <http://www.oregon.gov/OWEB/index.shtml> as well as interviews with OWEB staff (Ken Bierly, Tom Byler, and Melissa Leoni,) as well as other secondary sources.

<sup>85</sup> [www.oregon.gov/OWEB/about\\_us.shtml](http://www.oregon.gov/OWEB/about_us.shtml)

<sup>86</sup> In this process, OWEB staff and the Board utilize numerous criteria such as utilization of best practice standards and deliberative criteria such as stakeholder representation. More info about grant eligibility, review, and implementation and monitoring can be found at: <http://www.oregon.gov/OWEB/GRANTS/>

<sup>87</sup> [http://www.oregon.gov/OWEB/WSHEDS/about\\_us.shtml](http://www.oregon.gov/OWEB/WSHEDS/about_us.shtml)

institutional feature of OWEB and the primary mechanism it uses to accomplish these goals.

These “capacity-building” grants assist watershed groups as they equip themselves with the planning, human resources, project management, and technical skills necessary to carry out complex restoration projects. Examples of the most common types of grant awards include projects that involve watershed assessment, data gathering, monitoring, fiscal management, various workshops, student programs and outreach programs.<sup>88</sup> “OWEB also provides technical skills to citizens working to restore urban and rural watersheds and monitors the effectiveness of investments in watershed restoration.”<sup>89</sup> Furthermore, OWEB “strives to prioritize funding for projects that foster cooperation, pursue matching-funds, provide for local involvement, include youth and volunteers, and promote education about watershed concepts.”<sup>90</sup>

The federal government has listed the Coho and other salmon populations under the Endangered Species Act. Despite this, the state of Oregon has continued to promote state level solutions through OWEB utilizing a grassroots, *voluntary* approach to Salmon management and restoration (taken from OWEB webpage and from a personal interview with OWEB Executive Director Byler, Tom. 28 June 2007). Former Governor John Kitzhaber and current Governor Ted Kulongoski and his staff have and continue to

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<sup>88</sup> [http://www.oregon.gov/OWEB/WSHEDS/about\\_us.shtml](http://www.oregon.gov/OWEB/WSHEDS/about_us.shtml) In addition to the grant program, OWEB also provides a variety of services to support watershed restoration in Oregon. These programs are considered secondary to the mission and actual bulk of OWEB’s funding and action items.

<sup>89</sup> [http://www.oregon.gov/OWEB/WSHEDS/about\\_us.shtml](http://www.oregon.gov/OWEB/WSHEDS/about_us.shtml)

<sup>90</sup> [http://www.oregon.gov/OWEB/WSHEDS/about\\_us.shtml](http://www.oregon.gov/OWEB/WSHEDS/about_us.shtml)

provide support to OWEB and its locals, integrate state natural resource agency efforts, and promote federal-state cooperation to help direct salmon recovery efforts. This unique and innovative approach to species management and recovery is often referred to as a model for other states and governments. The reliance on voluntary restoration is seen as key to its mission and its success (Rosenburg, 2005).

## **2. Why OWEB? Untested Deliberative Claims**

OWEB is the single state agency charged with “administering salmon and watershed maintenance, restoration, and enhancement through dedicated lottery funds” (Secretary of State 2000, 1).<sup>91</sup> Watershed management is now widely accepted as an important component of healthy ecosystems. Success in watershed restoration has been attributed to OWEB but has been collectively defined through local watershed groups that engage participants with diverse perspectives in ongoing dialogue about social, economic, and environmental issues surrounding their respective watershed. Numerous scholars and their existing research has highlighted “hundreds of success stories” (Wondolleck and Yaffee, 2000). The Oregon Watershed Board and its associated local watersheds have been grouped and cited by Sabatier (2005), Fox (2007), Wright (2000), and Rosenberg (2005), among others, as an exemplary case of community based collaborative natural resource management.

The attention that local watersheds receive in the media and in research studies is often favorable. Secondary sources examined often hold locals in high regard along multiple deliberative claims while simultaneously assuming away the deliberative nature

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<sup>91</sup> [http://www.oregon.gov/OWEB/WSHEDS/wsheds\\_councils\\_overview.shtml](http://www.oregon.gov/OWEB/WSHEDS/wsheds_councils_overview.shtml)

of OWEB itself as it relates to LWCs. Locals are referred to as grass roots based, inclusive bodies that empower localities to solve their problems at the local level using deliberative governance standards. Importantly, *OWEB is not separated or distinguished from this type of commentary*. For example, Rosenberg states that

The Oregon Plan for Salmon and Watersheds is a model for other collaborative efforts... There are lessons from this research that can be applied to other watershed programs and other collaborative initiatives. By providing local communities the opportunity to design and implement their own strategies for improving watershed health, within existing state laws and regulations, diverse watershed groups have emerged that reflect local conditions (Rosenberg 2005, 121).

Finally, OWEB Board members, deliberative theorists, and policy researchers also endorse the position that most and increasingly all *local watershed councils are or are becoming more “successful,” and include deliberative claims and the influence of OWEB in these statements of success.*<sup>92</sup> However, the OWEB Grant Program *only acts to support voluntary efforts* by Oregonians seeking to create and maintain healthy watersheds. *Local watersheds can form and continue to exist with or without the blessing or funding of OWEB*. Local watershed groups or other state and federal organizations can choose to turn to OWEB or not and can function *entirely* outside of OWEB.

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<sup>92</sup> Numerous scholars and policymakers support deliberative claims. For example, in “Swimming Upstream,” Paul Sabatier (2005) examines causes for and design of the collaborative approach, a new governmental approach to watershed decision-making and cites Oregon as an example in this discussion of collaborative watershed partnerships. “The more recent collaborative approach involves face to face information exchange and problem solving among all relevant stakeholders, usually under fairly strict civility guidelines and some form of consensus rule. This method emphasizes win win solutions... [and examples include] Massachusetts, Oregon, Washington, Pennsylvania, and Ohio” (Sabatier 2005, 7 and 48). Or, Fox states that “Oregon’s watershed council community has been used as an exemplary example of a community based collaborative natural resource management model in the developed world” (Fox 2007, 11).

Additionally, previous secondary studies have found clear differences in watershed process and accomplishments. Some locals have received national awards for their “excellence in collaborative efforts.” However, interview statements among OWEB meeting participants and OWEB Board and staff members themselves substantiate variance in and actual deliberative shortcomings endemic to various local watersheds. More than one researcher has stated “all case study councils are widely regarded as highly successful - often along multiple measures - in the state of Oregon” while simultaneously claiming that “every watershed council is different” (Rolph, 1996; Rosenberg, 2005; Fox 2007, 14 and 21). It is unclear how each local can be considered equally successful and therefore also deliberative under conditions of extreme variance (even if uncommon), suggesting that different standards are applied when attributing terms like “deliberative” and “success” to local watersheds.

Despite the establishment of OWEB and the proliferation of local watershed programs largely due to OWEB support, *a) there is not only little careful explication of the deliberative criteria used to collectively assess OWEB and LWC as a collaborative institution, there also exists little b) systematic testing of OWEB separately as a deliberative body, and finally c) little systematic testing and evaluation of OWEB and its role in deliberative variance among local watershed councils.* This renders substantive evaluation of exemplar claims ambiguous.<sup>93</sup>

The purpose of this chapter is to evaluate the largely unexamined exemplar deliberative claims surrounding OWEB. This will be accomplished by assessing explicit

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<sup>93</sup> Almost no deliberative research exists on OWEB itself (Margerum, 2005).

and testable deliberative criteria against the existing evidence in this case. The following chapter shows that OWEB is perceived as a deliberative institution by numerous stakeholders within and outside OWEB along measures of parity and respect. That is, stakeholders view OWEB as sufficiently open, inclusive, and receptive to their concerns, even when controversial. Finally, stakeholders understand that deliberative LWC variance is outside of formal OWEB control and in fact often prefer the existing voluntary nature of participation with OWEB despite previous and existing LWC deliberative transgressions.

## **II. Evidence: An Accounting of Power**

### **1. Power within OWEB**

Findings: OWEB lacks significant ideal deliberative institutional authority along devolution and centralization standards. Despite these constraints, current voluntary standards and practices of OWEB (access, influence, and stakeholder representation) indicate numerous institutional steps taken within OWEB to establish deliberative standards along measures of relative parity. OWEB grants institutionalized access and influence to relevant stakeholders. Relevant stakeholders perceive these efforts along criteria of adequate deliberative parity. OWEB's institutional behavior is examined in the following section. Additionally, I will present and assess OWEB's behavioral role in addressing LWC deliberative variance in institutional structure and practice. Evidence such as interview data and meeting minutes will be examined to show that OWEB was able to meet significant ideal and perceived deliberative standards along parity measures.

#### A. Institutionalized OWEB Access and Influence

Access of *all* relevant stakeholders to the OWEB decision-making process is a central minimum deliberative criteria and basic institutional feature of OWEB. OWEB is extensively open and at times actively attempts to recruit and solicit stakeholder input. *All* stakeholders are welcome and encouraged to participate. OWEB meets access criteria due in part to its organizational transparency in theory and in practice. The OWEB Executive Summary of the Oregon Plan for Salmon and Watersheds explicitly states its commitment to inclusion of all relevant stakeholders:

Oregon's Plan is an adaptive strategy that will change and improve over time based on constructive suggestions from the public, key partners, scientific reviewers, and the Legislature. Over the long term, the Plan will continue to change as we implement agency measures, build local support, obtain voluntary commitments, and monitor the ongoing success of those efforts.<sup>94</sup>

Transparency and openness represent central, minimum deliberative criteria and are central institutional features of OWEB. The transparency and openness of OWEB is part of an effort to stress the actual participation of *all* relevant stakeholders. Extensive stakeholder participation in OWEB is a central and is explicitly linked to local success and legitimacy. On its website, OWEB calls for

Projects that foster cooperation, pursue match-funding, provide for local involvement, include youth and volunteers, and promote education about watershed concepts. OWEB provides grants to support the capacity of citizen groups to assess watershed health conditions, then to plan, prepare, and undertake successful restoration projects. These "capacity-building" grants assist watershed groups as they equip themselves with the planning, human resources, project

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<sup>94</sup> [http://www.ccb.state.or.us/OPSW/archives/ocsri\\_mar1997/FExec.html](http://www.ccb.state.or.us/OPSW/archives/ocsri_mar1997/FExec.html)

management, and technical skills necessary to carry out complex restoration projects.<sup>95</sup>

The actual process surrounding the Board's prioritization of funding is transparent and attempts to elicit broad levels of participation by creating structural participatory incentives. All information, meetings, and other relevant decision-making procedures are open to the public. OWEB goes to considerable lengths to make sure information on and actual discussion and reaching of Board decisions are public. OWEB holds regular announced meetings across the state. At these meetings the general public is invited to attend and steps are taken to ensure that the public feels welcome.

Food is served at OWEB meetings. The staff and Board mingle with the public during breaks. Extensive physical and online documents are provided for the public regarding past meetings and future agenda items. Time for public commentary is periodically included at every major decision-making step in the Board's deliberation. A comprehensive, regularly updated website with meeting minutes, progress reports, contact information, and grant award criteria are all posted and regularly updated.

#### B. Perceived Adequacy within OWEB

Are the actions of OWEB viewed in deliberative terms? OWEB is perceived as reaching various stakeholders standards of relative parity. OWEB accomplishes this by carefully institutionalizing a deliberative culture of openness and inclusion in decision-making. OWEB statute demands citizen and relevant stakeholder inclusion. Self-reported interview responses among several staff and Board members such as Dan Powers, Tom

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<sup>95</sup> [http://www.oregon.gov/OWEB/about\\_us.shtml](http://www.oregon.gov/OWEB/about_us.shtml)

Byler and Melissa Leoni, Jane O' Keefe, OWEB meeting minutes and direct meeting observation, and other secondary sources establish and substantiate the perceived deliberative steps that OWEB takes to ensure stakeholders are engaged and incorporated into OWEB policy making and practices.

Tom Byler, Melissa Leoni, OWEB Board members, and independent assessments such as The Secretary of State or other lay participants agree that OWEB (OWEB Board and staff) engages in adequate deliberative practices. These adequacy statements can be characterized as either the best possible deliberative governance under its current legislative scope or governance practices that avoid bias and are consistent with its legislative scope and intent. However, according to Tom Byler and Melissa Leoni, OWEB still views itself as a work in progress. OWEB continues to work hard at utilizing best practice standards. This is done in an effort to develop better mechanisms to improve and develop deliberative democratic governance standards at all levels, both intra and interagency wide.

Jane O'Keefe and others have suggested the deliberative reputation of OWEB is due to the OWEB's attempt to meet deliberative standards of inclusion and openness.

[OWEB's deliberative reputation is due to the] Openness of the process. Because the staff is considered professional and so the information that comes to the Board that we deliberate on is considered professional and credible, I think the statewide geographic mix allows people to feel like a lot of different viewpoints are considered. Anybody that goes to one of our meeting can see that you know Board members are not shut down and can speak fairly freely (O' Keefe, Jane. Phone Interview. 9 July 2007).

Direct observation of OWEB Board meetings and interaction with OWEB itself through staff and Board members also repeatedly met the highest standards of openness

and transparency. OWEB incorporated multiple steps to generate inclusion. Both OWEB Board members and staff were friendly and accessible. OWEB staff and Board members provided extensive help in locating previous meeting minutes and securing interviews. With one exception, audio tapes of meeting minutes from 2007 and direct observation of two full days of meetings in Salem in May 2007 did not produce public commentary which could be categorized as a desire for OWEB to further regulate LWC due to deliberative variance. In fact, public commentary often featured extensive support for reduced levels of state level oversight.

OWEB was both proactively and reactively open. Meeting minutes showed OWEB to be concerned and responsive to *all* public commentary, even welcoming and incorporating the comments that were critical of the Board, locals, or OWEB staff.<sup>96</sup> The direct observation of OWEB meetings in Salem in May 2007 represents a good example. After the Board received critical public commentary about a particular LWC, voting Board member Skip Klarquist, Portland Fish and Wildlife Commission Representative insists that the Board address these concerns during a discussion of improving LWC

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<sup>96</sup> For example, On May 15<sup>th</sup>, 2007 during a 2 day OWEB meeting period in Salem, a local lay participant proceeded to raise objections during a public comment period. The objections were highly critical of the local watershed, calling it exclusive as it “shuts out individuals from attendance, won’t send out its agenda, and threatens to call the police,” OWEB for not investigating these claims, and the OWEB Grant Review Committee, calling it “incestuous and possessing a conflict of interest.” Despite running over the time limit, this person was granted more time for testimonial. OWEB staff also made an attempt to explain the process of grant review and its shortcomings as well as steps being taken to improve it (grant application went from 90-20 pages, 8 criteria, trying to make more consistent rules for awards to ensure merit based). At this point, the Board proceeded into a discussion about the difficulties in making the award process formulaic (e.g. not funding underachieving locals could mean their demise entirely). Additionally, OWEB Board members validate these claims and promise to take them seriously and to investigate this situation. After this testimonial Dan Heagerty, current OWEB Co-Chair states that “OWEB takes this seriously and will look into this. I have talked to others and we will look into this. Give Bonnie Ashford your information. We appreciate your information and comments.” After the conclusion of the meeting, I observed that this person was approached by Bonnie Ashford and Roger Smith, both OWEB staffers.

through grant funding prioritization before they approve funding for *any* LWC. The staff then proceeded to substantively address the concerns raised during this commentary in public before the Board moved forward with any funding decisions.

Also, during regular meeting intervals, staff and Board members actively solicit public feedback by conceding the defects in the LWC evaluation process and by stressing the need for public feedback to help improve this process. Additionally, the Board allows public testimony to continue until everyone that has signed up has had a chance to speak. The Board attempts to respond to all concerns raised directly or by specifying the nature of a later response if either the Board or the public feel more/better follow-up is appropriate.

Meetings are open and inclusive while also drawing on real expertise. OWEB also uses these public forums to make their decision processes transparent. Former OWEB Co-Chair Jane O’Keefe supports this statement. “You know I honestly don’t know how we could be any more public. Our meetings are held, all of the information that we consider is public, you know, I don’t know what else you would do” (O’Keefe, Jane. Phone Interview. 9 July 2007).

Additionally, institutional attempts structured time to “get to know each other and forge working relationships.” OWEB Board members suggest this type of action is representative of a broader deliberative culture. Board members such as Dan Powers and Jane O’Keefe attribute this behavior and attitudes to the ability of such a large group to work effectively in a deliberative manner (O’Keefe, Jane. Phone Interview. 9 July 2007; Powers, Dan. Personal Interview. 20 July 2007).

The examined evidence indicates OWEB is a responsive institution along ideal deliberative criteria. That is, when local or other stakeholders approach OWEB directly to acquire information or testify at its meetings, for example, OWEB is responsive and open. However, OWEB does not always appear to actively reach out and solicit and acquire unstructured feedback, especially from the most marginalized and affected populations. For example, in a June 2009 email survey, I asked a random sample of LWC “does OWEB ever proactively reach out to your local watershed organization to solicit your input in their decision-making, e.g. invite you to their meetings?” One LWC Coordinator responds by saying “being a smaller council, we don't have as much interaction as some of the larger councils might, so I can't say that we are approached directly for our feedback” (Interview 19). This LWC respondent and others feel that OWEB is open and responsive when approached, and while satisfied overall, OWEB does not always reach out proactively to solicit participation and feedback from all relevant stakeholders.

Finally, statutory limitation mandates OWEB remain a voluntary organization. OWEB is not and never will be a finished deliberative/policy product (Byler, Tom. Personal Interview. 28 June 2007). Despite this, OWEB staff and OWEB Board members as well as researchers and other independent parties believe that OWEB is publicly taking the right steps to improve LWCs on deliberative terms (Leoni, Byler, and Powers. Personal Interviews. 2007).

OWEB is moving rapidly toward facilitating more openness, inclusiveness, and influence the lay public has on the decisions of local watersheds. Take a March 17<sup>th</sup> 2000

report released by the Secretary of State, for example. An independent audit of OWEB's grant review process (requested by OWEB) determined that "OWEB's multiple level review process provides the opportunity for consistent evaluation of project grant applications and is appropriately based on the criteria found in the statute" (Secretary of State Audit Report 2000, 2).<sup>97</sup> Furthermore, from this analysis, the report also determined that "review guide and practice includes significant provisions from relevant statutes and appeared to be free from extraneous evaluation that may bias approval toward a particular group or watershed area" (Secretary of State Audit Report 2000, 2).

*Conclusion-* OWEB does not necessarily ascribe to ideal deliberative standards of devolution (deliberative population of OWEB and budgetary control). Additionally, OWEB does not meet ideal deliberative centralization standards (OWEB is completely voluntary in authority). OWEB does not meet ideal deliberative participatory standards as OWEB does not aggressively solicit and acquire feedback from all relevant stakeholders. However, OWEB *does* meet many of the ideal deliberative standards in its current institutional practice. OWEB meetings are inclusive. OWEB seeks to incorporate experts as well as interested participants in its meetings and decisions. In particular, OWEB outside stakeholders assert that seems genuinely interested in actively responding to concerns and feedback driven by affected and interested stakeholders in local issue area concerns. OWEB shares power with and encourages interaction with multiple stakeholders. OWEB is also open in its sharing of information and in its decision-making whenever possible.

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<sup>97</sup> Essentially, this means that the grant review process provides a multiple step review of applications that includes the grantee, OWEB staff, independent regional reviewers, and the Board.

In sum, OWEB approximates minimum theoretical, institutional deliberative relative parity standards and practice among stakeholders within OWEB's meeting process and the agency generally. OWEB is open to the public. While not ideal, at times OWEB does solicit and acquire unstructured feedback from relevant stakeholders. Participant stakeholders confirm this when reporting perceived adequacy concerning minimum conditions of relative parity within OWEB. This is illustrated in Table 9.

Table 9: Relative Parity within the OWEB

<b>Minimum Ideal Deliberative Conditions</b>	Access	Actively Solicit	Public Stake
IV: Institutional Structure and Behavior	Yes: meetings are public; all information and decisions transparent	Yes: OWEB does not always seek relevant stakeholder participation in agency decisions; involvement opportunities exist for stakeholders that <i>are</i> present at meetings	Yes: five voting Board members are citizen representatives
DV: Perceived Adequacy	Yes: participant stakeholders report OWEB is open to and tries hard to balance all relevant interest concerns	Yes: participant stakeholders report that seems genuinely interested in and actively responds to any concerns and feedback brought <i>to</i> OWEB	Yes: Board members report representative satisfaction. No participant stakeholder representation concerns were discovered

## 2. An Accounting of Power outside OWEB

Findings- The initial inception and framing of the Oregon Plan meet ideal and perceived deliberative standards. However, the creation of OWEB itself does not conform to ideal deliberative devolution and centralization criteria. Examples include

state level legislation which voluntarily devolves complete authority over defining and implementing watershed restoration projects to voluntary, local watershed organizations rather than OWEB directly,<sup>98</sup> the legislation that created OWEB also substantially limits the agency's control over total budgetary allocation and specific budgetary appropriations, and even the process of conceiving and populating the OWEB Board. Despite this, the data examined suggest *the Board is viewed as a highly representative institution*. In the following section, OWEB's institutional structure, framing, and composition are examined and evaluated according to deliberative standards.

#### A. Inception, Framing, and Composition

*Inception and Framing-* The origins of GWEB can be traced to Governor John Kitzhaber and OCSRI. In October 1995, Kitzhaber announced the planning effort to conserve and restore Oregon's coastal salmon and steelhead. Initially, framing the mission of the Oregon Plan started with a fundamental assumption that Salmon health were in serious and relatively recent decline.<sup>99</sup> This assumption appears to have been and

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<sup>98</sup> While not attributable to OWEB directly, it is important to note that a lack of a minimum set of consistent deliberative standards within the local watershed councils due to severe regulatory limitations in OWEB's authority has led to LWC variance on deliberative grounds such as ideal adequate representation, equal influence, and perceived legitimacy. In fact, the examined evidence raised concerns that at times went further than deliberative concerns to include outright exclusion and a lack of stakeholder influence in the decisions of local watersheds.

<sup>99</sup> Native populations of salmon, steelhead, and trout have declined, some dramatically, in Oregon during the century and a half since the region has been exposed to industrial-scale development. Many populations of salmon, steelhead, and trout are extinct today; other populations are at risk of extinction, and relatively few are in a condition that may be considered healthy. Thus the principal purpose of the Oregon Plan is summarized from a passage in the Oregon Plan drafted in 1997. "The Oregon Plan recognizes an historic decline in coastal Coho populations. The Oregon Plan is designed to reverse this decline and return salmon, once again, to healthy levels" (the Oregon Plan 1997, 5).

remains uncontroversial and shared by the vast majority of Oregonians and stakeholders in salmon and watershed restoration.

A basic tenet of the Oregon Coastal Salmon Restoration Initiative (OCSRI) is that “All Oregon citizens share responsibility for the changes to the natural systems that have hurt salmon and, likewise, share responsibility for restoration” (the Oregon Plan 1997, 5). Additionally, the Plan states that “for the long-term, the challenge is to negotiate societal decisions that address the complex, conflicting issues of human population growth and competition for natural resources. “This must be done in a manner that meets the needs of both salmon and people” (the Oregon Plan 1997, 12).<sup>100</sup>

Former governor Kitzhaber and the state legislature intended the majority of this heavy lifting or implementing of watershed and salmon restoration to take place locally through LWCs. Policy implementation was to be voluntary and collaborative. LWC organizations and their policy agendas were to be diverse in order to reflect the various social, economic, and physical conditions and resulting diverse set of preferences and needs of local watersheds. This variation is readily linked to state legislation that actively encourages LWC variance and does not any set of mandated, minimum standards. The Oregon Revised Statute itself establishes the general mission of the Oregon Plan which states that “Use of voluntary and collaborative process to achieve the mission of the Oregon Plan whenever possible” constitute the primary goal of the plan ORS 541.405 (2)(b)(J).

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<sup>100</sup> Perhaps this is best captured in the mission of the Oregon Coastal Salmon Restoration Initiative, which is “to restore our coastal salmon populations and fisheries to productive and sustainable levels that will provide substantial environmental, cultural, and economic benefits” (the Oregon Plan, 12).

It appears that previous to widespread public involvement, these basic purpose and mechanisms of the Oregon Plan were in place. Namely, the Oregon Plan's basic goals and mechanisms were strong enforcement of existing laws and regulations within a voluntary and cooperative action. Voluntary and cooperative action was stated as the only approach that would generate the support and commitment across all sectors, from landowners and industry to government agencies—to restore salmon and their natural systems. The plan's purpose and ability to succeed was initially and remains framed as requiring an unprecedented level of cooperation and coordination among local, state, and federal agencies (the Oregon Plan, 1997).

However, it is important to note that *Kitzhaber was careful to consult and work with key governmental agencies and other important stakeholders early in the process of the Oregon Plan*. On page 27 of the 1997 Oregon Plan Executive Summary document, the commitment to public stakeholders is clearly stated. “It is essential to build *all* stakeholders into the recovery effort: soil and water conservation districts, the Oregon State University Cooperative Extension Service, watershed councils, local governments, landowners, industries, and citizens.”<sup>101</sup>

One of Kitzhaber's first steps was to establish a collaborative or self-identified “team approach” for developing an action plan that would lead to restoring the health of

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<sup>101</sup> While deliberativists insist devolution is crucial to generating effective deliberation there must also simultaneously be accompanying centralization standards which are postulated as leading to greater deliberation among all involved groups. Centralization generally consists of setting of basic minimum standards and assistance in facilitating local priorities (Dorf & Sabel in *Democratic Experimentalism*). Kitzhaber insisted on extensive, explicitly stated and codified institutional standards and efforts toward public and stakeholder inclusion which included independent review of the policy process and findings and public transparency among others in extensive attempts to build public and stakeholder input and legitimacy.

coastal salmon and trout populations. Another early step was to require directors (issue area stakeholders) of key state agencies (called the Salmon Strategy Team) to meet with the Governor bi-weekly, reporting progress and resolving interagency obstacles.

Additionally, an Outreach and Education Team, consisting of relevant existing issue area organization representatives and governmental stakeholders, began to work with other key agency stakeholders, identifying other stakeholders and asking for their advice and ideas (the Oregon Plan 1997, Chapter 2).<sup>102</sup>

The Outreach Team initially took numerous steps to reach out to the public and to effectively solicit input from known and unknown stakeholders. “The comprehensive and inclusive outreach and education effort extends to private groups. The Salmon Watch Program and the proposed Oregon Heritage Stocks Program are examples of conservation organizations getting involved” (the Oregon Plan 1997, 78). Or, “Print and electronic media have been kept closely informed of OCSRI efforts and have been invited to attend demonstration projects. The publicity gained by media attention has placed a spotlight on salmon restoration and highlighted successes” (the Oregon Plan 1997, 78).<sup>103</sup>

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<sup>102</sup> The Outreach Team took extensive steps to determine and elicit participation from all relevant and non-participant stakeholders. Utilizing the opportunity of reaching more than 200 attendees at a February two-day workshop on salmon/watershed education co-hosted by Oregon State University, the Outreach Team conducted a survey asking respondents to identify all audiences that should be targeted for salmon education, specifically to identify audiences OCSRI was not reaching. Fourteen major audience categories were identified: Landowners, Conservation Groups, Local Government, State and Federal Government, Civic Groups, Education, Seniors, Youth Groups, Media, Recreation, Business, Cultural, Religious, Others. In all 110 potential stakeholder groups were identified.

<sup>103</sup> Specifically, the Outreach Team “assisted in marketing the original OCSRI Draft Plan by coordinating distribution at 110 public sites throughout the coast and affected regions. Copies of the plan were placed at public locations including libraries, city halls, extension offices, soil and water conservation district offices, watershed council offices, and ODFW district offices. The Outreach Team also placed an electronic version

According to the report 1997 Oregon Plan, public commentary on the plan frequently reiterated the need for more significant Outreach and Education Chapter to raise public awareness and build stakeholder involvement. In response the 1997 Oregon Plan report details extensive follow-up efforts to reach out and educate the public as well as statewide stakeholders as to the need for public involvement in the Oregon Plan.<sup>104</sup>

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of the Plan on the Governor's web site. A news release informing the public of the availability of the plan was written by the Outreach Team and distributed to statewide media. The Outreach Team produced an Executive Summary of the OCSRI Draft Plan in September and distributed it widely to interested parties. Hard copies were made available at eight OCSRI community briefings in September and October. Copies were mailed to an extensive list of interested parties. An electronic version was also placed on the Governor's web site with links to other agency web sites" (the Oregon Plan 1997: Executive Summary and Overview). Additionally, "the Outreach Team reviewed public comments on the OCSRI Draft Plan and assisted in preparing written replies to those comments. The team also produced a brochure consisting of the most common questions and answers that resulted from the community briefings. The brochure was distributed to every attendee of the briefings, as well as other interested parties."

<sup>104</sup> [http://salmonplate.com/OPSW/archives/ocsri\\_feb1997/workfiles-html/Sect11.html](http://salmonplate.com/OPSW/archives/ocsri_feb1997/workfiles-html/Sect11.html)

The Outreach Team also planned and organized a series of 8 public informational meetings, which were sponsored by county commissioners, in September of 1996 to "target key groups and interested individuals in the following locations: Astoria, Tillamook, Newport, Coos Bay, Grants Pass, Gold Beach, Roseburg, and Portland. Local leaders and potential stakeholders were personally invited to attend the workshops, and news releases were sent to local media to promote the briefings." According to the Oregon Plan documents, More than 540 letters were mailed from the Governor's Office encouraging citizen attend and informing Oregonians of the importance of these presentations. Local newspaper and editorial boards were also contacted and visited as a mechanism to further raise interest and attendance at public meetings.<sup>104</sup> "Members of the governor's staff provided an overview of the draft restoration plan and fielded specific questions from attendees and allowed time for public comment... They explained the general decline in salmon populations, and then listed major components of the draft plan and how they would affect local citizens and require grassroots involvement" (the Oregon Plan 1997, 77-78). In addition, there were "special briefings" provided to the various sponsoring county commissions. "An executive summary of the plan was distributed to interested parties two weeks prior to the meetings. Agency directors and staff were present at all of these meetings to answer specific or technical questions that were received from the audience." (the Oregon Plan 1997, 77-78) Finally, the Outreach Team "gathered questionnaires from attendees and mailed a written response with answers to the 'most frequently asked questions' to all 575 citizens who attended. Specially researched and written responses were prepared for detailed questions. These briefings allowed interested citizens, local officials, and interest groups an opportunity to meet with agency leaders and staff who were directly involved in the drafting of the restoration plan" (the Oregon Plan 1997, 77-78). The Outreach Team also "assisted in the planning, coordination, and implementation of a two-day workshop on salmon/watershed education in February 1997 at Oregon State University, sponsored by OSU Extension Service. Nearly 200 educators, extension specialists, and representatives of public/private agencies and watershed councils attended the workshop. Participants were able to share information and ideas during the workshop. As part of the event, the Outreach Team presented the compendium of salmon education which also began to identify specific needs and gaps in salmon and watershed education."

Finally, an *independent* “science team” was established to review and to evaluate technical issues in a non-partisan manner (the Oregon Plan 1997, 9).<sup>105</sup> The Oregon Conservation Plan itself is a synthesis of the first draft of the Oregon Coastal Salmon Restoration Initiative Plan, which was conceived and then released for public and scientific peer review in August 1996. This was then followed by a subsequent legislative review draft which was prepared in February 1997.<sup>106</sup>

The result of this was, of course, the Oregon Plan (to restore salmon and watersheds). As originally conceived, the Oregon Plan consisted of four essential elements that sought to solicit and bring together multiple stakeholders in an innovative manner: “(1) coordination of effort by all parties, (2) development of action plans with relevance and ownership at the local level, (3) monitoring progress, and (4) making appropriate corrective changes in the future. Along deliberative concerns, most notably

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<sup>105</sup> According to the full version of the 1997 Oregon Plan Report, this independent team of scientists interacted with the Implementation Team (a state level committee responsible for integrating state agencies) on a routine, ongoing basis. The purpose of this interaction was to evaluate the effectiveness of the Conservation Plan, make recommendations for change, and provide an “external” evaluation of progress. Agencies, stakeholders, and NMFS staff worked together to develop action plans designed to address management practices and environmental factors that were identified as affecting salmon production. All of these steps “occurred on a fast track and a draft was submitted to the National Marine Fisheries Service (NMFS) in August 1996” (the Oregon Plan: restoring an Oregon legacy through cooperative efforts, 1997).

<sup>106</sup> <http://library.state.or.us/repository/2006/200612260850302/>  
Public input was also compiled. “To improve the Plan through a series of eight community briefings held throughout western Oregon. In November 1996, a group of scientists reviewed the Plan and suggested improvements. Then, over six months, the many agencies and their staff working on the Coastal Salmon Restoration Initiative met regularly with staff of the National Marine Fisheries Service and other key partners to improve and strengthen the plan. In February 1997, a revised and updated draft was presented at legislative hearings in Salem. This provided an opportunity for the Legislature to address concerns and make needed changes to the Plan. This final draft is the cumulative result of these efforts.

the Oregon Plan explicitly attempted to solicit, coordinate, and incorporate multiple stakeholders” (the Oregon Plan 1997, Executive Summary and Overview, 1-2).<sup>107</sup>

*OWEB: Inception and Framing-* Now called OWEB, this state agency continues to gather and incorporate scientific and stakeholder data. OWEB is charged with and explicitly recognizes the efficacy and legitimacy of the Oregon Plan lies in its capacity to develop and incorporate better measures and practices. OWEB is charged with and recognizes that success must come from continuing to build local support and in obtaining voluntary commitments in the ongoing efforts toward watershed and salmon restoration.

In practice OWEB was largely a *legislative* process of negotiation between the governor and the legislature rather than deliberative outreach process that took place in Salem. OWEB itself was formed by the state legislature during the regular 1999 session. The public and any interested stakeholders could attend and comment on the extensive

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<sup>107</sup> [http://www.oregon.gov/OPSW/archives/ocsri\\_mar1997/FCH01.html](http://www.oregon.gov/OPSW/archives/ocsri_mar1997/FCH01.html)

Step 1, or coordinated agency programs in the Oregon Plan document acknowledges the need to coordinate state and federal agencies administer laws, policies, and management programs. Coordination efforts were considered necessary as they “have an impact on salmon. These agencies are responsible for fishery harvest management, production of hatchery fish, water quality, water quantity, and a wide variety of habitat protection, alteration, and restoration activities.” (the Oregon Plan 1997, 2) Previous to the Oregon Plan, these agencies conducted business largely independently. Under this plan, “all government agencies that impact salmon are accountable for coordinated programs in a manner that is consistent with conservation and restoration efforts.” Secondly, community-based action was incorporated as a central premise of the Oregon Plan. The Plan states that “actions to conserve and restore salmon must be worked out by communities and landowners, with local knowledge of problems and ownership in solutions... Watershed councils, soil and water conservation districts, and other grassroots efforts are the essential vehicles for getting the work of these efforts accomplished” (the Oregon Plan 1997, 2). Government programs will “provide regulatory and technical support to these efforts.” In sum, the Oregon Plan established the framework for and precipitated eventual creation of OWEB. The Oregon Plan was conceived in an institutionalized process which acknowledges the role of and actively solicited suggestions from the public, key partners, scientific reviewers, and the Legislature. The plan was conceived as a collaborative, voluntary, and adaptive strategy. In this new approach, Oregonians themselves will manage watersheds rather than imposing top down and fixed regulatory solutions to watershed and salmon management. Finally, the Oregon Plan is clearly intended to continually change and evolve.

legislative proposals to create OWEB but stakeholders were not involved nor were they actively solicited. This is explained in the following interview passage. According to an OWEB staffer I spoke with in May 2009 (this current OWEB staff member was involved in OWEB at its actual inception)

Since it [OWEB creation] was a legislative process, access was restricted to those parties that could come to Salem or be represented in Salem. Non-governmental entities played a significant role in framing the discussion (Oregon Business Council) and provided input on priorities (Umpqua Watershed Council, others). However, since it was a legislative process, *much of the specific language was negotiated between the legislative branch and the administration* (Interview 18).

The OWEB staff member continues to explain the formal process of OWEB's creation:

The process was (personal involvement speaking) painful to the extent that there were morning and evening sessions two days a week for months. The deliberations about make up of the Board, voting rules, statutory guidance to the agency, etc. were debated at length. *The public had the opportunity to comment at each public hearing* [emphasis added] (Interview 18).

Multiple opportunities clearly existed for public input. The legislative process provided formal institutional stake to interested stakeholders. However, the process did not actively solicit public. As a result, the creation of OWEB can be characterized more as a legislative bargaining process than an actively open, ideal deliberative venture.

*OWEB Composition- The composition of the HSC was and is not a public or participatory process nor was not intended to be. OWEB Board members are not elected nor chosen by the public in a deliberative (e.g. open and directly accountable) process.*

Jane O'Keefe, former OWEB Co-Chair confirmed this in a telephone interview on July 7, 2007. "You know that is their decision, not Board members or Co-chairs decision of who is on the Board."

The constitution of the Board an insular process. Under Senate Bill 23, OWEB is governor appointed and legislature (Senate) approved. That is, the process is independent of OWEB or the lay public. The formal authority of this mandate is directly vested in and interpreted by the governor alone. Other stakeholders are not given any formal influence over this decision. Additionally, the 6 non-voting OWEB Board members are not chosen in a public or participatory process. Stakeholders have no formal influence in this process. This is true for all 6 non-voting Board members as According to Dan Powers. Powers is the non-voting EPA (Environmental Protection Agency) representative that serves on the OWEB Board is internally appointed. Powers explains that while the governor can refuse to seat this representative, they cannot select this representative. “This is the case for all 6 non-voting members as well” (Powers, Dan. Personal Interview. 20 July 2007).

However, original legislative standards were put in place in an attempt to ensure major stakeholders would be represented on the Board. The Legislature originally established a small OWEB staff (formerly GWEB) as a separate agency. Now, OWEB “is to be *guided by the expanded citizen Board.*” Governor Kitzhaber and the Legislature added six new members to the Board, “requiring broad geographic distribution and staggering the four-year terms.”<sup>108</sup> Also, a state archival document entitled *The Oregon Agreement Project December 2002 Progress Report* calls for

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<sup>108</sup> Gathered from the Secretary of State website. These statements were taken from one of former Governor Kitzhaber’s released statements on October 1, 1999:  
[http://arcweb.sos.state.or.us/governors/Kitzhaber/web\\_pages/governor/press/p991001.htm](http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/press/p991001.htm)

A partnership representing all levels of government, key stakeholders and local participants working together to benefit the environment, economy and communities of Oregon. This agreement offers opportunities for federal, tribal, state and local participants including landowners and businesses to design, improve and test strategies, improve their cooperation and collaboration to make more efficient use of public resources and reduce regulatory gridlock.<sup>109</sup>

According to OWEB's website, eleven of the Board's seventeen members are voting members. Decisions by the Board are made through a simple majority vote. One voting member is a tribal representative, and five others are citizen representatives. *Together this constitutes a majority of the Board's vote.* The remaining five voting members are

drawn from governing boards and commissions of five state agencies: the Board of Forestry, Board of Agriculture, Environmental Quality Commission, Fish and Wildlife Commission, and Water Resources Commission...Of the six non-voting Board members, five represent federal natural resource agencies with expertise in forest and agricultural land management, water quality, and salmon recovery, and one represents the Oregon State University Extension Service.<sup>110</sup>

It remains unclear exactly how representative OWEB is or even if OWEB (or any organization) is truly capable of ideal representativeness as multiple and at times contradictory evaluative criteria might be simultaneously employed.<sup>111</sup> However, *in practice*, when populating the Board, the governor and the legislature have taken steps that partially conform to deliberative standards of Board representation.<sup>112</sup>

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<sup>109</sup> [http://arcweb.sos.state.or.us/governors/Kitzhaber/web\\_pages/governor/nat/OregonAgreement.pdf](http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/nat/OregonAgreement.pdf)

<sup>110</sup> [http://www.oregon.gov/OWEB/board\\_main.shtml](http://www.oregon.gov/OWEB/board_main.shtml)

<sup>111</sup> Ideal representative schemes are not agreed upon in the deliberative literature across issue area (Rosenberg, 2007). Should those most affected by an issue be disproportionately represented? If so, how much? Applying this idea, in watershed issues, should we constitute Board representation by area proportional to population areas or by allocating more representation to populations in sensitive upstream or downstream watershed areas? How should we represent marginalized populations that have or currently rely on salmon populations for their cultural and or fiscal livelihood?

<sup>112</sup> While a deliberativist like Dryzek might partially disagree, an institutional deliberativist like Fung proposes meeting deliberative representation by "choosing participants that demographically mirror the

Numerous stakeholders have been incorporated in order to build perceived adequacy around the representative constitution of the OWEB Board. The current composition of the OWEB Board attempts to grant multiple, diverse, and traditionally marginalized stakeholders real authority in OWEB decisions. This was done intentionally, according to OWEB staff, in an attempt to ensure that multiple interests, demographics, and regions are represented in OWEB decisions.

Multiple interests are represented by the OWEB Board to ensure multiple divergent interests are always a part of decisions. OWEB consists of seventeen members that are to be chosen to “represent the public at large, tribes, state natural resource agency boards and commissions, and federal natural resources agencies.”<sup>113</sup> The composition of the Board is as follows: of the Board’s seventeen members, eleven are voting members. At least one voting member is a tribal representative, and five others are citizen representatives. The remaining five voting members are drawn from governing boards and commissions of five state agencies: the Board of Forestry, Board of Agriculture, Environmental Quality Commission, Fish and Wildlife Commission, and Water Resources Commission. Of the six non-voting Board members, five represent federal natural resource agencies with expertise in forest and agricultural land management,

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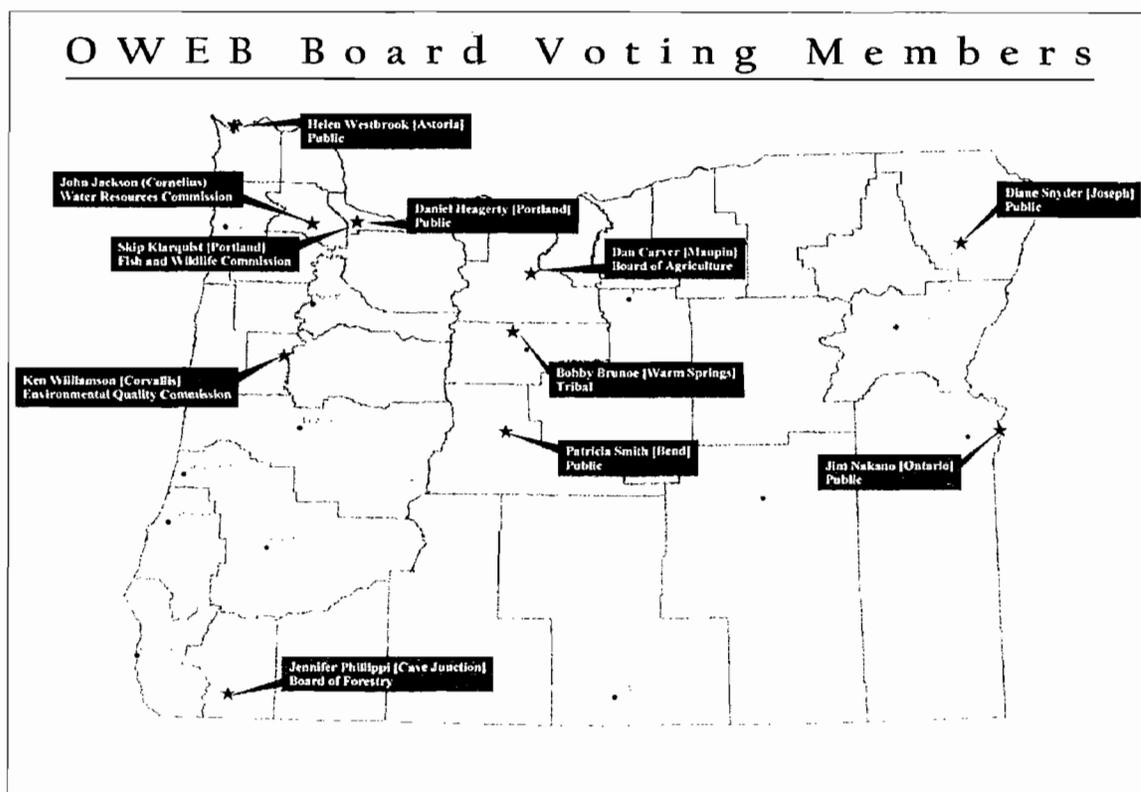
population” (Fung in Rosenberg 2007, 162-163). This can be accomplished in a number of ways, either through randomized selection or affirmative action through recruitment, for example. Participation may be difficult to solicit or may not be perceived as legitimate without substantive representation on institutional entities with some form of decision-authority. Having representatives that appear to reflect various stakeholders may help enhance and legitimize the discourses that are presented in a given deliberative body.

<sup>113</sup> [http://www.oregon.gov/OWEB/board\\_main.shtml](http://www.oregon.gov/OWEB/board_main.shtml)

water quality, and salmon recovery, and one represents the Oregon State University Extension Service.<sup>114</sup>

Also, the geographic areas of the state are given serious consideration. In fact, currently 6 Board members are from Western Oregon and 5 are from the eastern parts of the state. 4 of the 6 public and tribal representatives are from Eastern Oregon. In an effort to represent a diverse set of watershed stakeholders and to represent watersheds rather than merely people, the relatively sparse populations of Eastern Oregon enjoy considerably more representation per Board member than the exponentially more populous western portion of the state (See Figure 2 below).

Figure 2: OWEB Board Voting Members



<sup>114</sup> [http://www.oregon.gov/OWEB/board\\_main.shtml](http://www.oregon.gov/OWEB/board_main.shtml)

Finally, “original stewards of Oregon’s salmon and watersheds,” the Native American tribal population (a traditionally marginalized group) is also given a substantive stake in the process.<sup>115</sup> As a result, the general public rather than wealthy landowners, removed federal or state “experts” – or any other group arguably possessing narrow interest in watershed and salmon health - are vested with majority control in the process.

*Legislative Role: Devolution-* Voluntary devolution to solve problems is not only a theoretical deliberative criterion,<sup>116</sup> but is also seen as essential to real policy solutions and an essential premise upon which OWEB was created. OWEB generally conforms to theoretical devolution standards (Dorf and Sabel 1998) which require voluntary and substantial devolving of vertical authority to local control over watershed and salmon

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<sup>115</sup> In the “Report to Governor’s Office of Legal Counsel and the Legislative Commission on Indian Services Activities of the Oregon Watershed Enhancement Board on Jun 16<sup>th</sup>, 2006, pursuant to Kitzhaber’s Executive Order 96-30, staff member Ken Bierly states that OWEB works with Oregon’s nine federally recognized Indian tribes on a government-to-government basis to address watershed restoration interests to Oregon agencies and the tribes. OWEB involves tribes at all levels of the organization. The Governor appoints a tribal representative as a voting member of the OWEB Board. This position has been extremely valuable in shaping the awareness of OWEB responsibilities and opportunities to more fully involve tribal representatives. The Board member has been an effective voice for tribal interests and has improved awareness by OWEB staff of the significance of tribal issues with the projects and grant applications being managed. At the program level, tribes have specific standing at three levels; watershed council members, small grant participants, and regular grant applicants. The statute that identifies watershed councils (ORS 541.388) specifically identifies “federally recognized Indian tribes” as potential members of local watershed councils. Many of the tribes in Oregon are active members of local watershed councils. When OWEB developed the small grant program (OAR Chapter 695, Division 35) tribes were identified as a member of each “small grant group.” In this role, the tribe is a member along with watershed councils and soil and water conservation districts of a group empowered to make decisions about grants of up to \$10,000 for watershed restoration purposes.

<sup>116</sup> Recall the previous discussion of devolution in chapter 1. Deliberative theorists such as Dorf and Sabel define devolution as *voluntary and substantial granting of vertical authority to local control* (Dorf and Sabel 1998, 316-317).

restoration.<sup>117</sup> In fact, voluntary devolution of state authority over watershed regulation to local communities constitutes the central premise or centerpiece of OWEB. In theory and practice, OWEB enjoys considerable autonomy over its goals and activities, such as control over the conditions of awarding and monitoring grants or other appropriations.

The Oregon Watershed Enhancement Board has broad authority to carry out a watershed enhancement program under the provisions of ORS 541.351 to 541.415. Under SB23, the legislature gave and later substantially expanded authorization for full time employees and mandated administrative support from other related state level agencies (e.g. Water Resources Department). Specifically, OWEB provides technical assistance and grant funds to Oregonians or organizations undertaking efforts to:

- Fund projects that restore, maintain, and enhance the state's watersheds.
- Support the capacity of local watershed-based citizen groups to carry out a variety of restoration projects.
- Promote citizen understanding of watershed needs and restoration ideas.
- Provide technical skills to citizens working to restore urban and rural watersheds.
- Monitor the effectiveness of investments in watershed restoration.<sup>118</sup>

OWEB's Board has the authority to allocate funds to projects deemed worthwhile. These include "restoration, monitoring, technical assistance, small grants, education and outreach, watershed council support, land acquisition, in stream water leases and transfers, research and other related activities that advance the purposes of the watershed

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<sup>117</sup> However, this does not mean OWEB is an ideal example of devolution. As mentioned previously, OWEB exercises limited control over legislative budgetary appropriations, OWEB budgetary control, and the OWEB board composition itself. OWEB's budget and its allocation are partially constrained by legislative appropriations or in flux due to state revenue sources.

<sup>118</sup> [http://www.oregon.gov/OWEB/about\\_us.shtml](http://www.oregon.gov/OWEB/about_us.shtml)

enhancement program.”<sup>119</sup> Through legislative statute, OWEB was also given authority to approve all standards and provides guidance for all application requirements and processing; evaluation criteria, agreement conditions, and distribution of funds such as accepting and reviewing applications for watershed enhancement projects, grant agreements, interagency agreements, and any contracts for services.<sup>120</sup>

However, OWEB was also mandated to empower localities to define their environmental concerns, raise awareness over, and ultimately solve their own environmental problems. The reliance on devolved authority to local communities to undertake watershed restoration efforts is the key to the Oregon Watershed Enhancement Plan. In a speech in 2000, former Governor Kitzhaber said “the Oregon Plan was designed to involve, empower, and incentivize private landowners to make voluntary commitments to watershed restoration and habitat restoration” (State of Oregon, Office of the Governor, 2000).

Or, according to OWEB’s executive summary titled “The Oregon Plan: restoring an Oregon legacy through cooperative efforts,”

OWEB recognizes that actions to conserve and restore salmon must be worked out by communities and landowners, with local knowledge of problems and ownership in solutions. Watershed councils, soil and water conservation districts, and other grassroots efforts are vehicles for getting the work done. Government programs will provide regulatory and technical support to these efforts, but the bulk of the work to

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<sup>119</sup> [http://arcweb.sos.state.or.us/rules/OARS\\_600/OAR\\_695/695\\_004.html](http://arcweb.sos.state.or.us/rules/OARS_600/OAR_695/695_004.html)

<sup>120</sup> [http://www.oregon.gov/OWEB/docs/rules/GrantAdminRules\\_PublicCommentDraft.pdf](http://www.oregon.gov/OWEB/docs/rules/GrantAdminRules_PublicCommentDraft.pdf)  
<http://www.aocweb.org/em/Portals/2/Applying%20For%20A%20Watershed%20Restoration%20Grant.pdf>  
Examples of funding priorities and policies are listed later in the OWEB Centralization discussion. A specific example of a funded local watershed project can be viewed at:  
[http://www.oregon.gov/OWEB/GRANTS/docs/GrantApplications/CouncilSupport\\_1008/ExampleApp\\_CouncilSupport.pdf](http://www.oregon.gov/OWEB/GRANTS/docs/GrantApplications/CouncilSupport_1008/ExampleApp_CouncilSupport.pdf)

conserve and restore watersheds will be done by local people (the Oregon Plan, 1997).<sup>121</sup>

The initiative for implementing riparian area restoration and management projects was given to persons and agencies at the local level (OWEB Program Status Report 1997, 2).

*Budgetary Funding and Appropriations-* In practice, OWEB's authority is constrained along budgetary appropriation with only partial control over the total amount and type of allocation of budgetary funds. Of the 15 percent of net lottery funds, measure 66 dedicates half of the fund to create, maintain state parks, ocean shores, public beach access areas, historic sites, recreation areas. The other half goes to OWEB, which must use at least 65 percent for capital expenditures. Additionally, in practice the legislature exercises control over where a substantial amount of these funds are directed as 66 only stipulates what percentage of lottery revenue OWEB receives and in what way a percentage of the funds must be spent (capitol versus non).<sup>122</sup>

During one interview in 2007, I spoke with a Board member who specifically addressed the substantial limitations OWEB Board members and agency staff exercise over OWEB appropriations:

Well the Board sets funding priorities for different types of grants. For instance, capital, non-capital, education, technical, assistance, and research. The bulk of our money, because of the ballot measure that created us - goes to capital type expenditures. So, you know, culvert replacements or different acquisitions are considered capitol, things like that. The rest of the money we figure out non-capitol, what the legislature, the other thing you have to understand is that *the legislature makes a lot of out funding decisions, without our input, other than we*

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<sup>121</sup> <http://www.oregon.gov/OWEB/publications.shtml> The full executive summary can be found at this link.

<sup>122</sup> This information was gathered from interviews with Board members and staff and from the OWEB website: <http://www.oregon.gov/OWEB/> as well as <http://oregonvotes.org/nov398/guide/measure/m66.htm>

*can go testify before a legislative hearing, but it is not a collaborative process* [emphasis added] (Interview 16).

Former Co-Chair Jane O’Keefe confirms the limitation and re-routing of funding for OWEB:

They give us well the measure 66 dollars, that is the basis for the money we get, but then from there they direct how we spend, a good portion of that measure 66, part of it of course goes on these grants, and that is kind of a non-capital, and that is pretty much directed by the verbage in the ballot measure that created OWEB. But then the rest of it is this non-capital which the legislature has made the decisions to send to other agencies (O’Keefe, Jane. Phone Interview. 9 July 2007).

This biennial fluctuation in funding totals and allocation also constrains deliberative devolution claims on OWEB authority.

#### B. Perceived Adequacy: the Oregon Plan and OWEB

In the inception and framing of the Oregon Plan, initially extensive and deliberative attempts were taken to involve and include interested and affected stakeholders. However, the actual inception, framing, and actual institutional conceptualization (e.g. institutional features) of OWEB itself do not conform to theoretical deliberative minimum institutional standards of relative parity. The process of creating OWEB, while formally accessible, did not actively solicit public or stakeholder feedback and did not grant these parties a substantive institutional stake. Additionally, OWEB does not currently meet minimum institutional standards of relative parity along deliberative standards of devolution or centralization (budgetary or LWC regulation and OWEB Board representation). Examples include extensive participatory inclusion or OWEB Board representation.

However, do these deliberative shortcomings really matter in practice? In other words, is OWEB still considered adequately representative according to various stakeholders inside and outside of OWEB? OWEB's regulatory lack of control over LWC's standards and practices viewed as a deliberative problem originating with OWEB? Are LWC deliberative limitations viewed in terms of outside forces/institutional constraints or due to actions or inaction by OWEB's? Are these theoretical deliberative shortcomings nonetheless viewed in adequate terms?

Chapter 2 of the 1997 Oregon Plan OCSRI Outreach and Education Chapter ascribes to ideal deliberative standards of stakeholder identification and recruitment. The extensive steps taken by the various initial Oregon Plan committees demonstrate the willingness and ability to further Oregonians' understanding of the Coho salmon crisis. The extensive steps also helped to build a broad-based partnership of diverse groups and interests, e.g. coordinated and comprehensive outreach and education programs.

The Oregon Plan is referred to by OWEB as the founding document for Oregon's current plan for salmon and watershed restoration.<sup>123</sup> The Oregon Plan serves to guide OWEB's basic purpose operational principles. An examination of archival documents suggests that Kitzhaber initiated an innovative and aggressive exemplar attempt to immediately identify and then reach out to and grant numerous relevant stakeholders opportunities if not stake in the conceptualization of the Oregon Plan.<sup>124</sup>

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<sup>123</sup> <http://www.oregon.gov/OWEB/publications.shtml>

<sup>124</sup> In fact, in the chapter 13 of the original Oregon Plan for Salmon and Watersheds, or the Independent Scientific Assessment of The Plan, the review team supports the innovation, deliberative steps taken by Kitzhaber and the OCSRI. "The OCSRI has taken an important and unprecedented step to reduce institutional barriers. Governor Kitzhaber brought together all the relevant state agencies (Agency Planning

Additionally, when Measure 66—the primary source of funding for OWEB—was presented to the public for a vote, the measure was approved and received wide support from numerous public and private stakeholders. “An alliance of environmental groups, political leaders and corporations has raised almost \$500,000 to put the measure on the Nov. 3 ballot and promote it. Nike Inc. founder Phil Knight provided \$100,000.” Measure 66 also had the support of former Oregon governors “Neil Goldschmidt and Bob Straub, former Sen. Mark O. Hatfield, the Oregon Forest Industries Council and a number of big-name environmental and outdoors groups such as the Audubon Society, the Mazamas and the Sierra Club” (The Oregonian, October 14, 1998).

According to an article published in the Oregonian on October 14, 1998, “as Oregon grows, we need to protect our last great places,” said Russell Hoeflich, director of The Nature Conservancy of Oregon. It is an investment “in our legacy.” Additionally, the article states that “The campaign has drawn no organized opposition” to funding OWEB and salmon/watershed restoration.<sup>125</sup>

Some stakeholders may have disagreed with the initial conceptualization and framing of the initial Oregon Plan. However, in practice the evidence examined does not

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Team) to develop and implement the plan to restore salmon in Oregon's coastal basins. In addition, grassroots watershed councils, the Soil and Water Conservation Service, and OSU Cooperative Extension Service will be incorporated into the OCSRI implementation. These are unprecedented steps” (the Oregon Plan 1997, 20).

<sup>125</sup> However, some Oregonians are on record as opposing the use of state sanctioned gambling to raise revenue in general and others would prefer the lottery funds were allocated in other areas, like education. The lack of organized opposition has also been supported in interview with multiple subjects involved with OWEB directly within and outside of the agency. The lack of organized opposition is further supported by a comprehensive Lexus Nexus multiple keyword search of public newspaper documents before January 1, 2000. This search revealed multiple documents which explicitly identified extensive support for OWEB. No public statements of perceived exclusion in the initial framing and conception of the Oregon Plan and even OWEB itself were documented.

support this and the Oregon Plan's *initial* deliberative attempts to identify and solicit as well as grant formal stakeholder input exceed ideal deliberative standards.

*OWEB Composition-* OWEB does not ascribe to ideal deliberative representation criteria. However, substantial efforts have been made to achieve representativeness. Is the Board itself viewed as representative? Is the appointment process viewed as legitimate? It appears that at a minimum, OWEB is perceived as reaching various stakeholders standards of representativeness. OWEB appears to do this by giving a seat to all major stakeholders and by choosing stakeholders that appear to possess cross cutting interests or attributes. Independent assessments, secondary sources, meeting minutes, and interviews found no reports of perceived inequality of representation. Interviews with Tom Byler, Melissa Leoni, OWEB Board members, and other independent assessment all agree that OWEB (OWEB Board and staff) is adequately representative.

Former OWEB Co-Chair Jane O'Keefe states that "I have not received any feedback that that [OWEB representativeness] has been an issue for folks" (O'Keefe, Jane. Phone Interview. 9 July 2007). Executive Director Tome Byler agrees and states this in more specific terms. "There is good geographic representation [on the Board] even though this is not required in the statutes...OWEB gives grants everywhere [geographically]" (Byler, Tom. Personal Interview. 28 June 2007). Byler also confirms the Board's perceived representativeness while conceding it could always be better:

[The OWEB Board is] very good architecture in how structured. Not perfect. For example, there is not USF&W representation. [However, OWEB is] unique in state governance, in operation due to all the interests, expertise, and perspectives at that table...Oregon is trying new model, based on key stakeholders and locals, agreeing on problems and solutions (Byler, Tom. Personal Interview. 28 June 2007).

One Board member suggests there are positive and negative aspects to the governor's appointment process. Despite this, this Board member also believes the Board is highly representative:

[The] drawback is cumbersome process, lots of input from governor and legislature which are not always in synch...and [this selection process] may not get most knowledgeable appropriate person...[is also depends on] the objectivity or the desire to put the best people for the OWEB position in the job (Interview 16).

The current OWEB Board is largely viewed by locals, staff, Board members, media, and many OWEB researchers as a *representative, deliberative, effective governing body*. Dan Powers states that OWEB is "Far more representative than almost any other Board I have ever seen. East West federal state private tribal. I think it is an outstanding model of how you get diversity" (Interview 20 July 2007). Additionally, Powers believes that while the Board's selection process opens up the potential for politicized appointments, the current composition of the Board is representative and deliberative and implies this was done intentionally.

I would not say I am a typical regulator. Most of my work and input and experience is actually external and not just within my agency and a program. I would say that's, most of the people on the OWEB Board have a broad range of experiences that are not just necessarily limited to – I mean you look at Dan Carver, okay so he represent the ranching community, but he has been doing this sustainable Oregon brand country beef – so we do I think go for individuals, and I think agencies go for this too, you go for individuals who have experience in collaborative process. Who don't come in with just experience in regulating someone in a narrow program. But someone who has been exposed to a broader range of collaborative or external process so you are not so locked into your agency's perspective (Powers, Dan. Personal Interview. 20 July 2007).

Interview subjects agreed that the selection process has resulted in Board members that exhibit traits of openness and experience working with other groups outside

their current position and that these traits further enhance OWEB's representativeness. "We have picked people, or people who have been appointed, have just been pretty outstanding, in their breadth and in their experience, and just their nature. I mean they are good-natured people" (Powers, Dan. Personal Interview. 20 July 2007).

Throughout my interview, Dan Powers repeatedly points out his concerns with the OWEB and the Board. Even though Powers is a non-voting federal representative he is deeply involved in OWEB. Powers believes his role on OWEB is largely to provide expertise and important information on federal standards or best practice models (often from the federal vantage point). This puts Powers in a fairly unique position to be candid in assessing the effectiveness of the structure and process of the Board. Despite this relative autonomy from OWEB, he maintains the representativeness and effectiveness of OWEB on deliberative terms.

I would say they [OWEB Board] are usually very effective. We have a co-chair set up, and generally the co-chairs that have been picked there is usually a broad flowing ideas person and a taskmaster details person. There is usually an east west with the co-chairs, at least we attempt to do that. It does not always work out that way but that is the attempt. I would say it is usually very effective when you look at the agendas we get though I am blown that we get through them with an 18-member Board. It is a pretty full platter for a full day and ½ usually (Powers, Dan. Personal Interview. 20 July 2007).

However, the current structure of OWEB Board reserves spots for specific stakeholder representation. In doing this, "the program brings together a broad base of interests to tackle natural resource issues" in a process that attempts to grant real authority and inclusion to local stakeholders in a deliberative institutional process (The Governor's Watershed Enhancement Board: Program Status 1997, 1). This arguably provides the public with real as opposed to symbolic authority rather than policy

“experts” control of OWEB decisions by seating both state and federal agencies on a single board and inviting the participation of academics, Native Americans, industry, and environmental groups on supporting projects such as technical and advisory committees.

Interview subjects maintain that the current Board composition meets deliberative criteria. This is reflected in perceptions that the selection process that is driven a concern for members that are representative, willing to act in deliberative terms, and possesses relevant experience or expertise in watershed issues.

However, in the absence of any clear and minimum (e.g. deliberative) formal standards for Board selection, the representativeness of the Board appears to be a fortuitous product of the current governor’s selection criteria rather than a product of an institutionalized set of standards. Interview subjects confirm this position when acknowledging the potentially unfettered politicization that could occur in the current appointment process. One Board member confirms this. “It can become a political football – political appointment processes can become. And OWEB appointments yet have not” (Interview 16). That is, future Board member selections may not be easily replicated with a political switching of the guard. A new governor or legislature may feels that a different set of criteria or outcomes is desirable in place of the current method. The process may or may not continue to be driven by careful attempts to choose members that are representative of the larger statewide community, are open, and engage in a deliberative institutional decision-making process. This would leave stakeholders to view the Board in instrumental and or partisan terms.

*The Budget-* Board members, OWEB staff, and other watershed stakeholders view OWEB's lack of control over its total budget and partial ability to control budget allocation in unfavorable deliberative terms. For example, a general consensus exists among the OWEB Board that the legislature's diversion of large pieces of OWEB's budget are viewed as a violation of the intended use of these funds. Furthermore, this legislative budgetary control unnecessarily constrains OWEB in carrying out watershed restoration activities.

One Board member summarizes the budgetary constraints and frustration over legislative control.

Even though we get to decide on funding projects, there is a huge chunk of change that is diverted initially that we have no say over. And it is a very sore point with Board members in general. But it is a very delicate issue because of the need for the legislature to essentially authorize us to spend. Our spending authorization is dependent on the legislature. And that to me is one of the biggest problems (Interview 16).

This Board member reiterates the basic concern over budgetary control which was raised repeatedly in the most explicit terms. "Even though we get to decide on funding projects, there is a huge chunk of change that is diverted initially that we have no say over" (Interview 16). One Board member, who asked to remain confidential, says "I think a downside is that the legislature is involved. A lot of times agencies will go directly to the legislature. And it is tough for us, but it has been easier since the last election. There is much less micromanaging of what we do." This Board member restates this more strongly in the following passage. "The money that is diverted directly to the agencies [rather than in a public forum like OWEB], I think that should be day lighted. I think if more people knew they would be furious" (Interview 16). Or,

The legislature has made the decision to send quite a bit of the non capitol funds, which I would consider are more flexible funds to other state natural resource agencies. ODF and W, Department of Agriculture, Water Resources, agencies like that...All of that money that goes to those agencies is not available to OWEB to put in our funding strategies. But it does not matter what I think, that is what the legislature does and that is that way it is, and there we are...This is a very sore point with Board members in general. But it is a very delicate issue because of the need for the legislature to essentially authorize us to spend. Our spending authorization is dependent on the legislature. And that to me is one of the biggest problems (Interview 16).

This Board member cites a specific example of legislative control over OWEB funds in the following passage:

We do a tremendous funding of state police. We do a tremendous amount of funding of OR Department of Fish & Wildlife staff...If you want to talk about it being problematic our process is limited to the amount of money the legislature has authorized us to spend. So let me give you a real example: this biennium, 80-90 million dollars, 20-30 million right off the top to the agencies, we have nothing to say about that. So some of the framers of measure 66, that actually got it passed, said wait a minute, this is not what we intended when we passed this (Interview 16).

OWEB does exercise considerable autonomy over their grant program. However, the actual appointment of the OWEB Board and the legislative control over OWEB funding allocation and priorities of Measure 66 dollars serves to limit ideal deliberative devolution based claims. Interviews suggest a perception among Board members that OWEB cannot optimally set, redefine, and accomplish its goals while the legislature redirects significant pieces of OWEB funding sources that already fluctuate substantially. Board members suggest that autonomy from legislative diversion of funds is important for OWEB to better set and then meet its goals.

*Conclusion-* Initial public outreach and inclusion meets ideal deliberative conditions. While originally conceived and originating from governor Kitzhaber's office,

extensive collaborative goals were codified and then taken to incorporate multiple private and governmental stakeholders directly into the creation of the Oregon Plan. Numerous stakeholders were placed on foundational committees. Public outreach committees were established to identify and solicit public stakeholder feedback. The state then provided and continues to provide resources - through OWEB - to empower these stakeholders to understand the Oregon Plan and to help them facilitate their own restoration efforts.

The process was open to the public but creating a new agency ultimately necessitated “a legislative process” and consisted of negotiation between the Governor’s office and the state legislature (Interview 18). The actual creation of OWEB does not meet ideal deliberative standards. However, the creation of OWEB did not receive any substantive complaints. Instead, the creation of OWEB is perceived as a normal and necessary part of the legislative process. Furthermore, OWEB was directly a result of previous, more extensive and involved deliberation about the Oregon Plan itself. Previous statewide, extensive public deliberation was to guide the mission and ultimately the creation and governance standards of OWEB itself. The initial exemplar deliberative standards and perceived adequacy of the initial conceptualization and framing of salmon and watershed restoration (which led to GWEB and OWEB itself) are represented in Table 10 below.

Table 10: Relative Parity outside OWEB: Initial Conceptualization &amp; Framing

<b>Minimum Ideal Deliberative Conditions</b>	Access	Actively Solicit	Public Stake
IV: Institutional Structure and Behavior	Yes: extensive efforts were made to identify and reach out to all relevant statewide stakeholders. The creation of OWEB was a legislative process with formal access	Yes: the Outreach Team formally made extensive efforts to identify and recruit all relevant statewide stakeholders.	Yes: numerous stakeholders were recruited to assist in formulating policy priorities. Stakeholders received no formal stake
DV: Perceived Adequacy	Yes: No evidence claimed that conceiving OWEB was closed and the campaign to create OWEB generated no organized opposition	Yes: No evidence examined indicated that stakeholder input was not actively or adequately solicited in conceiving the Oregon Plan	Yes: Evidence examined does not indicate any concerns with public stake in conceiving the Oregon Plan

Furthermore, the examined data does not report any concerns of perceived inadequacy regarding OWEB deliberative standards of centralization (standards of openness, transparency, inclusion, and attempts to elicit participation). Interview subjects routinely acknowledge the less than ideally deliberative process associated with the closed nature of creating OWEB itself and constituting the Board. However, there are simultaneously consistent reports of perceived adequacy. These reports acknowledge less than ideal standards while simultaneously report satisfaction with policy process and outputs.

Outside process (legislative, gubernatorial) such as populating the Board is considered non-ideal in theory but adequate in practice. Interviews with current and previous OWEB Board members and staff all report high levels of satisfaction with governor Kitzhaber and Kulongoski's Board appointments while not necessarily the constitution process itself. All interview subjects indicated potential problems or "cons"

with the appointment process. Interview subjects were asked “what are the benefits and drawbacks of this process?” In response, subjects would point out that there is no process in place to guarantee that Board member selection continues to be representative.

Institutional standards and practice outside of OWEB do not meet either minimum theoretical, institutional deliberative relative parity standards or standards of perceived adequacy. Oregon legislative behavior frequently constrains OWEB standards and practice through legislative mandate. OWEB’s lack of budgetary control and total bi-annual budgetary appropriation remains a particularly contentious point among OWEB staff, local watershed representatives, and especially OWEB Board members.<sup>126</sup> All interview subjects expressed dissatisfaction with OWEB’s lack of budgetary control. Underfunded locals are asked to do more with less. As a result, OWEB Board members feel OWEB cannot guarantee that its most essential programs continue to receive a steady revenue stream.

Legislative mandates devolve authority to local watersheds while simultaneously neglecting to legislate minimum centralized standards. The OWEB appointment process is outside the control of relevant stakeholders. As a result, LWC also exhibit deliberative variance in standards and practice. Despite all these ideal deliberative transgressions, relevant stakeholders maintain that minimum conditions of relative parity are often met in practice by and within OWEB. However, these stakeholders also acknowledge the

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<sup>126</sup> The legislature often directs OWEB to fund particular projects whether OWEB considers them related or essential to OWEB’s mission. At times the legislature diverts funds that OWEB may believe are a priority elsewhere.

deliberative concerns that are raised in theory and at times in practice. This is illustrated in Table 11.

Table 11: Relative Parity outside OWEB: Representation & Budgetary Constraints

<b>Minimum Ideal Deliberative Conditions</b>	Access	Actively Solicit	Public Stake
IV: Institutional Structure and Behavior	No: OWEB composition and budgetary decisions are “closed” to the public	No: neither the governor nor the legislature actively seeks public input in composition or budgetary decisions	No: the public is not given any formal vote in legislative decisions over funding
DV: Perceived Adequacy	No: stakeholders express dissatisfaction with the composition and budgetary process and its results	No: stakeholders express concern that the public is not actively included in and or aware of composition and budgetary discussions	No: staff, Board members, LWC reps. all expressed dissatisfaction with the lack of public accountability and control over these decisions

### **III. An Accounting of Respect**

#### **1. Respect and Perceived Adequacy within OWEB Board**

Findings: Interview subjects report and public testimony consistently confirm high levels of perceived respect among OWEB and within OWEB Board meetings. Board members and meeting participants report feel taken seriously, being genuinely heard, and having their perspective taken into account in OWEB meetings. In this section, the efforts of the OWEB to generate deliberative respect are examined. Next, an assessment of perceived level of respect within OWEB meetings and among Board members follows.

#### A. OWEB Meeting Structure and Process: Perceived Adequacy?

Non-participant observation and meeting minutes confirm that Board meetings were always public. At these meetings most if not all OWEB Board members spoke and spoke often. OWEB meetings are run in a respectful manner. For example, in observed public OWEB meetings, immediately preceding public commentary, the Co-Chair Dan Heagerty informs the audience that OWEB is working hard to be open, transparent and merit based about watershed funding issues. He goes on to state that the Board recognizes the lack of precision in funding decisions. “We are trying to very sensitive about this [LWC funding decisions]. We are trying to be fair but still be merit based. Unfortunately we are still struggling to define as a technical issue something that is very vapid” (OWEB Board meetings in Salem, May 2007). Heagerty then explicitly encourages public feedback and input to help OWEB improve the grant evaluation process.

Immediately preceding public commentary, staff members also publicly acknowledge the need for public input to improve the grant evaluation process. “[The funding evaluation process] it is evolving and also improving and will continue to do so, in part based on what you are going to hear today. And that is the kind of information that makes it possible to continually improve the process” (Byler, Tom and Leoni, Mellissa. Personal Interviews. 28 June 2007).

Dan Powers speaks highly about the efforts of OWEB staff to be respectful. Powers claims that OWEB staff builds respect by their fairness or merit-based evaluations and by reaching out to locals proactively and then providing support. Individual review teams are not saying “well this is my pet project. There is a good

enough mix of people...I think that our regional review leads do a great job of going out and getting input from people so that the RPRs [Regional Program Representatives]. We have them based in all the 5 regions. There is a huge effort to get out and met with the locals and talk to them and they are very open and accessible, very un-government like in terms of their, you know, always being willing to talk and help out” (Powers, Dan. Personal Interview. 20 July 2007).

Immediately following public commentary, a public OWEB staff report is presented by Laurie Dickenson, who is in charge of LWC funding evaluation. Dickenson explains evaluation process and the steps being taken to make the grant application process more streamlined and merit based. Dickenson also mentions that the process has been reduced from 90 to 20 pages and 8 merit based criteria. Importantly, Dickenson publicly explains the process of choosing reviewers. The following is part of her explanation.

Each team had a representative from each region [geographic representation]...and were chosen [diversity of perspectives] because we wanted to have extended conversations in the process...[experience] reviewers were chosen that had done this before...and the mechanisms and limitations they employed such as 6 weeks of independent review and scoring along specified criteria that were then turned in and then scored cumulatively...(OWEB Board meetings in Salem, May 2007).

When Dickenson finishes, Dan Powers states that “I think this was a great effort to make the process merit based and create some standard way to look at them. It doesn’t mean it is perfect and I had problems just like all of you did *but* [pause] *I didn’t have a better option*” (OWEB Board Meetings in Salem, May 2007). Whether the criteria are

optimal or not, they are transparent. They are explicitly and publicly presented. OWEB solicits constructive feedback on this and other OWQEB decision-making procedures.

These examples are clearly deliberative institutional mechanisms that meet extensive deliberative criteria for relative parity and respect. There were no reports of perceived inadequate mutual respect among the evidence examined. This evidence included interviews, secondary sources, previous research, and OWEB meeting minutes. Instead, high levels of respect were reported between OWEB Board members and by OWEB meeting participants. All Board interview statements demonstrated high levels of esteem for other Board members. These Board members stressed the role of individuals, though often from separate backgrounds, as willing to listen to each other and take all Board member perspectives seriously, even under conditions of controversy and disagreement.

OWEB Board interview subjects reported high levels of satisfaction with the agency staff, the deliberative nature of the OWEB Board and its public meetings, and especially with the personalities of fellow Board members themselves. Specifically, there were satisfactory claims regarding broad representation of the OWEB Board. Additionally, when asked “if and to what extent the Board was a successful deliberative body and why,” OWEB staff and Board members offered respect as important for explaining the deliberative success of OWEB Board interaction.

High levels of respect among the Board and participating stakeholders present at OWEB Board meetings were also observed during two days of OWEB Board meetings in Salem last May 2007. Similarly high levels of respect were observed when the OWEB

Board audio taped from 2007 were examined. Interview subjects, self-reported claims of respect largely concerned Board member's general perceived sense of trust. Subjects repeatedly commented that Board members were genuinely open and willing to listen to each other. According to interview respondents like current Co-Chair Dan Heagerty, Dan Powers, and former Board member Jane O'Keefe, this leads the Board and meeting participants to feel they are able to speak freely and generates a sense of inclusion.

Multiple Board interview subjects agreed that "We have some very open members on the Board" (Powers, Dan and O'Keefe, Jane. Personal and Phone Interviews. July 2007). Numerous statements by Board members praised the qualities of the other Board members generally and in more specific terms at times as well. Dan Powers expressed his high opinion he and other Board members share of each other when he says "you have a pretty outstanding group of people there" (Powers, Dan. Personal Interview. 20 July 2007).

Board members repeatedly emphasized the openness and lack of fixed positions regarding individual Board members. According to Board members themselves, the staff and the Board exhibit a willingness to work together to enhance the overall effectiveness of public meetings and OWEB Board decisions. Both staff and Board members agree this is possible because Board members "generally refraining from taking fixed or extreme positions on ideological grounds" (Interview July 20, 2007). Powers believes part of this openness is due to the diversity of experience the representatives brings to the Board, citing the diverse set of experience of Board member Dan Carver as one example.

In follow up questions, when asked why and how the Board works so well together OWEB staff and Board members agreed with Power's sentiment that high levels of respect were consistently indicated by observable data and interview statements.

Part is that there is a comfort and trust level and a willingness to not fight everything because there is a trust that okay, if you know what my issues are, you are not going to support something that is really going to really undercut or – there is an amazing trust level on the Board, from my perspective. I think it has something to do with personalities. We have some very open members on the Board. We try to be as informal as we can. You know we have a no tie rule that Tom violates, but we try to be informal, I think we try to schedule some dinner and free time that we can talk to each other, and Board members are pretty good at calling each other up if there is an issue and asking for support. We have had very few cases where we have either voted for something that wasn't pushed up and recommended or that we have overturned something. But there are a few cases, but not many... I don't think it is groupthink, because it is a really diverse group, but I think that there is a desire, I think that the staff does a good job of getting us, you know we are not looking at dogs, and so I think that that is a key factor. And I think the other factor I think is that personal relationship (Powers, Dan. Personal Interview. 20 July 2007).

These statements are typical of other Board members comments regarding their respect for one another. Interviewed Board members stated that they felt they could and did speak freely and that others did as well. For example, one Board member states that “Anybody that goes to one of our meeting can see that you know Board members are not shut down and can speak fairly freely” (O’Keefe, Jane. Phone Interview. 9 July 2007). The feeling of freedom to speak and the observed sense that others were frequently speaking their minds is one strong indicator of high levels of respect within the Board itself. Perhaps even more important than feeling the ability to speak freely, as an indicator of respect was the conditions that allowed perceived sense of openness, or willingness to

listen to others as a necessary prerequisite condition that enabled Board members to feel they could express themselves freely.

Despite their independence and self-acknowledged bias, Board members all still speak quite highly of the current OWEB Board as far as its member's openness and lack of fixed positions that are crucial in enhancing the deliberative component and ultimately the effectiveness of OWEB's functioning. In a follow up question, several Board members were asked "why are you so comfortable and willing to listen and respect each other's positions?" Powers insists that Board members trust each other due to a perceived reservoir of previously established social capital through a regular exercising of deliberative culture or norms actions that have establish durable and positive perceptions of each other.<sup>127</sup>

Even under conditions of disagreement, without exception, Board members spoke very highly of one another. Board members universally reported high levels of satisfaction with the overall effectiveness of the Board. For example, *despite controversial issues and disagreement, such as land acquisition issues* Board members reported satisfaction and even surprise with the effectiveness of such a large group. Despite representing divergent interests, Board members reported high levels of satisfaction with other Board members ability to listen, include, and demonstrate a *willingness to cooperate*. O'Keefe supports the existence of controversy while affirming the ability of the Board to work respectfully through the deliberative process.

I wouldn't say that because our group is so homogeneous that you know, that people don't have varying opinions, but you know, people on the Board generally

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<sup>127</sup> See earlier quotes by Powers.

are professionals people, they have been on boards, they understand the public process, they kind of understand time limitations, so people are pretty darn good about expressing their opinions, and understanding that at some point you have to stop discussing and start voting (O'Keefe, Jane. Personal Interview. 9 July 2007).

More than one Board member was quick to point out that that there have been and continue to be various agency issues (such as governance standards) with extreme disagreement. One Board member admits that there have been significant problems in the past, when the OWEB Board did not function as well as it could have.

For example, former OWEB Co-Chair Jane O'Keefe states that:

One of our most controversial issues continues to be acquisitions, especially large dollar amount acquisitions. Last summer the Nature Conservancy proposed buying some land in Wallowa county using OWEB funds. And a lot of the local people were unhappy with that proposal. So we head a lot of feedback from the local folks on that proposal... It is controversial because a fundamental belief that money should not be spent, lands should be in private hands rather than, say, owned by a trust, or by the government. They prefer to see land what they consider productive and, don't like to see land taken out of production or off the tax rolls (O'Keefe, Jane. Phone Interview. 9 July 2007).

Clearly, Board members do not always agree. In 2 days of direct OWEB meetings observations in Salem in May 2007, other controversial issues were raised. These issues included but were not limited to OWEB Board criteria for issues of funding underperforming locals, and issues of equity in grant prioritization between locals and state agencies and researchers. Dianne Snyder, now current OWEB Co-Chair, raised the issue of grant prioritization and equity. Snyder is concerned when other state agencies or researchers come and ask for funding that is arguably the responsibility of other agencies and could even be considered outside the direct purview of OWEB. "Is it fair for state agencies to come to us directly when others [locals] go through a grant process?"

Dan Thorndike (former OWEB Board member) and Dave Powers immediately respond to Snyder's concerns by pointing out and focusing on the perceived unique and crucial research taking place in these projects. They also emphasize the potential loss if these projects are not funded. However, Dan Heagerty, a current OWEB Co-Chair, agrees with Snyder. While conceding that this type of related research and work is "important, and it is sad that BPA (Bonneville) is not funding it. However, this is where discipline is required. Watershed councils have only 5 million in the pipe, council budgets are being slashed. *Our mission is the watershed councils.*"<sup>128</sup> Despite these strong disagreements, Board members consider each other to be open minded even under conditions of controversy.

Board members come from different independent agencies and are not afraid to represent divergent constituencies independent of OWEB itself or other Board members. OWEB Board members themselves admit their own bias toward their particular agency and the perspective or constituency it may represent. In one instance during the Salem Board meetings in May 2007, the Board was receiving a presentation of the At Sea Research update. At this public presentation extensive stakeholder inclusion was being declared by multiple Board members and meeting participants.<sup>129</sup> Bobby Brunoe, a

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<sup>128</sup> Board members have publicly expressed concern over clear, explicit agreement on funding prioritization. Is it cutting edge research, as Dan Powers argues or is the first priority the watersheds themselves, as public representative Dan Heagerty suggests? Current Public representative and voting member, Co-Chair Dan Heagerty, at the end of 2 days of meetings in Salem in May 2007, in a discussion with OWEB staff member Roger Webb about OWEB's role in best practice information sharing among locals states that "our ruling document states that we are to consider "political, social, and economic concerns. How do we do this? We never get to this? How do we keep to our mission? What is our role?" It is clear from these discussions (and others previously mentioned) that Board members are not in agreement over how to prioritize funding decisions.

Public at Large voting representative (Tribal Representative) interjects and asks, “If this project is so collaborative, where are the tribes?” (Taken from audio recordings of the meeting in Salem on May 2007) Or, “I am biased towards regulation since I come from a regulatory perspective” (Powers, Dan. Personal Interview. July 2007). This supports the claims that various stakeholders are willing to firmly articulate their own perspective (whether agency or other constituent position) and that OWEB’s composition is also somewhat independent of OWEB itself (e.g. non-voting agencies select their own representatives).

Intense controversy also exists among OWEB Board members over funding criteria and prioritization issues. Despite this, OWEB Board members believe that all member concerns are equally included and listened to. Some interview subjects attribute the high levels of respect and openness in meetings and among Board members generally to the personalities and or experiences of the Board members themselves. Others posit an institutional explanation for the high degree of respect that is generated among Board members as best captured at the public Board meetings. For example, when asked if the Board members feel their perspective is included despite the need for practical limitations in the meeting. Recall O’Keefe stating that Board members are able to express their opinions to their satisfaction within existing time constraints (O’Keefe, Jane. Phone Interview. 9 July 2007).

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<sup>129</sup> According to the presentation in Salem in May 2007, At Sea uses fishing vessels and is currently working with multiple stakeholders to track and learn about salmon scarcity. At Sea is the largest project of its kind in the US.

Powers articulates a partially institutional explanation for the respect among Board members:

[The OWEB] Board is unique in make-up and in state government. With 17 members – most other state boards are 5 – this creates a much different dynamic in terms of how issues are discussed...I have had experiences with other boards, and while I was initially panicked about trying to manage this Board. I have found that in some ways it is easier, because you cannot have one individual dominate and its actions like you might have in a smaller board environment. It [a dominant member] tends to get muted by the total. [This does] not mean don't have strong personalities, we do and that's ok too. The Co-Chairs we have right now are tuned in to trying to bring out all members to give them an opportunity to weigh in on decisions and have strong deliberation as we go through decision-making (Powers, Dan. Personal Interview. 20 July 2007).

Ultimately, despite the varying explanations for respect, what is important is that all these indicators of respect appear to be different *satisfactory* accounts of respect within the Board and among Board members. While it may not be clear exactly why OWEB Board members feel that they can speak their mind freely and without undue restraint, they do. Jane O'Keefe supports this when she says "Boy if they are not speaking their minds I would like to know what it is. People pretty much say what they think." (O'Keefe, Jane. Phone Interview. 9 July 2007)

*Conclusion-* The perceived explanation for respect among Board members varies by interview subject. However, interview subjects consistently report - and direct OWEB Board meeting observations support - high levels of respect among Board members and the various meeting participants at these meetings. Board members bring to bear different experience and expertise and serve potentially divergent constituents. At times, Board members articulate divergent perspectives and needs. Despite these differences, OWEB Board members speak highly of one another along various measures of respect.

Interviews, meeting minutes, direct meeting observations, and staff as well as secondary accounts confirm the Board’s respectful behavior. This respect exists not only among the Board but also includes OWEB’s attempts to treat other stakeholders within OWEB Board meetings with respect. This is illustrated in Table 12 below.

Table 12: OWEB Board & Perceived Mutual Respect

<b>Min. Ideal Del. Conditions</b>	Inclusion	Heard	Incorporated
IV: Structure, Behavior	Yes: open and transparent standards and process to facilitate inclusion; multiple opportunities for stakeholders to speak and participate in processes	Yes: OWEB meetings structure participant involvement; Board meetings actively responded to stakeholder feedback when critical	Yes: by statute OWEB is largely driven by local concerns; in practice OWEB requires and actively solicits expertise and relevant stakeholder input in OWEB policy-making
DV: Perceived Adequacy	Yes: at OWEB meetings participants report inclusion in decision when reaching out to OWEB	Yes: OWEB participants report that OWEB actively listens to their concerns	Yes: meeting participants repeatedly state that their concerns have been incorporated, e.g. grant criteria

## 2. Respect and Perceived Adequacy outside OWEB

Findings- The behavior of OWEB is considered respectfully adequate overall. Outside stakeholder perceptions of OWEB meetings and decision-making processes are generally viewed in highly adequate, respectful terms. Outside stakeholders cite extensive efforts by OWEB agency staff and Board members to include, genuinely listen to, and then incorporating feedback from LWCs in grant application and evaluation, for example. In evaluating levels of outside stakeholder mutual respect, the examined evidence did not indicate outside stakeholders concern over OWEB’s role in allowing or encouraging variation in local deliberative standards and practice (with one exception). When concerns over respect were raised in OWEB Board meetings, interview subjects and

public testimony occasionally cited some concerns such as unclear or closed grant evaluation procedures, and a concern that favoritism may be occurring. Examined evidence such as interview data and meeting minutes confirms that genuinely respectful behavior was actively practiced. This evidence will be presented to substantiate outside stakeholder perceived deliberative adequacy of OWEB along criteria of mutual respect and in coping with LWC deliberative transgressions.

#### A. Perceived Adequacy

Clear variation in deliberative respect exists among LWCs. Does this matter as far as OWEB's role is perceived by stakeholders outside of the OWEB agency itself (staff members and the Board)? That is, are the actions of OWEB staff and Board viewed by LWC or others outside of OWEB in adequate, respectful terms? Is OWEB blamed somehow for deliberative variance at the local level? It appears that at a minimum, OWEB itself is perceived (as measured in public commentary in OWEB meeting minutes) as reaching various stakeholder standards of adequate respect.<sup>130</sup>

This is reflected repeatedly in public commentary. Local watershed representatives and members of the public frequently go on record as feeling that OWEB staff and Board members listen, value their feedback, and actively reach and assist locals. Improving standards such as streamlined and increasingly merit based grant awards are

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<sup>130</sup> Extensive archival Lexus Nexus keyword searches of public state and national level documents in the spring of 2009 failed to reveal any public commentary that reported perceived inadequacy along measures of respect. This does not mean that all stakeholders agreed with the funding priorities of the Oregon Plan (and later OWEB) or the sources of funding themselves (state sanctioned gambling). However, the examined evidence suggests that OWEB was overwhelmingly supported by numerous stakeholders. Conversely, organized opposition to the salmon and watershed restoration project itself or any issues surrounding the initial conceptualization and framing of the Oregon Plan and now OWEB were and remain absent from the public debate.

frequently and publicly cited as evidence for these perceptions. Finally, an anonymous survey was distributed by email to a random sample of LWC in April of 2009. This survey provided an opportunity to provide anonymous feedback about OWEB. It included questions about perceived respect and treatment by OWEB. Only two watersheds returned the survey and these LWCs did not report any concerns about mutual respect.

Public commentary within OWEB meetings consistently praised staff and Board members about attempts actively reach out to locals help them feel actively listened to, valued, and assisted (OWEB public meetings in Salem, May 2007). Members of the public and various stakeholders at these meetings do not debate these overall claims and throughout the public commentary that follows. In fact, watershed representatives consistently reinforce these claims.<sup>131</sup>

Jane Van Dyke, Executive Director of the Columbia Slough Watershed Council,  
Michelle Presario, Cheryl McGinnis Executive Director of the Clackamas River Basin  
Council, Janelle St. Pierre, former coordinator of the Scappoose Bay Watershed Council,

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<sup>131</sup> There are two exceptions to this claim that I discovered. During the 2 days of OWEB meetings in Salem on May 2007, there were at least 2 public statements that partially challenged OWEB's claims of practicing complete transparency and openness. Wayne Hoffman, the Coordinator for the Midcoast Watershed Council, states that after the ranking process "then there is a process to decide how to allocate funds. How much [funding] difference should there be between the highest and the lowest rank, what amount of additional funding there should be or shouldn't be, and that kind of process, at least from my perspective, seems to be insulated from public input." While still framed in "adequate terms" Or public participant Cindy Ashy, a participant in the Midcoast Watershed, states that "I was literally shocked to see the OWEG Grant Review Committee rate the Midcoast Watershed as excellent...that is until I looked at the list of reviewers. Then I understood why. It is an incestuous review process. Both of the Region 1 reviewers have significant conflict of interest. One of them was a board member of the Midcoast watershed council at the time the application was submitted, and was a very active member of the tech team that reviews the grants." While Ashy's concerns are more serious but isolated, Hoffman's comment suggests perceived adequacy but still levels concerns that some locals or other stakeholders may feel disrespected and that the funding process is somehow less legitimate.

Denise Laughlin, and other members of the general public all voluntarily and without specific prompting support and reiterate similar claims of perceived respect. According to this public commentary, OWEB is referred to as listening, valuing their perspective, improving their grant application/evaluation process, and actively reaching out to assist locals.

For example, Wayne Hoffman, the Coordinator for the Midcoast Watershed Council, states that “I have been involved in this process for several bienniums, and each time we get a new grant application, each time a new set of rules. And those changes in the rules [and those] rulemaking committees offer lots of opportunity for input in the process, and the process has gotten better” (Hoffman, Wayne. Meeting Testimony. Salem, Oregon. May 2007).

Additionally, Denise Laughlin, a watershed representative, who spoke during the first public comment period at the meetings in Salem (May 2007), stresses the extensive helpfulness and support she received from OWEB staff and the efforts of OWEB to make the grant application process more streamlined. This is repeated by several other watershed representatives in the same public comment period.

A previously mentioned, in April of 2009, an anonymous survey was sent to ten different, randomly selected watershed council representatives. In this brief open-ended survey, questions concerning respect, transparency, and inclusion were administered. If serious respect issues were present, this survey provided an anonymous opportunity to

voice these concerns.<sup>132</sup> Only three surveys were returned. Each respondent reported that OWEB not only met but exceeded adequate levels of respectful treatment. In fact, LWC representatives in this survey and in public commentary generally speak quite highly of OWEB and the Board in particular.

For example, “OWEB attempts to be science driven in its policy decisions. When the concerns of the locals are at variance with the science, the science wins. Otherwise, OWEB tries hard to be respectful” (Interview 20). In fact, this respondent also spoke highly of the OWEB Board and its attempts to generate transparency. For example, “The Board is quite transparent. It’s [OWEB] meetings are open to the public and generally well-attended” (Interview 20). Another LWC Coordinator states:

I feel that we ARE treated with a high level of respect, both by the Board and staff. Being a smaller council, we don't have as much interaction as some of the larger councils might, so I can't say that we are approached directly for our feedback. I HAVE made comments to the Board at their meetings (though I only attend one or two a year), and I feel they are genuinely interested in the comments I have made, and their questions show a desire to better understand and improve the functioning of councils. They fully understand that the individual councils are key to restoring our watersheds, and have taken seriously their role to support councils and the work they are doing (Interview 19).

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<sup>132</sup> These questions included: 1. Is OWEB respectful to the concerns of locals? 2. Is OWEB open to feedback from locals? 3. Is open transparent in its decision making? 4. Local watersheds differ at times in their governance standards and practices. In your opinion, do you think this variance is ever a problem? If so how? 5. Note: If you answered NO to #4, please skip this question. If there are any problems in terms of variation in governance standards and practice among locals, what (if anything) does OWEB do to deal this variation? Should they do something else and if so what? In one instance follow up questions were asked and included: Do you view OWEB as a open to your local watershed's (or other local watersheds) feedback? That is, when you do interact with OWEB, do you perceive that you are treated respectfully (e.g. heard and taken seriously)? How well does OWEB itself solicit feedback from other stakeholders (your watershed, landowners, the public in general)? Does OWEB ever proactively reach out to your local watershed organization to solicit your input in their decision-making (e.g. invite you to their meetings)?

However, LWC representatives and public commentary at times express some concerns with and suggest specific areas for improvement along the deliberative respect measure. In OWEB meetings during public testimony, representatives of local watersheds repeatedly expressed frustration at the fluctuating nature of OWEB funding. However, these comments simultaneously and explicitly recognize OWEB funding as outside the control of OWEB. LWC representatives also repeatedly identified the constant change in watershed grant evaluation criteria toward increasingly merit based terms as generally improving. At times, however, multiple statements also expressed remaining frustration over the seemingly unclear, frustrating, and closed nature of watershed rankings.

Wayne Hoffman, the Midcoast Watershed Coordinator, reiterates the concern of other local watershed agency representative testimony when he states that the difference between each watershed ranking and how different watershed umbrellas “get what” is closed. Hoffman requests this process be open to the public (OWEB Board meetings, May 2007). Additionally, Hoffman asserts that OWEB funding levels “incentivizes fracturing councils” or encourages splitting on to smaller watersheds. This was immediately reiterated by several other watershed representatives in the public commentary that took place at OWEB Board meetings in Salem on May 2007.

*Conclusion-* Previous studies, meeting minutes, and interviews all confirm that deliberative LWC variation clearly exists, even if significant transgressions are isolated and increasingly uncommon. However, none of the examined evidence placed blame for deliberative variation among LWCs on OWEB. Public testimony at times reflected

serious deliberative relative parity and respect concerns within LWCs. However, the testimony did not implicate OWEB itself (with one exception already mentioned).

Instead, public testimony was overwhelmingly favorable from outside stakeholders and public testimony (i.e. stakeholders other than OWEB staff and Board members). Outside participant stakeholder testimony characterized OWEB behavior in highly respectful deliberative. At worst, outsider commentary illuminated issues that should warrant OWEB’s careful attention in the future but acknowledged adequate progress toward these goals. This is illustrated below in Table 13.

Table 13: OWEB and Outside Perceived Mutual Respect

<b>Min. Ideal Del. Conditions</b>	Inclusion	Heard	Incorporated
IV: Structure, Behavior	Yes: local watersheds define problems. OWEB is open to all interested stakeholders in decisions	Yes: OWEB actively solicits and responds to stakeholder input in OWEB meetings	Yes: OWEB standards require and OWEB actively solicits and utilizes diverse stakeholder input and expertise in forming policy
DV: Perceived Adequacy	Yes: local watershed reps. report feeling included when approaching OWEB	Yes: local watersheds reps report feeling heard when approaching OWEB	Yes: local watershed reps. report feeling incorporated when approaching OWEB

#### **IV. Chapter Discussion: Perceived Adequacy—Centralization & the Role of Representative Deliberation**

The initial framing and conception of the Oregon Plan (which led to GWEB and then OWEB) meets ideal deliberative standards. However, the initial formation of OWEB and some of OWEB’s institutional standards do not meet ideal deliberative standards.

*Despite failing to meet numerous ideal deliberative standards, in practice OWEB is*

*perceived by stakeholders in adequate deliberative terms.* However, this does *not* mean that stakeholders are satisfied with statewide governance standards surrounding watershed restoration outside of OWEB (excepting participatory standards). The following discussion identifies and assesses the importance of the perceived inadequacy of outside deliberative parity *standards*, namely the constituting the Board, OWEB's lack of adequate centralization standards, the lack of budgetary control imposed by the legislature. Finally, perceived stakeholder satisfaction with lower participatory standards will be discussed.

### **1. Institutionalizing Deliberative Board Selection & Behavior**

OWEB Board member selection occurs in the absence of a carefully institutionalized or democratic, transparent process. Despite this the *Board itself is perceived as able, effective, and deliberative.* This is due to careful candidate selection by the governor along criteria that are generally perceived as appropriate. These criteria include openness, expertise, geographic and experiential representation. This is coupled with careful institutional attempts to build camaraderie and rapport.

The actual participation of the affected watershed community seems less important than the respect and openness the Board exhibit among themselves and in relation to the general public. The voluntary nature of OWEB and the agency's inclusion and openness reassures stakeholders that the process is at worst open to and at best actually does articulate the major relevant interests in OWEB's decision-making. However, the current Board composition does not readily lend itself to transferrable, institutional replication. Future Board composition may become a product of partisan

shift, political entrepreneurship, or even luck. OWEB Board members and staff privately concede that previous Boards were significantly less deliberative.

Implementation of an institutionalized, democratic, and transparent process would help or potentially enhance the replication of a successful (in more clearly deliberative terms) candidate selection. Granting OWEB stakeholders influence in Board member selection and directly involving the public in an open and transparent process would help ensure replication of quality Board members. This process could also enhance perceptions of Board's legitimacy over political time and with the inevitable changing partisan electoral fortune.

## **2. Centralization Matters: Voluntary Largess v. Regulatory Mandates**

Deliberative variation in local watershed standards and practice remains a concern. However, OWEB exercises no formal control over LWC. Additionally, the overall structure and practice of OWEB is perceived in highly adequate, deliberative terms, including the agency's dealings with LWC. To the extent that OWEB may exert some measure of informal influence over specific *LWCs through the grant process*, *deliberative LWC transgressions were perceived as unrelated to OWEB*.

Despite failing to meet numerous *ideal* deliberative standards, there were no serious, measurable *perceived* concerns leveled at OWEB. Stakeholders report that despite these deliberative shortcomings, the behavior of the legislature, the governor, and most importantly OWEB itself still manages to actualize or meet adequate deliberative standards. This is achieved either in results (Board composition is seen as fair) or in

practice (OWEB does enough or what can reasonably be expected overall). The voluntary, capacity building function of OWEB may help partially explain this lack of serious concern.

Despite this, it should be noted that deliberative variance in standards and practice among LWC has been and likely will continue to be a problem in isolated instances. Complaints have been registered to the OWEB Board by lay participants at the local watershed level. These reports include perceived marginalization and real exclusion. Previous studies readily demonstrate occasional yet serious theoretical and perceived deliberative variance among LWC in governing standards and practice. Perhaps most troubling, LWCs are completely autonomous from not only OWEB or other governing agents but also the communities themselves. To some, this means LWCs may view and be viewed by local (or other) stakeholders as irrelevant. In any case, LWCs clearly do not meet ideal or perceived deliberative criteria.<sup>133</sup> Ensuring minimum deliberative governance standards among LWC that receive OWEB assistance remains an ongoing concern. This is confirmed by OWEB staff members (confirmed in interviews with Tom Byler, Melissa Leoni, and Ken Bierly).

Deliberative LWC variance supports Dorf and Sabel's (1998) basic deliberative centralization hypothesis. As this relates the case of OWEB, additional regulatory state level legislative action would be required to eliminate continued minimum deliberative standard variation among LWCs. This could be accomplished by strengthening the

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<sup>133</sup> At times this is not always far from accurate. In previous research by Dianne Rolph, multiple LWC representatives stated that local residents were unaware of their LWC. For example, a survey of the McKenzie watershed conducted of the upper river area by David Povey found that no more than 30-40% of respondents were aware of the LWC.

linkage between OWEB's deliberative standards and behavior and LWC or by facilitating deliberation among LWC in response to OWEB itself. Ideally, deliberativists would require additional legislation to grant OWEB additional authority. This authority would impose more explicit, minimum deliberative standards for *any* local or other community organization under state law. This would be mandated whether they accept OWEB funding or not. In practice, this mandate would effectively alleviate unacceptable deliberative variance among state sponsored watershed organizations and bring them into increased compliance along minimum ideal and perceived deliberative standards.

### **3. Representative Deliberation**

Ideal deliberative standards that require participation of *all* affected stakeholders (Cohen, 1989) may *not* be necessary to meet minimum perceived deliberative thresholds along relative parity and respect. OWEB Board representation and LWC participation further reinforce standards of representative deliberation. That is, the type of individuals selected or the discourse they actually represent may be just as or more important than the number of and extent of participation from any given group or demographic.

The OWEB findings further reinforce the viability and appropriateness of a different non-ideal evaluative standard of stakeholder participation. The OWEB Board is perceived in adequate representative terms by various stakeholders and LWC representatives themselves along deliberative measures of parity and respect. As currently practiced in OWEB Board meetings, current Board members and stakeholder participants are perceived as willing and able to articulate and adequately represent their

respective constituent groups. The Board is also perceived as being willing to move from their position and respect “other” perspectives.

Furthermore, concerns over lack of diversity and disproportionate representation of certain demographic groups might be unrealistic and even acceptable on non-ideal deliberative terms. If individuals or institutions exhibit or select on traits such as openness, if OWEB grants real authority to lay participants, and the Board is perceived as exhibiting genuine respect by traditionally marginalized populations, then participation among all affected stakeholders or demographic groups may be unnecessary.<sup>134</sup> If accurate, deliberative scholars might examine the optimal conditions under which these representatives would be chosen. In any case, these findings support the adequacy of non-ideal deliberative standards. This appears to disconfirm ideal deliberative standards. At a minimum, it suggests a needed reconciliation between ideal and non-ideal deliberativists.

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<sup>134</sup> This finding is supported in the previous OHCR case as well. The idea that selection is more important than extensive participation of large numbers of individuals affected proportional the total population or issue area impact is finding that other deliberativists such as John Dryzek (2008) are beginning to support. Future research might more carefully attempt to determine the conditions under and the process by which selections based on interest or discourse articulation are more appropriate than representative demographic requirements or full participation of all affected or other wise relevant individuals and groups. The search for a more workable yet robust conception of stakeholder participation supports the recent work suggested by deliberativists such as John Dryzek (2008). Dryzek’s notion of discursive representation may generate a process where stakeholder positions are more fully articulated and incorporated into policy decisions. Representatives of interested or affected individuals may be more capable of articulating and engaging in deliberative behavior than an ideal that evaluates deliberation through participation based on actual demographic diversity or the total number of participants.

## CHAPTER IV

### CASE STUDY III. EVALUATING EXEMPLAR DELIBERATIVE CLAIMS SURROUNDING THE NEW COMMUNITY MEETINGS

#### **I. Introduction**

##### **1. NCI & II: Background**

Lane County residents were and remain distinctly divided along issues of “gay rights” and sustainable growth. However, in the 1990s in particular, the Eugene-Springfield Oregon metropolitan area in Lane County was at the center of an increasingly polarized and conflictual community politics. The extreme division along issues of gay rights and growth and sustainable development had created major concerns as to community livability due to this division (Stein, 2001; Landt, Gayle. Personal Interview. 27 June 2007).

In response, Gayle Landt, a Eugene resident and local community activist, mediator, activist and founder of Beyond War (a local non-profit dedicated to ending armed conflict) put forth a model for community and regional controversy and conflict resolution called the “New Community Meeting” (NCM). Landt—who has more than 30 years experience in politics and public policy at the grass-roots, state and national

levels—designed, facilitated, and mediated *all* institutional aspects of NCMI and II (Landt, Gayle. Personal Interview. 27 June 2007; Gwartney, 2002). In interviews conducted in 2007, NCM core participants reported intense frustration and community division. This led community stakeholders to view the NCM process as an important experiment and as a potential viable alternative to the “normal politics” of competition and self-interest. Core participants suggested that typical strategies of collusion, manipulation, or control of “normal politics” had been exhausted.

The NCM model draws from a meditative and consensus (*not* explicitly deliberative) based model of political engagement and Landt’s is designed to take place outside of the intractable politics of polarization and competition. The NCM model is built on the premise that “community conflicts can be resolved when key relationships between citizen leaders - characterized by alienation, hostility, and polarization - can shift to a base of shared principles, identification of common ground, and willingness to collaborate” (Gwartney 2002, 56).

To facilitate consensual and cooperative conflict resolution, the NCM model involves a series of well-defined, sequential steps over six to twelve months. These steps are designed to build trust and effective working relationships among previously alienated stakeholders. NCM brought together leaders on all sides of divisive and contentious community issues in Lane County with a focus on the Eugene-Springfield metropolitan area. However, the NCM models lack formal institutional authority. Accordingly, the NCM process is structured with careful attention to ensuring that larger

community “buy in” occurs in as well as after and outside of the NCM (Landt, Gayle. Personal Interview. 27 June 2007).

The NCM meeting process begins with “skill-building exercises in listening, conflict resolution, and identification of operating principles or essential core values. These exercises are then followed by structured dialogue and facilitated consensus building on disputants’ issues. NCM culminates with documentation of participants’ common ground, reached entirely by consensus, in a written “Statement of Agreements.” (Gwartney 2002, 56-57).

However, the goal of the NCM project in each case was not simply to bring relevant stakeholders together, structure “buy in,” and to measure success by forging agreement about a specific issue. Rather, the process also seeks to “improve participants’ skills in listening, problem solving, and appreciating each other’s differences and commonalities” (Gwartney 2002, 57). To accomplish this, voluntarily recruited participants engage in careful, intensive exploration of genuine listening skills, conflict resolution techniques, and cultural and dialogue awareness training in order to positively address the conflicts inherent in the issue.

*NCMI*- NCMI emerged over the controversy surrounding the state’s “anti-gay” initiatives and the growing tension in Lane County and Oregon over the preceding few decades. This is reflected in extremely fixed, narrow, polarized, and negative attitudes in neighboring communities (Stein, 2001). According to Landt (and other NCM participants) Oregon’s ‘gay rights’ issue clearly represented the most dramatic evidence of the increasing polarization in the Eugene-Springfield community and in Lane County

more broadly (Landt 1994, 1). “A split between conservatives, who are often fundamentalist Christians, and more liberal or ‘progressive’ citizens had been widening in Lane County for the last twenty years” (Landt 1994, 1).

In 1992 the Oregon Citizens Alliance (OCA), a conservative Christian political organization, proposed Ballot Measure 9. This initiative would have amended the Oregon Constitution to prevent what the OCA called "special rights" for homosexuals and bisexuals.<sup>135</sup> This was the most direct legal attack possible. The gay community perceived efforts to pass initiatives such as Measure 9 (as well as other anti-gay rights actions) as representative of a larger, deeply personal, unfair attack by the larger community. For example, long-time politico Kathleen Sadaat still chokes up when she talks about Measure 9. “It was not an easy time,” she says. “You've been living in a community for years - you go to the grocery store and wonder if the person behind the counter voted against you.”<sup>136</sup>

One NCMI core participant summarizes this extreme divisiveness and frustration:

NCM followed a ballot measure that was very personal and very painful. I think the whole community was incredibly damaged by what happened around that ballot measure. It was hideous. It created rifts in neighbors, in workplaces, in everywhere...It was so damaging and I think people were really tired of it (Interview 5).

Nadia Telsey, a core participant in NCMI, was extremely hesitant to participate and thought Gayle Landt was “crazy” to even consider the NCM meetings a viable option

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<sup>135</sup> <http://www.wweek.com/html/25-1992.html#oca>  
Measure 9 did not pass but 44% of Oregonians voted in favor of Measure 9.

<sup>136</sup> <http://www.wweek.com/html/25-1992.html#oca>

(Telsey, Nadia. Personal Interview. 9 July 2007). Statements like these were common and reflect the destructive and divisive nature of the controversy.<sup>137</sup>

NCMI consisted of a series of meetings between self identified fundamentalist Christians and “gay rights” activists in Lane County (1994-1996).<sup>138</sup> NCMI core participants expressed satisfaction along deliberative parity and respect criteria, NCMI was not entirely transformative. The NCMI Statement of Agreements did not result in tangible policy agreements about the issue of gay rights. However, it appears the two primary groups were able to move (slowly) from severely strained relations and fixed narrow notions of blame and exclusion to a condition of mutual respect and general acceptance (Stein, 2001; interviews with NCMI core participants).

NCM consisted of 12 core meeting participants chosen from Lane County. Participants were chosen “due to their status as leaders within the community and represented all sides of the ‘gay rights’ issues” (Landt 1994, 1). The participants were key political activists, religious leaders, community leaders, the mayors of Eugene and Springfield, as well as trained facilitators and mediators (from Statement of Agreements 1994; Landt, Gayle. Personal Interview. 27 June 2007; participant selection documentation provided by Landt in 2007).

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<sup>137</sup> <http://www.wweek.com/html/25-1992.html#oca>

<sup>138</sup> The NCMI sessions worked to develop the Conflict Resolution Center’s curriculum developed by Beyond War now called Foundation for Global Community of Palo Alto, California. Internalization of these principles (these principles can be found in the appendix) provide the foundation for a new, shared cultural understanding of a “third way” for solving problems (Landt 27 June 2007). By “third way,” Landt means that “if you get high quality people to sit in a circle on both sides, they are going to learn to care about each other and that gives them motivation and makes them come up with a third way or good resolutions to the conflict. It makes that possible” (Landt, 27 June 2007).

In addition to the core meeting participants, there was an Advisory Committee, composed of twelve civic, political, and religious leaders. There was also a seven-member community leaders' panel composed of the mayor of Eugene, Springfield, and others. Finally, outside of the Advisory Panel and Community Leaders Panel there were 6 other advisors on an "Optional Panel" (Participant List, 1994. This list was provided by Gayle Landt in 2006).<sup>139</sup>

NCMI consisted of more than 100 hours of meetings (Statement of Agreements, 1994). These meetings were conducted as weekly three-hour meetings for 9 months and included two weekend retreats (Landt, Gayle. Personal Interview. 27 June 2007). The NCMI meetings consisted of: an initial weekend retreat, two dialogue training sessions, structured dialogue session about the issues, a sessions where the field was narrowed, a second retreat were the statement of agreement was outlined, a writing of the agreement

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<sup>139</sup> The following is a list of NCMI Community Leader Panel, Advisory Committee, and Other advisors and was gathered from a list provided by Landt in 2006. The Community Leaders Panel consisted of: Ruth Bascom, former Eugene mayor; Gerry Gados, Eugene City Budget Committee member and former president of the Eugene Chamber of Commerce; Bobby Green, Lane County Commissioner; Annabel Kitzhaber, past president of the League of Women Voters Lane County and League of Women Voters Oregon; Gretchen Miller, Eugene Human Rights Commission member and former Eugene City Councilor; Bill Morrisette, Springfield mayor; Jim Torrey, Eugene Mayor. The Advisory Committee consisted of John Alvord, founder of Alvord-Taylor; Dorothy Anderson, member of Board of Directors, EWEB; John Baldwin, Director University of Oregon Institute for a Sustainable Environment; Rob Bennett, President of Bennett Management and owner of Downtown Athletic Club; Donna Buell of Buell Chapel, Springfield Chamber of Commerce Board member; Galen Carpenter, Veneta Mayor; Susan Daluddung, Director of Development Services, City of Springfield; Dave Hauser, Manager Eugene Chamber of Commerce; Bern Johnson, Director Environmental Law Alliance Worldwide; Scott Meisner, Eugene City Councilor; Margaret Nichols, Superintendent 4J School District; Mary O'Brien, Interim chair, City of Eugene Toxics Right to Know Board; Gary Pierpoint, Senior Vice President, South Umpqua Bank; Craig Smith, member Eugene School District 4J Board of Directors; Jean Tate, retired real estate business owner; Dan Williams, University of Oregon Vice President for Administration. Other Advisors were: Tom Bartlett, former Chancellor Oregon State University System of Higher Education; Doug McKay, General Manager North Douglas Wood Products, McKay Investment; Phyllis Loobey, Director Lane Transit District; Jeff Miller, former Eugene Mayor; Gretchen pierce, President Hult & Associates; Emily Schue, former Eugene City Councilor.

session, and a presentation of the Statement of Agreement to the community (Landt, Gayle. Personal Interview. 27 June 2007).<sup>140</sup>

*NCMII*- Landt also applied the NCM model to issues of growth and sustainable development in the Eugene-Springfield Oregon metropolitan area from March 1997 to March 1998 (Evaluating the Success of the NCMII 1999, 1).<sup>141</sup> Statements of extreme divisiveness and frustration in NCMII are not unique. Interview subjects, media reports, and even current intractable political conflicts did and still continue to exhibit highly polarized and divided community stakeholder positions along issues of growth and sustainability. For example, Tom Bowerman states that “we are a polarized community on issues of development” (Bowerman, Tom. Personal Interview. 5 October 2007). In the following excerpt, one interview participant discusses the community divisiveness before NCMII occurred.

Well I think there is an exhaustion in this community and we have sort of hit a wall and its really (frustrating), the city council continues to be divisive, any kind of major initiative around looking at land use, transportation issues, urban growth boundary, economic development, continues to be stymied by different points of view... you know there are a lot of people in that circle that had actually been, in the public process either politically or in advocacy roles for a very long time and were are, there is sort of this exhaustion level of I am kind of tired, trying to get stuff accomplished and forever getting walled (Interview 8).

After NCMII, the community remained and remains divided on issues of growth and sustainability. On March 19, 1998, the *Impact Weekly* reported that “the packed, six page statement of agreements that 16 of 17 group members signed left several large

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<sup>140</sup> The meeting outline can be examined in more depth in the appendix.

<sup>141</sup> [http://www.censusscope.org/us/m2400/chart\\_pop1.html](http://www.censusscope.org/us/m2400/chart_pop1.html)

At the time the population was approximately 322,000. More recent non-official data places the 2007 population closer to 340,000.

elephants still seated in the community living room.” Or more specifically, University of Oregon professor and NCMII participant Robert O’Brien says “there are areas of both my concern and other’s peoples concerns that are not in here because we could not get agreement” (*Impact Weekly*, March 19, 1998). The article states that, “among these issues were growth itself” (*Impact Weekly*, March 19, 1998).

Unlike NCMI, an attitude of goodwill and willingness to work on the issues of growth and sustainability varied considerably among core participants before NCMII began. When the NCMII meetings began Bowerman perceived that

I think that there was a general sense that there was a common set of expectations that if we work on something then we will be able to solve it. If we kind of tease this out together pretty much you might say, you know, that a fresh group of city councilors who have no previous political experience might be elected and that they have a sense going into the processes that they are going to be able to contribute to the solutions of the community and that they are going to be able to work together (Bowerman, Tom. Personal Interview. 5 October 2007).

Bowerman believed that stakeholders had different ideas about growth and sustainability but felt that community leaders were able and willing to work productively on these issues.

Community discussion surrounding growth and sustainability were not about immediate rights and livelihood issues. The discussion about growth and sustainability took place along positions that were not as far apart and fixed due to the political climate. Interview subjects reported that most members of NMCII and the larger community were usually somewhat agreeable to ideas of sustainable growth and development. Rather, the community stakeholders and NCMII participants were uncertain as to *how* this problem should be defined and implemented.

Nonetheless polarized community disagreement about growth issues among community residents and business groups in the Eugene community most directly served to precipitate NCMII.<sup>142</sup> During this time, the Conflict Resolution Center, in Eugene, Oregon brought together “seventeen community leaders, representing pro-business and pro-environment organizations, with diverse opinions on growth, to address the challenges of sustaining a vigorous economy while respecting environmental realities” (Evaluating the Success of NCMII 1999, 1). These core participants “represented feuding factions and voiced diverse opinions of urban growth and development issues” (Gwartney 2002, 57).

These core participants included business leaders, environmentalists, and community activists and were identified and enlisted by Gayle Landt. Twenty-nine additional community leaders also served on an Advisory Committee and a Leaders panel. The members of these panels included, among others, the mayor and former mayor of Eugene, the former president of the Chamber of Commerce, and a county commissioner. As in NCMI, these panels were designed to help generate participatory buy in, act as community monitors, and enhance community impact of the meetings.<sup>143</sup>

New Community II followed the institutional design and facilitation by Gayle Landt of NCMI. NCMII core participants discussed local growth and development issues were discussed over the period of one year. The commitment of the core participants

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<sup>142</sup> This is readily acknowledged and substantiated from interviews with NCMII core participants, Gayle Landt, as well as secondary sources and accounts. I use the term polarized to mean divergent but not unwilling to work together. This type of polarization was perceived by Tom Bowerman in NCMII.

<sup>143</sup> The complete list of participants can be accessed in the Statement of Agreements (March 1998). This document is available to the public at the Eugene Public Library More. This list is also included in the NCM Evaluation Document 1999).

entailed more than 200 hours of meetings. These meetings occurred four times per month for three-hour sessions and also consisted of attending three weekend retreats over the year-long period. At the end of this process, a Statement of Agreements was produced. This document identified participants' consensus on community relationships, land use planning principles, and process recommendations for citizen participation in land use planning (Evaluating the Success of the NCM, November 1999; Final Report for the NCMII, September 1998, 28).

As in NCMI, the second NCM meeting also generated a Statement of Agreement that every member signed excepting Liz Cawood. This Statement of Agreements“ identified participants' consensus on community relationships, and use planning principles, and process recommendations for citizen participation in land use planning” (Gwartney 2002, 57). As in NCMI, NCMII did not result in tangible policy agreements about issues of growth and development. As in NCMI, NCMII core participants engaged in an extensive process to improve conflict resolution skills. As a result, participants “learned to regard their mutual dependence as complementary interests” (Gwartney, 2002, 72). As in NCMI, NCMII core participants report satisfaction along parity and respect criteria.

Despite the fact that NCMI has received less scholarly attention and has been less carefully studied, NCMII appears to have been less successful than NCMI.<sup>144</sup> Unlike

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<sup>144</sup> Previous research by the now defunct Oregon Survey Research Laboratory (OSRL) and Patricia Gwartney (2002) carefully exhibits the shift toward increased respect among stakeholders outside the NCMII forums. The Final Report for NCMII (September 2000) also demonstrates numerous joint acts of cooperation between previously divisive stakeholders. Initially this evidence suggests a more successful process than NCMI.

NCMI, interview subjects in NCMII *never* spoke of the process or other participants in equally transformative terms. Interview subjects often expressed dissatisfaction with the ambiguity of the Statement of Agreements and its inability to produce tangible policy agreements. Gayle Landt *herself* concedes that NCMII was less successful than NCMI. “In terms of the difference between NCM I and II, the differences in success, and NCM II measures success, it was much less successful than NCM I, but it still did have some benefits for the community” (Landt, Gayle. Personal Interview. 27 June 2007). An NCMII core participant, Tom Bowerman speaks to the dissatisfaction he and others felt in regard to the larger community impact and ambiguousness of the Statement of Agreements. “I went back and read it fresh for the first time in like 6 or 7 years and I thought you know this is not a very good product... I don’t think it had any impact. That is the sad part” (Bowerman, Tom. Personal Interview. 5 October 2007).

## **2. Why the New Community Meetings? Untested Deliberative Claims**

Eugene resident and local community activist Gayle Landt designed and applied a model for community and regional controversy and conflict resolution called the “New Community Meeting” (NCM). The New Community Meetings were driven by the goal of finding common ground in previously intractable, controversial community issues. Landt intended the NCM model to be a collaborative process driven by principles of mediation. That is, the NCM model was not explicitly and solely conceived in deliberative terms (Final Report for the NCMII, September 2000, 2). Nonetheless, scholars, NCM meeting participants (though this varies by case), journalists, and others refer to *both* NCMI and II as a successful deliberative community based conflict resolution process.

While the NCMI has been considerably less studied, participant interview statements powerfully affirm the deliberative and at times transformative impact of NCMI. For example, NCMI statements by meeting participants claim that “It forever changed the way that I view things,” Or “it [NCMI] convinced me that political maneuvering is not answer,” and refer to the NCMI as “[NCMI] was probably one of the most meaningful experiences of my 73 years” (Interview quotes from NCMI interview subjects on 9 July 2007, 15 December 2007, and 11 October 2007).<sup>145</sup>

NCMII is also referred to in deliberative terms. For example, Patricia Gwartney, in a 2002 article entitled *Measuring the Long-Term Impact of a Conflict Resolution Process* Gwartney asserts that her longitudinal content analysis indicates a shift in respectful views and interaction over time which positively affected the larger stakeholder community.

The lessons participants learn in conflict resolution processes [in this case NCMII] disseminate to their communities...such dissemination can be measured by content analysis of participants’ constituent organization newsletters...NCMII participants replicated their learned improved skills in their interactions with constituents, as evidenced in the newsletter communication” (Gwartney 2002, 69-70).

Additionally, The Business News, in October of 1998 quotes the city manager as saying that “it was a miracle that members of groups as diverse as the Friends of Eugene

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<sup>145</sup> Outside scholars also make deliberative claims about NCMI and II. Arlene Stein, in her book entitled *The Stranger Next Door*, refers to NCMI in deliberative terms. NCMI engaged in a process that allowed participants to truly see the “other” through a process by facilitating genuine listening, transplanting dialogue in the place of divisive conflict (Stein 2001, 228). Stein speaks to the NCMI process and its ability to transcend the normal political model of exclusionary politics. “After meeting together for several months, the group issued a statement decrying the unconscious assumption in cultural warfare that if one side wins the other side will simply disappear” (Stein 2001, 228). All sides came to the conclusion that they must all learn to live in this community together.

and the Chamber of Commerce could reach agreement.” Other articles praise the NCMII with titles such as *The Register Guard* and its May 13<sup>th</sup>, 1998 article entitled “Diverse Eugene groups find surprising consensus.”

## **II. Evidence: An Accounting of Power**

### **1. Power within the New Community Meetings**

Findings: Numerous minimum deliberative ideal parity criteria were not met. The NCM did *not* initially grant the general public a stake in the decision-making process nor was the process open to all interested and or affected participants. Additionally, the conception, structuring, and framing, as well as NCM participant selection was closed to the public. The NCM process did *not* make its proceedings public. However, each NCM project took steps to and was perceived by meeting participants as more than adequately meeting any concerns of relative parity. Evidence such as interview data, trade publications, and meeting minutes will be presented as confirmation of these findings. The NCM design, creation, constitution, and facilitation are examined in this section.

#### **A. Institutionalized NCM Access and Influence**

Ideal deliberative theory requires formal institutional authority in any deliberative process.<sup>146</sup> “The results of deliberation must be binding on all those involved” (Cohen in Rosenberg 2007, 9). In the NCM cases, there was no formal state authority. Orthodox deliberative standards of voluntary, state led or top down vertical movement of power to local government and relevant stakeholders was not a part of the NCM I or II. Instead, a

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<sup>146</sup> Dorf and Sabel (1998) 316-317.

bottom up community initiated process asked the relevant interested or affected local community stakeholder representatives and political leadership to voluntarily grant Gayle Landt and the NCM forum institutional authority.

This voluntary recruitment and endorsement by public governmental and private community leader and stakeholders allowed Landt to legitimately organize, conduct, and ultimately generate consensus based decisions in the NCM forums. These decisions or Statements of Agreement would then be taken by each representative to his or her constituent community to advocate for the results of the NCM. Local leadership and government were to help not only grant authority to the NCM project but to lobby for acceptance and approval in their respective positions of formal authority as well.

The NCM process itself did not possess any devolved authority in the traditional top down statist manner. This fails to meet criteria of ideal deliberative devolution. To the extent that elements of informal devolution existed in both NCM cases, it was generated by the community itself in a bottom up process within the NCM process. As mentioned, representatives of the major affected or interested groups were sought out and voluntarily agreed to give up individual autonomy and partial authority to Gayle and the NCM process. Core participants agreed to a voluntary “buy in.” Core NCM participants also agreed to and followed the rules that established power equality such as giving every position the full amount of time they feel needed as well as following rules of deliberative communication such as respectful listening required by the NCM process.

The NCM project only partially and informally conforms to Dorf and Sabel’s institutional centralization standards along empowerment and setting of participatory

standards within the meetings themselves.<sup>147</sup> Deliberative transgressions include failing to make deliberation public, inclusive, transparent, or granting any type of substantive stakeholder state in NCM decisions. NCM forums were *not* open or transparent. NCM forums did not generate and did not actively solicit or take into account extensive public participation.

However, the NCM was explicitly designed to and actively practiced a number of institutional steps that ascribe to other important deliberative standards. These steps included setting and implementing numerous deliberative centralization standards along parity criteria. NCM standards and processes sought to actively ameliorate real or perceived power imbalances and ensure that participants treated each other with respect, thereby establishing a “safe space” for discussing sensitive issues. Additionally, the actual direction and nature of the substantive discussion and any agreement that was reached, to the extent it existed, was to be determined by the core participants themselves. As Landt states, “they are in control of the content” (Landt, Gayle. Personal Interview. 27 June 2007).

Landt explains the need to keep the meetings closed to the public and the media:

The reasons the meeting are confidential or secret...you cannot get to the creative part, I would never do this in front of reporters, because people cannot sift and sort, show their vulnerabilities and show their growing edges and if you are really going to get to a solution you cannot take the risks that you need to take or you cannot make the mistakes – the process of discovering a third way, the process of discovering a whole new way to look at something, that messy, exploratory thing – people can be crucified in the press over it and there are lots of forces that want

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<sup>147</sup> These standards can be found in Dorf and Sabel’s *Democratic Experimentalism* (1998), page 315 or in the previous discussion on ideal deliberative standards of devolution in chapter 1.

to do that...The process won't work like that (Landt, Gayle. Personal Interview. 27 June 2007).

Additionally, the selection of meeting participants was *not* an open, participatory process in either NCM case. In both NCMI and II, the lay public and the local media were not invited nor allowed to attend or participate in meetings. Additionally, Gayle asked the core meeting participants to avoid discussing the meetings with family, coworkers – anyone not associated with the meetings (Landt, Gayle. Personal Interview. 27 June 2007).

The NCM process began by generating, screening, and then enlisting members of the NMS meeting process. These included: an advisory committee (8-10 members), a Leaders panel (5-7 members), and then, with their assistance, the core participants (originally conceived of as somewhere between 8-12 members). A similar approach was utilized in NCMII as well (Landt, Gayle. Personal Interview. 27 June 2007; Steps in the NCM Conflict Resolution Model, 1994).

According to Gayle, the enlistment process took almost 18 months (Landt, Gayle. Personal Interview. 27 June 2007). Gayle explains that such a strong initial focus on the selection process is often necessary for successful deliberation and says this is often recognized within the mediation community as well. Landt explains. “Many mediators say that getting the parties to the table is 2/3 of the necessary work for a successful mediation” (Landt, Gayle. Personal Interview. 27 June 2007). By successful deliberation Gayle say she means establishing “groups that want to resolve conflict, learn to know one another better, and change the polarized, alienated relationship that they have in the community” (Landt, Gayle. Personal Interview. 27 June 2007). According to Landt, with

a closed participant selection and meeting process as well as a limited number of participants, you rely more on the quality and the broader community's perceived legitimacy of the participants themselves. This entails an extremely careful up front consideration of the selection process and institutionalization of the meetings as well.

Gayle did not let just anyone into the process. Group size was severely limited and selection was explicitly controlled (Landt, Gayle. Personal Interview. 27 June 2007). This violates a basic and central minimum theoretical requirement of deliberative theory. Deliberative theory insists on inclusion and through formal openness. That is, all interested and affected actors must be allowed to participate in deliberative forums (Rosenberg 2007, 9). Landt believes that group size must be severely constrained. Gayle explains: "The maximum for that is probably something like 18 people; [that is] for people who are already in high regard for one another but want to think together. But if you are in a conflict so that there is much more work to be done then I think you are in the 8-12 range" (Landt, Gayle. Personal Interview. 27 June 2007).

When asked to explain the need for this type of limitation in group size, Gayle says:

I think this has to do with several things. First of all I have people sitting in a circle, so it is the distance across the circle. It's a sense of including everybody, not just the people next to you. It has to do with even how loud you have to talk. It also has to do with being able to track and care about what number of other people in a group, and so, I know as a facilitator, in my experience, I can really track 8 or 9 people...People have an exaggerated sense of how important that content is...conflicts are much more resolvable than they think they are, because of the human being's capacity to build relationships.

So if you get high quality people to sit in that circle on both sides, they are going to learn to care about each other and that gives them motivation and makes coming up with a third way or good resolutions to the conflict, it makes that possible. So if you have a circle that's too big and you have people that are too

physically apart, or there are too many of them to really get to know one another in a deep way, then you subtract from the possibility of being successful...Two main reasons, its just the physicalness about it and then the ability to track the complexity of how many minds and hearts, how many identities, how many people you can care about (Landt, Gayle. Personal Interview. 27 June 2007).

Also of crucial importance is the “fitness” of a participant. Members were also chosen by what Gayle described as their constitution (or mental and physical health) deemed important in stressful and demanding meetings over a year. Can the participant handle the demanding time constraints and the stress that will accompany intense deliberative work? Are potential participants in good physical health? Will they “cut and run?” (Landt, Gayle. Personal Interview. 27 June 2007). Landt explains:

It is challenging to get people to come to the table and to commit enough time. for a successful conflict resolution process you have to give people enough time and I think there is structure to the process that I think you should go through to set them up for success but then they need time, and they need time to work on the content of the issue but they also need time to learn to care about one another and really get to know each other so that’s the relationship and content thing that I keep talking about.

So it’s a big challenge to get people to come to the table and agree to work that long (Landt, Gayle. Personal Interview. 27 June 2007).

The NCM process attempted to overcome the lack of formal authority through an institutionalized Advisory Committee and the Leaders Panel. The purpose for these panels was to ensure the legitimacy of the meetings process, create accountability for the core participants, and ensure participants took the process seriously. The NCM forum was endorsed by the major political leadership in the community (Eugene and Springfield mayors and city councilors, University of Oregon president David Frohnmayer, as well as other local private and religious leaders).

To accomplish commitment and legitimacy, Landt believes it is vital to recruit the most widely respected and high profile community members to constitute the Leaders Panel and Advisory Committee groups, and the most influential issue leaders in the Core Participant panel. Twenty-nine additional community leaders served on advisory panels. Landt recruited community these leaders to endorse the NCM process and asked participants to sign contracts of commitment.

Landt also incorporated a contract to achieve the full commitment of core participants:

I did have people sign contracts. Those contracts should say, I know what the meeting schedule is going to be and I have talked to everybody in my family, in my extended family, everybody in my work life, and anybody else in groups that I am in, that has influence on my schedule, and they know in advance that I have made these commitments, and make them do that (Landt, Gayle. Personal Interview. 27 June 2007).

This was done to help motivate the core participants to value the full time commitment in the absence of any legally binding incentive to fully participate. These panels were created to help act as community monitors for the somewhat high profile participants. These highly respected, high profile community members were recruited to facilitate “good behavior” among core participants. These panels were expected to support the “buy in” process in other ways, even if the oversight was largely symbolic in nature. Landt explains this in the following passage:

A big thing I did to address that [“buy in”] was to get those two big panels the community leaders panel with the mayors and the business leaders, high profile business leaders, and David Frohnmayer, first the dean of the law school and then the president of the U of O – I guess he just did it for NCM I. But anyway, it was motivating to people to know that people like the mayors, and then there were people like the advisory committee and it had other high profile, well-respected people. It is challenge to get those people - you want to be as neutral as possible

but also as high profile as possible - to behave as neutrals in those committees... These people are going to come to the beginning meeting, meet you, thank you, bless you, and at the end they are going to come and they are going to see what you found out, and they are going to care and they are going to – because you cannot depend on the media – and they are going to help disseminate the resolution that you designed. That is motivating. That is meeting one challenge of getting them to the table- and that was in my design (Landt, Gayle. Personal Interview. 27 June 2007).

How did Landt ensure the best (legitimate, influential, and deliberative) participants were chosen? First, Gayle would need a mechanism to gather and then carefully screen a pool of potential participants for these aforementioned traits. This process began by involving the community. Landt actively solicited feedback from all major representative stakeholders to build an adequate and “legitimate” pool.

[This] involved me going to lots of meetings, public meetings group meetings, and also a lot of asking people. I picked out who had the energy in the group, who were the other people listening to... I also went around the community talking to anybody, lots of people with a lot of profiles, and the question I began by asking, I had a database around this, was who do you respect?... I certainly got to know my community better and that helped identify who would be participants in the process. I asked everybody that because you are looking for a participants in my model, who not only will function effectively in the conflict resolution process within the NCM, but who will also, once they walk out of there will be able to sell, if you will, the resolutions that they come up with. And so they have to have a pure constituent base that respects them (Landt, Gayle. Personal Interview. 27 June 2007).

This cast a wide net of potential applicants and served to tap into multiple sources of community knowledge. This process was also designed to gather a list that was community driven and was a step toward building community legitimacy.

However, Landt also needed a way to assess the deliberative capacity, reliability and influence of this list. Landt screened for influence in by asking questions about confiding. Landt explains:

I would ask who do you talk to, who do you confide in, who do you bounce your ideas off? We did that later because it was part of our process of measuring how much influence we had, and what I observed was, the person who had 6 or 7 people that they confided in, and those 6 or 7 people included influential people in the community, they were both the most effective participants and they had the most capacity to influence other people in the community (Landt, Gayle. Personal Interview. 27 June 2007).<sup>148</sup>

This process generated the initial pool. Next, Landt utilized reference checks that further screened the potential participant list. Landt asked others about the ability of participant X to stay committed. “What I would say about the reference checks, is a key question to ask is, does this person cut and run?” (Landt, Gayle. Personal Interview. 27 June 2007).

Landt also selected for what deliberativists might refer to as “openness.” According to Landt, ideal participants are capable of mutual respect through openness. When asked to expand upon the traits of the ideal participant, Landt speaks of a willingness to listen. Gayle also believes that one indicator of openness is a potential participant is able to bond with others easily. “Another criteria for someone who is going to do effective work is someone who bonds with other people” (Landt, Gayle. Personal Interview. 27 June 2007). From this definition participants can be divergent in their perspective relative to other interests at the table but are not unwilling to see value in another perspective.

Landt insists that these “bonding” personalities generally facilitate a more deliberative forum. Landt describes these ideal personalities:

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<sup>148</sup> This is one key difference that was not controlled for in NCMI vs. II. In NCMI, this screening process was not utilized. However, the relative deliberative success of NCMI suggests this step is not necessarily critical for proper core participant selection by itself.

They've got kind of a juicy kind of personality, and they are affectionate and they bond with other people and they care about other people, these are better candidates. They will try harder to work with the content in a way that is acceptable, than people who are more theoretical, more cerebral, and less into bonding with one another. So that is a personality thing that I have observed that is helpful. A higher percentage of the best leaders actually have that quality. But not everybody (Landt, Gayle. Personal Interview. 27 June 2007).

However, Landt realizes this trait is not always an absolute necessity. Landt states that "leaders come in different configurations" (Landt, Gayle. Personal Interview. 27 June 2007).

Once viable participants were carefully identified participants were recruited. This was done until a small group, with a roughly equal number of participants - proportional to the major identifiable positions within the respective community - were assembled. However, in a controversial and divisive issue like gay rights, identifying a list of ideal participants did not readily translate to a working list of core participants. Once the ideal potential candidates had been selected, many were initially resistant to the idea of and even openly hostile to any deliberative community forums or even any interaction at all with the "other" stakeholders in these issues, especially in NCMII.

Gayle speaks to these challenges first hand.

My method in going to talk to people is that I would briefly sketch what I intended to do and then I would hear from them, and I would ask them questions, and I would ask them about their experience in the conflict and the issue, I would ask them, I would listen and listen and listen and hopefully they would give me enough time so that I would listen long enough that so it would be respectful because you can't dive right in, to ask them how it affected them personally... I would schedule a minimum for myself of 2 ½ hours, and what I would say to them is why don't you schedule a couple of hours I would say, you may only want to talk to me for 20 minutes I would say to them... And it was very effective in enlisting people to spend that time listening to them. And I would have at least two and usually three interviews with people before the process started so that they trusted me. Because when you respectfully listen to someone and you really

care what they think, first of all, for the mediator, it's invaluable once you get in the room because you know what they need and you know what matters to them, but also they have a trust that you do care (Landt, Gayle. Personal Interview. 27 June 2007).

The recruitment process resulted in Landt spending a lot of time overcoming initial resistance to participation and required extensive energy investments in listening to potential participant's personal stake and concerns. These included issue such as skepticism about the potential of the meetings to generate any real change. Concerns also included participant alienation from other stakeholders and the extensive time commitment that would be required. For example, Nadia Telsey, a core participant in NCMI, speaks to the hesitation initially experienced by many if not most participants: "I was extremely resistant when Gayle first contacted me. I thought she was crazy" (Telsey, Nadia. Personal Interview. 9 July 2007).

The entire underlying purpose of the NCM model was to provide the tools and the space to communicate in productive terms through mediative mechanisms of interaction. Through this, Landt carefully structured and facilitated a process of relative parity utilizing deliberative rules of communication. While *never* demanding that participants change their core values, they were expected to express them without domination or rejection. Participants were provided educational materials and extensive opportunity to gradually practice deliberative communication skills. This allowed the discussions and decisions of the group to remain content neutral (Landt, Gayle. Personal Interview. 27 June 2007).

Interview subjects confirmed that this was a perceived and effective function of

the panel. Interview subjects also stated repeatedly that the demanding time and energy commitment ensured the participants took the process seriously as well and cared about outcomes. For example, on participant captures the general attitude reflected among interview subjects. Participants felt participants took the process seriously, citing the extreme time commitment.

I mean there was a huge commitment of time, I mean we were meeting every single week for like 3 hours and there were 3 or 4 long weekends away, doing the retreat format. So the people who agreed to participate were making a huge commitment. And so had to be bought into the process... There really was no way to participate without really committing to the process” (Interview 8).

Both NCM meetings consisted of weekly meetings and weekend retreats. The meetings were convened and sponsored by the Conflict Resolution Center.<sup>149</sup> The meetings consisted of the following elements in this order: Enlistment, The First Formal Meeting, Listening Training and Practice, Powerful, Non-defensive Communication, The Principles of Response, Weekend Retreat, Dialogue Training, Structured Dialogue of the Issues, Narrowing the Field of Exploration, Weekend Retreat 2: Outlining the Statement of Agreements, Writing a Mediated Statement of Agreement, Presentation to the Community: Final Formal Meeting, and Documenting the Results (from Categories of People Who Participate in the NCM Model, 1994).<sup>150</sup>

While explicitly mediative in intent, Landt’s 9 step process (New Community Meeting Handbook 1994, 13), involved what *deliberativists would recognize as deliberative standard setting, practice, and implementation*. Both NCM I and II followed

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<sup>150</sup> The purpose and structure of each deliberative step is outlined in Landt’s “Categories of People Who Participate in the NCM Model” (1994).

this procedure outlined in the NCM Principles of Design Handbook. The purpose and structure of each step is outlined in Landt's "Categories of People Who Participate in the NCM Model" (1994). For example, the first formal meeting is referred to Landt as "the wedding." This meeting is designed to enhance commitment of the core participants. The participants receive public commitment from the Leaders Panel and the Advisory Committee. The media and community members are at this meeting as well (Steps in the NCM Conflict Resolution Model 1994 2-4).

Gayle spent a significant amount of time in NCM I and II establishing and practicing mediative communication and building rapport. As Gayle puts it, "the NCM process has a lot of structure in the beginning. And then much less structure toward the end. That is another reason why the process has to be long enough. In my opinion, habits are everything" (Landt, Gayle. Personal Interview. 27 June 2007). In both NCM forums, the first half of the meetings did not even attempt to address issue discussion. In the first half of the NCM meeting process, the emphasis consisted of information distribution, multiple sessions that engaged in extensive application of these principles, and rapport building exercises.<sup>151</sup>

These sessions were designed to give core participants the vocabulary, new insights, and skills in listening from standard "active listening" techniques to more "deep listening" ideas (Steps in the NCM Conflict Resolution Model 1994). Next, a few sessions were also devoted to introduce new "powerful, non-defensive" communication

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<sup>151</sup> For example, other steps in the NCM process involve building a deliberative language to enhance communication skills as evidences by the following steps: listening training and practice, powerful non-defensive communication, the principles of response, and dialogue training (Steps in the NCM Conflict Resolution Model 1994, 2-3).

skills. Working on material related to tone of voice was considered particularly important because of the recognition that tone change is the beginning of conscious physical changes in their relationships. A section on the design of questions was the other essential part, where core participants have an opportunity to learn how to ask “pure” questions without any element of what Gayle called the “rhetorical question,” which is standard behavior between alienated leaders at public forums (Steps in the NCM Conflict Resolution Model 1994; Landt, Gayle. Personal Interview. 27 June 2007).<sup>152</sup> Working together in exercises to learn and use these new skills, Landt describes how NCM participant actively begin to co-operate, and to leave “ruts” of alienation with one another (Steps in the NCM Model, 2)).

Next, Landt worked carefully to implement what was referred to by Landt as “learning a new language” (Landt, Gayle. Personal Interview. 27 June 2007). Steps 4 and 6 also involved deliberative standards setting, namely Conflict Resolution Skills Building and Exploration of the Process of Dialogue, respectively. In Step 4, participants are given tools to more actively recognize and more appropriately respond to signs of interaction induced stress. The NCM Principles of Design Handbook states “when people are stressed and unaware, they go to fight, flight, or freeze reflexes. When people train themselves to be more aware, they are able to develop a range of responses to stress” (NCM Principles of Design, 13). Next, in Step 6 Exploring the Process of Dialogue, participants are asked to read David Bohm’s book “On Dialogue.” NCM participants are then expected to discuss and repeatedly practice these techniques in various interpersonal

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<sup>152</sup> Gayle refers to “Don’t be so Defensive!” Taking the War Out of Our Words with Powerful, non-defensive Communication” by Sharon Ellison, 1998.

exercises. According to Landt, only after this process has been clearly implemented do interview subject begin to talk about their own values and then substantively discuss the gay rights of sustainability issue (Landt, Gayle. Personal Interview. 27 June 2007).

As a facilitator, Landt also followed up carefully in the NCM process to ensure these standards were followed. If someone was interrupted or began to move toward non-cooperative language, Gayle immediately worked toward identifying and acting to shift this behavior. Landt utilized a number of active, procedural tactics during meetings to facilitate conditions of relative parity. Landt explicitly identified deliberative behavior so that positive behavior could be recognized and strengthened. Landt would also interrupt discussion when necessary to allow others to speak or to shift the discussion from tangential to relevant discussion (Landt, Gayle. Personal Interview. 27 June 2007). For example, Landt describes some of her efforts to facilitate parity in the NCM meetings:

What I watch for: they let me be almost a conductor to an orchestra almost. They gave me, they respected me enough...I almost just use hand signals for people. I try to sit by the person who has the most trouble running off at the mouth and I have actually just put my hand on their shoulder and they know that means time to be quiet and somebody next talks... I think they learn it intuitively and I explain it if I have to. If they are exploring, "well I have been here but I m uncomfortable," and "I am starting to think about this but I am not sure, and "this is starting to occur to me and I wonder," of they are saying anything new – in the beginning they have to do a certain amount of their tape so everybody hears it, you have to let them say everything once or twice – by the time they are going into their audio tape the third time you start to stop them, and that is the criteria I use. So people who are saying something new or are bringing out something in a different way or whatever, they are the ones that get to talk. (Landt, Gayle. Personal Interview. 27 June 2007).

The following quote articulates some other strategies Landt utilized to help facilitate conditions of relative parity:

[The mediators] are in charge of the process itself. Who gets to talk when and how long, setting the tone, all that. And that counts for a lot. The fact that you have everyone sitting in an identical chair, in a small circle and they get the option to talk equal amount of time, that is huge. And then you do other things to set the stage and you stop people from disrespectful behavior and hopefully you use tact and humor and diplomacy when you do that but you have a lot of control about how people treat each other. And those are ways that you equalize things. So you give that person, someone who may have come into the process looking like they have less power, you give them enough space (Landt, Gayle. Personal Interview. 27 June 2007).

An excerpt from a NCMI participant helps summarize and confirm the deliberative structure and implementation of the NCM model:

In the first weeks we met, we read about this kind of thing [deliberative communication]. About participation, about seeking other people's views, thoughts and things rather than dominate, a group dynamic orientation. This helped...when faced with the fact that we might have to make compromise, not on convictions, Gayle was very strong on *not compromising our position, but compromise on way in which carry out convictions* – rejection, judging, evaluating, rejecting people on that basis [emphasis added] (Interview 4).

The purpose of the NCM model is to provide the tools and the space to communicate in mediative terms. This was accomplished utilizing deliberative principles of communication. While not explicitly deliberative in intent, Landt carefully structured model and actively facilitated a process of idea deliberative parity.

#### B. Actual Participation

Attendance was a central focus of the NCM design. Landt felt that extensive participation was essential to substantiate successful claims in process and outcomes utilizing a true a consensus ideal model (Landt, Gayle. Personal Interview. 27 June 2007). At both NCM meetings there was almost 90% attendance by all members in the regular meetings. For example, the NCMII project comprised 40 meetings, plus three weekend retreats, over the period of one year. This represented a commitment of

approximately 200 hours. The average attendance at the weekly meetings was 87%, and 100% at the 2<sup>nd</sup> and 3<sup>rd</sup> retreat (gathered from NCM documents and in formal and informal discussion with Landt).

While attendance was consistently high, it was not ideal. In NCMII, 2 participants decided very early to withdraw from the process. Of the remaining 15 core participants, only Liz Cawood missed the key consensus building meetings in which the Statement of Agreement was drafted. These attendance numbers are similar for NCM I as well. One member had to withdraw for personal reasons unrelated to the NCM process.

Additionally, a few members of OCA, a conservative Christian organization that had placed an anti-gay measure on the ballot just before NCM I was initiated, left the NCM I process very early (Landt, Gayle. Personal Interview. 27 June 2007; Telsey, Nadia. Personal Interview. 9 July 2007). The OCA members dropped out toward the beginning of the meeting process, though one (Schanz) continued. "A few of the people from the Oregon Citizens Alliance did not continue. There was one member who stayed." (Telsey, Nadia. Personal Interview. 9 July 2007). In the end, only Cawood in NCMII and Larry Schanz in NCM I chose not to sign the final Statement of Agreements.

*Participatory Demographics-* NCM I and II violate ideal deliberative participation requirements, meaning these community representatives were different in some important ways from the rest of their constituent groups. The representatives of the various interests in both NCM I and II were overwhelmingly more affluent than the general community population and the various interests they represented. This was the case in both NCM forums. In each case the core participants were almost entirely white

and educated. While participants did not report income or wealth, interview subjects readily acknowledged the NCM groups were generally affluent relative to the overall community. Almost all the participants were college educated and several hold advanced graduate degrees.<sup>153</sup> Additionally, at the time of the meetings, all core participants excepting one (at the time of the meetings) was a high profile community member or leader.<sup>154</sup> In NCMI, there were 8 men and 5 women. In NCMII there were 8 men and 7 women (gathered from the NCM I and II Statement of Agreements). One interview respondent speaks to the lack of demographic diversity in NCMII:

Was it a very white group? Yes it was. If you are saying did that make us more compatible? No. If Gayle was to do this event today, there would probably be more effort to seek the spectrum across your economic views, but it might also be looking at the political, your race, your background, yeah. And the reality is did we have a homeless person on there? No. I don't believe we had a black person. Latino? I know there were several asked but I don't know that any served (Interview 8).

Nadia Telsey affirms a lack of racial and class diversity in NCMI as well when she says that "I think racially it was not diverse; class wise it probably was not diverse so there were intersecting issues that were not represented" (Telsey, Nadia. Personal Interview. 9 July 2007).

While most NCM participants were affluent at the time of NCM, numerous core participants had experience growing up poor. For example, one NCM participant states that "several of us came from families that were poor" (Interview 7). At least one of these

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<sup>153</sup> For example at least 8/12 of the core participant in NCMI held college degrees. This was taken from the *Statement of Agreements* (1994) pages 9-11.

<sup>154</sup> By high profile community member/leader I mean that at the time of the meetings they were actively involved in the community as either: CEO, founding member, or current member or head of a recognizable community board. NCM examples include: The Chamber of Commerce, The Rotary Club, Friends of Eugene, Lane County Bar Association, and so forth.

representatives, Susan Ban, had extensive experience working with the absent, traditionally marginalized populations.<sup>155</sup> For example,

I have played that role on a couple of other committees. It is more like the watchdog piece. It is like don't suggest any strategy that would have unintended consequences by making it more challenging for disabled or disenfranchised populations to access jobs, to get around, to increase wages, I mean that that had to always be a part of the equation (Ban, Susan. Personal Interview. 12 December 2007).

Ban perceived her role was to bring a conscious and explicit concern to voice to the interests of traditionally marginalized groups, such as the poor or disabled. Ban reported her major concern was that meeting decisions and process maintained a “no harm” principle regarding these groups (Ban, Susan. Personal Interview. 12 December 2007).

This skewed demographic representation was in some ways deliberate. Participant selection was constructed to ensure that community stakeholders had representatives that would articulate a given position. These participants also needed and be perceived as legitimate representatives of their constituent base (Landt, Gayle. Personal Interview. 27 June 2007).

### C. Perceived Adequacy: Relative Parity within NCM

Did stakeholders feel that Landt took sufficient steps to recruit relevant stakeholders and to establish relative parity among NCM participants? Were the core participants satisfied with her efforts and the NCM process in general despite its ideal deliberative failings? While NCM fails to meet even the most basic ideal deliberative parity standards, NCM I and II stakeholders also report consistently high levels of

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<sup>155</sup> Susan Ban was Director of Shelter Care, which provides housing, services, and advocacy for low-income families and individuals with special needs. Ban was also an active member of several charitable organizations at the time, such as the Lane County Domestic Violence Council and the United Way Agency Director's Organization.

perceived adequacy. There were no major concerns reported in examined meeting minutes or in interviews. In fact, all interview subjects (in both NCMI and II) report that the NCM process institutionalized conditions of relative parity to their satisfaction. The NCM meetings also drastically changed the way other stakeholders were viewed and provided more effective tools for conflict resolution. For some participants it profoundly impacted their lives. These claims are supported in the following discussion.

Landt explains, and participants agreed, that the stakeholders benefitted from a safe space to be open and honest even if this space was not necessarily public. These closed forums offered an institutional space that built and stressed equal power, safety, and respect. In return, this allowed candid conversation about issues that could not be easily brought to public discussion (Landt, Gayle. Personal Interview. 27 June 2007).

Interview subjects involved in the NCM process also attributed limited participant selection, a closed process, and strong but limited stakeholder discourse representation (as well as mediator facilitation) to NCM meeting success. Multiple interview subjects confirmed the need to have a limited group size in order to really allow participants to respect, connect to, and even care about each other. As previously mentioned, Landt feels that 8-12 range is in the ideal range (Landt, Gayle. Personal Interview. 27 June 2007). Nadia Telsey confirms this. "It [the NCMI group] was big enough to have some diversity within each side, but not so big that we couldn't develop some relationships" (Telsey, Nadia. Personal Interview. 9 July 2007). John Koekkoek, another NCMI participant confirms the need for a limited number of participants. "Any more [than 12] is too much

for self-expression. 12 was a lot. But no one was silent. Everyone participated and had something to offer” (Koekkoek, John. Personal Interview. 11 October 2007).

John Koekkoek also speaks to the importance of not only limited but appropriate participant selection. “I don’t know where she got [the] list, but she had sharp people on both sides. *Not the same, a lot of differentness, but a lot of openness [emphasis added]*” (Koekkoek, John. Personal Interview. 11 October 2007). One NCMI interview subject chosen as a representative of the “conservative Christian” movement offered an unsolicited comment about the impact and effectiveness of NCMI. When asked if about any concerns over relative parity in the group, one respondent explains how Gayle facilitated an excellent process and the core participants implemented it:

In the first weeks we met, we read about this kind of thing. About participation, about seeking other people’s views, thoughts and things rather than dominate, a group dynamic orientation. Our ability to deal with it as or make this an issue or I can care about you as a human being. This helped (Interview 4).

Core participants perceived the NCM process as more than achieving relative parity within these forums. For many, what took place in the NMC process drastically and positively affected them beyond merely facilitating deliberation within the NCM.

Nadia Telsey felt relative parity was achieved not only as a product of the NCM process and the Landt herself, but at some point this radiated from the core participants themselves.

I think Gayle was really on top of all that all of the time. By the end we were all watching out for each other. By the end of the second retreat, we were drafting the statement, one side would say to the other side are you sure this, it seems like what you really believe is not really in here enough. We were taking care of each other. It was very interesting (Telsey, Nadia. Personal Interview. 9 July 2007).

Telsey also speaks to the immense impact she felt from the NCM process. “I think it was very successful personally. So I guess I could speak to that first. It forever changed the way that I view things (process and other)” (Telsey, Nadia. Personal Interview. 9 July 2007). Later in the interview, Telsey offers an unsolicited assessment of the effectiveness and impact of NCMI in their life: “Well to this day I teach a class at UO. When discussion groups meet it can get pretty intense. And to this day I use the paper dialogue versus debate to try to help people get to a different place. So it has had that huge impact” (Telsey, Nadia. Personal Interview. 9 July 2007).

Finally, Landt herself speaks to the following transformative impact of NCMI not only on her life, but the lives of the core participants as well.

What I love about this, with NCM I which you just mentioned, one year, we got together a year later, because they wanted to, we got together a year later, and all were more enthusiastic about, and more accepting of their written statement of agreement than they were when they had just done the work in deciding what it was. After a year they looked at it and they were even more bought in. To me that was one of the more life affirming moments of my life (Landt, Gayle. Personal Interview. 27 June 2007).

However adequate, participants did not always perceive parity was necessarily ideal. For example, Susan Ban mentions how it is impossible to achieve parity, no matter the institutional efforts: “I think Gayle’s process was designed to undermine that [issues of power imbalance] or kind of erode it, but I don’t ever think you get past the fact that the guy sitting next to you used to be a state senator and is one of the wealthier lawyers in town” (Ban, Susan. Personal Interview. 12 October, 2007). Also, in NCMII, Tom Bowerman and Liz Cawood felt there may have been a slight bent to the “left” in stakeholder representation. However, they also attribute NCMII’s left leaning tendencies

as due to the relative ease of recruiting from biased sample.<sup>156</sup> That is, perhaps fewer conservatives were easily identifiable in Lane County or willing to sit down in this forum.

In the end the even most critical core participants also felt satisfied with the efforts and results of the NCM process along issues of relative parity. For example, despite Ban's belief that parity can never be achieved and the concerns within NCMII, she was ultimately satisfied with the efforts to achieve and practice standards of discourse. "She [Landt] moved us into a place where most of us were talking about the topics, not out of position and nor out of economic status but out of kinda' I am another vulnerable human being on this earth you know" (Interview 8). Or, Bowerman and Cawood both reported dissatisfaction with outcomes and even certain standards or procedures in NCMII. However, when explicitly asked, both respondents issued statements of satisfaction with the standards and practice of relative parity in NCMII (Bowerman, Tom. Personal Interview. 5 October 2007; Cawood, Liz. Personal Interview. 12 October, 2007).

*Conclusion-* In sum, NCM design and the meeting process itself do fully ascribe to ideal deliberative minimum standards of relative parity. Landt alone designed, selected and recruited participants, and conducted NCM meetings. The public was not given access nor a real stake or substantive influence in the deliberative process. The NCM model was not open to and did not actively solicit and acquire unstructured feedback

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<sup>156</sup> This is a reference to the so-called "liberal" reputation that Eugene enjoys, whether accurate or not, and implies that finding other highly visible and willing representatives from other ideological perspectives might be somewhat challenging.

(excepting in soliciting a potential list of NCM recruits) from the most marginalized populations. Landt did not grant the public a deliberative stake in or access to any of the substantive NCM meetings. NCM meetings were dominated by white, affluent stakeholders.

At times, NCM I and II core meeting participants expressed dissatisfaction with the NCM process. Participants raised concerns over attempts to grant access and public stake to all relevant perspectives and to actively recruit appropriate participant stakeholders. In interviews, NCM participants conceded the process did not meet ideal deliberative representation standards.

However, *despite* these ideal deliberative shortcomings, NCM attendance was quite high in both I and II and NCM. Additionally - along concerns of relative parity - core participants generally considered the institutional process (if not always the standards) exemplary. This is illustrated in Table 14.

Table 14: Relative Parity within the NCMI and II

<b>Minimum Ideal Deliberative Conditions</b>	<b>Access</b>	<b>Actively Solicit</b>	<b>Public Stake</b>
IV: Institutional Structure	No: stakeholders were not given access to NCM structuring	No: stakeholder input was not sought during substantive meetings	No: stakeholders were not given formal influence in NCMI/II
IV: Institutional Behavior	No: meetings were closed to the public. Core participants were selected by Landt and given full access	No: input on potential participants was actively solicited. Viable participants were then aggressively solicited. All other aspects were closed	No: no formal vote or influence was granted to the public stakeholders
DV: Perceived Adequacy, Structure	No: participants stated that not all relevant stakeholders were recruited	No: core participants reported NCM did not aggressively engage the community in structuring	No: participants expressed concern that participant selection was inadequately representative
DV: Perceived Adequacy, Behavior	Yes: participants feel Landt effectively granted access to all core participant concerns in meetings	Yes: participants feel Landt brought in all core participant input though process and through balanced assertive participant behavior.	Yes: core participants report general discursive representative satisfaction and high satisfaction with core participants overall.

## 2. Power outside the NCM

Findings- NCM inception, framing, and composition does not conform to ideal deliberative parity standards. Landt exercised complete control over all aspects of NCMI and II. The design, implementation, composition, and NCM facilitation itself was closed to and lacking in formal public or stakeholder input or oversight excepting informal solicitation of an aggregate potential participant pool and in the final NCM meeting where the final Statement of Agreements was presented to the press and the public. At times, multiple outside community stakeholders report perceived dissatisfaction with the closed nature of NCM meetings, the composition process and actual representation of

NCMI and II, and with the fixed nature of the meeting process. While many other stakeholder statements express satisfaction along these criteria, the lack of formal public and stakeholder access and input resulted in a lack of overall perceived adequacy along outside deliberative parity criteria.

#### A. NCM Inception, Framing and Composition

*Inception and Framing*- Unlike OHCR or OWEB, the NCM was entirely conceived and facilitated through a process that was exclusively under Gayle Landt's control. Not only did Gayle design the NCM and recruit its participants, she was also the primary facilitator and mediator for both NCM projects as well. This all occurred outside the NCM meetings. There was no deliberative or political process involving multiple stakeholders. No closed door negotiations occurred among stakeholders in conceiving and framing the NCM process or in constituting its participants.

While the NCM *process* itself was entirely closed to the public, in describing the NCM model, Landt mentions instances of outside public stakeholder input. Landt drew from community input in constituting the original list. Landt also allowed and solicited public participation at the last meeting in each NCM when the Statement of Agreements was signed. Landt recalls planning well in advance to ensure extensive participation (Landt, Gayle. Personal Interview. 27 June 2007).

Much like Kitzhaber in OHCR or OWEB, the outside role of Landt in all aspects of both NCM meetings is not easily overstated and is deeply tied to the success and failure of the NCM. Landt conceived, implemented, and facilitated the NCM. Because of this, to the extent that the NCM is viewed as successful Landt deserves and largely

receives credit for its success as well as its failure. This is readily supported in interviews with participants and in secondary sources as well.

When asked “to what do you attribute the deliberative success of the NCM, to the extent that it existed?” statements like this were common: “I think it was a great effort of Gayle’s part, and making sure that they identified the potential groups and the stakeholders and making sure that they had reps from each and every one” (Interview 10). Or, “from my perspective it was pretty deliberately, intentionally, assembled” (Interview 8).

Telsey captures the view, especially consistent among NCM participants, that Landt and her process are to be credited, to a large degree, with the respect, caring, and common ground that emerged from the process. For example, “if it had been anybody but Gayle it would never have happened. She was a very unique person” (Telsey, Nadia. Personal Interview. 9 July 2007). John Koekkoek supports this. “We had our own nickname for her. Tinker Bell or Gorilla, she could be gentle or tough” (Koekkoek, John. Personal Interview. 11 October 2007). Or, “I think a lot of this [deliberative success] was how Gayle structured this. Everything from avoiding words that would trigger words so that we could get to what was underneath; to the retreats they took us on, where we could get real with each other” (Telsey, Nadia. Personal Interview. 9 July 2007).

In conceiving and designing the NCM model, Landt felt the NCM model needed to draw upon a few basic principles learned from previous meditative experience. Landt felt an intense, mediative model was clearly appropriate due to the polarized, personal

nature of the discourse over these issues.<sup>157</sup> In designing the NCM, Landt settled on several principles upon which to base the NCM, or framing principles.

We all live in this community together. The means are the ends in the making...and the understanding that personal responses that will lead to a safer, healthier community for all its members necessarily include the commitment to the following 3 implications of the above principles: I will resolve conflict. I will not use violence. I will not preoccupy myself with an enemy. I will maintain an attitude of goodwill. I will work together with others to build a safe and healthy community. I will take initiative and respond to conflict within these principles and implications even when others are confused or lost in fight or flight reflexes (Landt, Gayle. Personal Interview. 27 June 2007).

Landt's belief in the features of NCM is unwavering, despite its violation of deliberative norms of openness. As previously mentioned, Landt believes that for genuine deliberation to occur the meetings must be "confidential or secret" (Landt, Gayle. Personal Interview. 27 June 2007). Landt believes that "the process of discovering...the process of discovering a whole new way to look at something, that messy, exploratory thing – people can be crucified in the press over it..." (Landt, Gayle. Personal Interview. 27 June 2007).

Landt conducted lengthy and thoughtful interviews with leaders of all sides of the gay rights issue which confirmed negative and polarized attitudes. Even in these recruitment interviews Landt reports that interview statements became more balanced.

This preliminary work confirmed Landt's view that a private, safe space that practiced

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<sup>157</sup> As mentioned, Landt focused on building a model with a private safe space where people could be honest and direct. Careful control of participant selection was perhaps the most important feature of all. Participants were carefully screened and many eager participants were not included. Finally, the meetings themselves were structured in a manner that sought first and foremost to establish relative parity and respect, like a traditional meditative forum. Extensive skill building sessions were structured to establish respect and parity in practice before any substantive issue discussion was allowed. These steps were did not report, include, or grant influence to relevant stakeholders. However, Landt felt she was designing an institutional space under the requisite conditions that would facilitate a real space for genuine deliberation.

balanced and respectful standards of discourse could potentially offer a viable forum to discuss these highly charged issues. The principles that Landt developed were to be presented, discussed, and agreed upon by all participants in order to be a part of the NCM process. Landt states the purpose for establishing this principle base in her document entitled “Essential Elements of the NCM Conflict Resolution Model.” On page 5, Step 2 of the Essential Elements of the NCM model is entitled “Principle Base.” This includes:

- Assist core participants in sorting their own values and ethics
- Provide core participants with an important reference point during the challenging and chaotic experiences of creating new solutions
- *Provide core participants with a shared cultural base to build on*  
[emphasis added]

Landt believes that the NCM model was to be realized through an extensive skill building component that follows the agreement to these principles but precedes any substantive issue discussion. If properly understood and followed, Landt believes these principles serve as a map to resolving confusing, emotionally charged issues. These strategies are not just limited to the NCM project but can apply extensively to other inter and intra personal conflicts as well (Landt, Gayle. Personal Interview. 27 June 2007). *The recognition of these necessary limitations in openness proved controversial according to ideal deliberative standards.* Landt’s exclusive control over the framing and conception of the NCM model, while expedient and even arguably appropriate, does not meet ideal deliberative standards.

*Composition-* The process of NCM composition violates theoretical deliberative standards. Ideal deliberative theory does not acknowledge a role for limited group size and highly selective participation that is closed to the public.<sup>158</sup> The composition of the NCM core participants was generally not a public or participatory process. The initial meetings among community stakeholders and the process used to create and populate the NCM model was closed. Neither the public nor major stakeholders were given access or voting rights.

Landt believes that in community forums that rest on an assumption of limited group size, in divisive issues - like gay rights or sustainable development - getting the right participants is extremely important. While not necessarily ideal, *this means not everyone can or should be allowed to participate or influence the participant selection process*, according to Landt. “Selection or getting the parties to the table is 2/3 of the necessary work for a successful mediation” (Landt, Gayle. Personal Interview. 27 June 2007). In the following passage, Landt speaks to the problem of participant “fit” and the need to filter and screen participants.

Wanting to be a part of it like that [asking to participate] is problematic. It might be good and it might be bad, and in some cases it has been bad. I had someone in the second one [NCMII] who should not have been taking up – I mean am thinking of one person in particular but even more – you can have that person taking up space, because the way my process works every chair is really important, you have to equalize power in order for everybody to function in a way that is creative and everything. So you can have somebody taking up space and making the circle too big and they’re not the right person and just because they want to be in on the action or they think it will be fun or something. That is not a good reason to have them there. I mean I think they should participate and create, I mean these people are really good people, but they are not necessarily going to

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<sup>158</sup> Ideal deliberative theory insists that deliberative success is most readily indicated by the actual number and type of participants (Cohen, 1989; Fung and Wright, 2003).

be the most useful for resolving polarity or resolving conflicts in the community in this process. *The people I had to convince were some of the best people* [emphasis added] (Landt, Gayle. Personal Interview. 27 June 2007).

While perhaps necessary to build a functioning deliberative forum, the NCM was not composed in ideal deliberative terms. The inception, framing and composition were driven by Gayle Landt. These standards and this process do not conform to theoretical deliberative standards. The perceived adequacy of the NCM process by those outside the NCM is examined in the following section on perceived adequacy.

#### B. Perceived Adequacy

Does it matter that the NCM was not composed in ideal deliberative terms? That is, do NCM participants view the process in adequate, deliberative terms despite the fact that NCM inception, framing and composition do not meet deliberative standards? This section will assess the perceived adequacy of the NCM inception, framing, and composition.

At times Landt drew criticism from the larger public and the media in particular. These criticisms concerned privately soliciting and constituting the meeting participants, closing the meetings to the press and public, and generally running the conceiving and conducting the meetings in a non-transparent manner.

Landt recalls the irritation expressed by the media and particular community residents, who were upset by their exclusion from the meetings. This is one reason Landt believes her NCM remained less reported and less favorably portrayed than it might have been if the media had perceived greater inclusion (Landt, Gayle. Personal Interview. 27 June 2007; Discussion with Landt in 2006 and 2007).

I had reporters were mad at me, especially after the first one, they were so darn mad...they couldn't believe there was all this agreement and nobody told them it was happening. They were offended. It was pretty interesting (Landt, Gayle. Personal Interview. 27 June 2007).

Landt also recalls instances of community residents who expressed frustration over their perceived exclusion in the NCM process.

I was so quiet on the first one [NCMI] that nobody knew it was happening which made some people very mad and I had some people come up to me and say I should have been part of that process, you know I can't believe you left me out I should have been part of that process, and then the second one [NCMII] I had people showing up saying I want to be a part of it (Landt, Gayle. Personal Interview. 27 June 2007).

Nadia Telsey and one other NCMI participant recall the resistance and dissatisfaction the OCA or the Oregon Citizens Alliance, (a group formed in Oregon in 1986 to oppose gay rights) expressed with the New Community Meeting I Process.<sup>159</sup> While originally involved in the NCMI meeting process, Telsey recalls that "a few of the people from the Oregon Citizens Alliance did not continue with that [NCMI]... [Additionally] one person from OCA was that he really couldn't get on board and *ended up [privately] accusing the conservative folks of being duped* [emphasis added]" (Telsey, Nadia. Personal Interview. 9 July 2007). According to interview subjects in NCMI, the OCA dropped out when "they realized they could not control the process" (Telsey 7/09/07). Although I did not speak directly with members of the OCA, I was told by other interview subject that they viewed the NCM in non-legitimate terms, and claimed the

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<sup>159</sup> OCA is a conservative Christian political activist organization, founded by Lon Mabon in Oregon. It was founded in 1986 as a vehicle to challenge then-Senator Bob Packwood who was a prominent fixture of Oregon politics in the late 1980s and into the 1990s. It has sponsored a number of anti-gay rights ballot initiatives: Measure 8 which passed an initiative measure that repealed Governor Neil Goldschmidt's Executive Order banning sexual orientation discrimination in the executive branch of state government as well as and Measure 9, Measure 13, Measure 19.

process was fixed and unfair (Telsey, Nadia. Personal Interview. 9 July 2007; Koekkoek, John. Personal Interview. 11 October 2007).

A core participant in NMCI and another in NCMII dropped out near the end of the meeting process. In public newspaper reports and in a personal interview with one of the core participants conducted in 2007, these participants cited what they characterized as “irreconcilable differences” with the NCM. They were the lone dissenters in each NCM group. Both expressed some shared frustration with the inefficiency of the process. Cawood and Schanz were troubled by the ambiguous nature of the terminology contained in the Statement of Agreements for leaving the process and refusing to sign the agreement, among other reasons. Cawood and Bowerman, as well as other NCM participants also recall feeling pressured and rushed to reach an agreement. Both of these individuals represented what other interview subjects characterized as “more conservative” elements of the community (Interviews with NCM participants in 2007).

Dissenters in NCM also expressed some dissatisfaction with the NCM selection process. This may have contributed to their general attitude of dissatisfaction with the NCM. The concern over selection is supported by several other NCM participant comments. In a few instances NCM participants raised uncertainty over the balance of representation. For example, one NCMI respondent states that

You know there was one member of the OCA, and I think that was all. And I’m not sure why that was, I mean I’m not sure there’s any reason why that was or just luck of the draw. Whether Gail wanted it that way or she had trouble recruiting others or what. It would’ve been useful to have 2 or 3 [from OCA] (Interview 6).

In NMCII, another respondent expresses uncertainty over adequate representation in the following excerpt. “I think that it might also be true that a careful dissection of the

participants yielded a discernable slant to the left or to the progressive left. And I think that was either conscious or subconscious on Gayle's part. I think that she had somewhat loaded it" (Interview 9). Despite reported perceived adequacy overall, these statements were expressed as concerns perceived along respect and relative parity criteria. However, these statements suggest support for the views that the OCA, non-participants, the media, and others at felt ambivalent or even unhappy about Landt's standards and process whether due to their insularity or not. At times, this lack of satisfaction with NCM is clearly linked to the exclusion of the public or relevant stakeholders.

*Conclusion-* NCM structure and practice does not conform to ideal deliberative measures of openness. Landt exercised control over every aspect of the process. Landt, however, believes that this is precisely what helped made the process work (Landt, Gayle. Personal Interview. 27 June 2007). As support, perceived adequacy was expressed in terms of perceived parity by NCM participants. Additionally, Landt and other interview subjects believe there are numerous examples of a larger deliberative impact in the larger community in both NCM I and II.<sup>160</sup>

The closed process of the NCM problematizes an evidentiary assessment of public complaints (outside NCM I and II) as they relate to specific non-deliberative parity standards or behavior. For example, the controlled process of participant selection and the private meeting space may or may not have been practical or even necessary to ensure the considerable deliberative success of the NCM (if success is defined by core participant

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<sup>160</sup> These examples will be examined more closely in the following discussion of mutual respect.

satisfaction). However, the absence of any extensive recorded public testimony regarding concerns that might otherwise be raised by the larger community about closed conceptualization, framing, constitution, and the meeting process make claims of relative parity difficult to accurately assess. However, NCM I and II participants and outside community stakeholders did report concerns about the adequacy of NCM I and II along framing, conceptualization, and participant constitution. These findings are summarized in Table 15 below.

Table 15: Relative Parity outside the NCM I and II

<b>Minimum Ideal Deliberative Conditions</b>	Access	Actively Solicit	Public Stake
IV: Institutional Structure and Behavior	No: conceiving, framing, and constituting the NCM/II was closed to relevant stakeholders	No: stakeholders were not solicited in framing or conceiving NCM; limited but active solicitation of public in constructing NCM pool	No: stakeholders had no formal authority outside of the NCM forums
DV: Perceived Adequacy	No: stakeholders (in and out) reported dissatisfaction with access: NCM framing, conceiving, and NCM constitution	No: at times stakeholders reported dissatisfaction with not being actively recruited	No: stakeholders (in and out) criticized numerous parts of NCM structure and lack of input

These findings suggest that ideal standards of openness may be unnecessary to procure overall deliberative satisfaction among those within but important to stakeholders (to a lesser extent or less conclusively) outside of deliberative forums. These challenges to ideal deliberative theory will be discussed more closely in the following section on respect and in the conclusion of this chapter.

### **III. An Accounting of Respect**

#### **1. Respect and Perceived Adequacy within the HSC**

Findings: Interview subjects reported high levels of respect within both NCMI and II. Statements concerning perceived disrespect were not reported by interviewed NCMI participants. In NCMII, statements of perceived respect were infrequent and consisted of statements that focused on issues outside of the meeting process itself. These concerns did not include mutual respect within NCMI or II. The following section will present and evaluate these claims.

##### A. HSC Meeting Structure and Process: Perceived Adequacy?

*NCMI-* In NCMI, lengthy interviews with leaders on all sides of the “gay rights” issue have confirmed that negative attitudes toward the “other” perspective stakeholder group decreased significantly over time. That is before, during, and after NCMI (T1-T3). An increase in respectful listening continued throughout the meetings and after the NCM process in the larger community. Evidence of respect includes the Statement of Agreements. The statement was accomplished by consensus and excerpts of the agreement were published in the paper. In interviews with NCM participants, every member expressed satisfaction with the overall respect the process generated.

When the NCM meetings first began, interview subjects recall feeling disrespected, negative and quite tense. Telsey recalls “I remember when I walked in the first day and I didn’t know who these people were and I didn’t know where to sit because I wanted to know who they were” (Telsey, Nadia. Personal Interview. 9 July 2007). Initially perceived respect was low at best (for most) and virtually non-existent for some

(notably many in NCMI). However, as the meetings progressed levels of respect consistently increased over time. All meeting participants observed and reported this in both NCMI and II. At times, meetings engaged in transformative moments of respectful interaction. For example, in one instance, John W. Koekkoek recounts one particular powerful, transformative interaction:

There was one situation...Nadia looked over at me and said; I know that people like you would probably as soon see me fry in hell as to even function in this society. And I think when she said it she realized how strong that was. And it took me totally off guard. And I just sat there for a minute. And then I got up and started to walk across the room to her, and she got up and walked across the room to me and we just put out arms around each other and just held each other for a while. And I don't - you tell me what caused that. I recognized how much she had been hurt by somebody representing my position, and she recognized that I maybe wasn't like all the rest. That she had projected in her mind, right wing conservative Christians (Koekkoek, John. Personal Interview. 11 October 2007).

Levels of respect continued to increase among NCMI participants during NCMI and after the meetings had concluded. More than 15 years later, John Koekkoek still supports this statement in a 2007 interview. In our discussion John cites language similar to the 1994 Statement of Agreements in his explanation of support. "What we faced was how continue to live in this community together? Are we going to continue to kick and throw at each other or can we find a way? And I think all the members of the group were concerned enough about the community that they realistically wanted to put that before, right along side there own values and convictions" (Koekkoek, John. Personal Interview. 11 October 2007).

High levels of respectful treatment began to increasingly emerge and strengthen as the meetings progressed. Once the participants were able to move past feeling as though they had to defend their own values and perspective participants began to listen.

Participants began to get to know each other and even form relationships that continue today. Most came to like and respect the other core participants from divergent perspectives, despite their disagreement.<sup>161</sup>

This represents a profound shift that occurred in these meetings. John Koekkoek speaks directly to the drastic shift in respect that took place in these meetings.

For instance, as I said in first session, we sat 6 facing 6. By the end we were totally integrated. I might be sitting by any one of the participants and feeling just as comfortable as if I was sitting by one of those that was supposedly Christian. And that was not false. It was genuine. We really came to respect and appreciate each other and I think a lot of misconceptions were clarified (Koekkoek, John. Personal Interview. 11 October 2007).

Nadia Telsey confirms this drastic shift in respect over time as well.

I remember when I walked in the first day and I didn't know who these people were and I didn't know where to sit because I wanted to know who they were... By the end we were all watching out for each other. By the end of the second retreat, we were drafting the statement, one side would say to the other side are you sure this, it seems like what you really believe is not really in here enough. We were taking care of each other. It was very interesting (Telsey, Nadia. Personal Interview. 9 July 2007).

Without exception, interview transcripts support adequate levels of perceived respect. For many though, the NCM process did more. John Koekkoek states

One thing [NCMI impact had] was it convinced me that political maneuvering is not answer. And that trying to pass laws or bills or things like that are only going to exacerbate or make things worse... I think when we get to the place where we can accept each other as people. And recognize that at the far end of the religious perspective there are religious crazies. And at the far end of the gay lesbian there are crazies and if we start evaluating each other on the basis of that we will never be able to talk through and come to any kind of consensus or understanding. Therefore get to know some of these people, get to know them as people whether

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<sup>161</sup> Not only did civil, respectful interaction emerge but multiple lasting relationships were formed in these meetings that continue today. Interviews with Landt, Telsey, Koekkoek, Bowerman, Alderman and others support this.

you agree with them or not. And the recognition that neither one of us have the right to force our opinions and convictions on anybody else. We can have them and we can express them but you know in a pluralistic society like ours when you start to make political statements and try to get people to vote on it you are forcing something down somebody's throat and that's not going to work. Not in our society (Koekkoek, John. Personal Interview. 11 October 2007).

For many participants, these meetings went beyond meeting basic respect criteria. The NCM forums allowed participants to imagine and prefer a deliberative model of conflict resolution and NCMI granted them the tools to do so.

*NCMII*- An analysis of interviews with core participants demonstrate increased measures of respect over time. Meeting commentary shifted over time along respect measures before, within, and after the meeting process (T1-T3). This is reflected in meeting commentary and interview transcripts. Core participant accounts confirm that discussions and attitudes changed significantly as stakeholders became more open and respectful over time.

Core participants in *NCMII* report perceived adequacy in respectful treatment by other core participants throughout the meeting process. Once inside the NCM forum core participants increasingly encouraged and facilitated improved civility. While some participants were not satisfied with the outcomes of the process or even the way the meetings were facilitated, there were no reported serious or systemic respect concerns, even when explicitly asked.

For example, the most dissatisfied core participant reports respectful structure and behavior in the *NCMII* forums. "I think Gayle pretty much kept that from not happening.

I don't think anybody hogged the mike so to speak" (Interview 7). Another core participant reiterates the highly respectful nature of the NCMII structure and interaction.

If you are asking did anybody feel like they didn't get to talk? I am not aware of it. Usually we had to go around the room and everybody had an opportunity. There may have been somebody that wanted more time but I am not really aware of that (Bowerman, Tom. Personal Interview. 5 October 2007).

Multiple core participants in NCMII expressed disappointment over the perceived lack of consensus over defining and generating concrete solutions to the issue of growth and sustainable development. There was a lack of practical consensus in the Statement of Agreements. Defining and dealing with issues of growth and sustainability were not adequately addressed. Some felt there was little overall community impact (Bowerman, Tom. Personal Interview. 5 October 2007).<sup>162</sup>

Despite these disappointments core participants expressed satisfaction along with perceived respect. Not one participant in either NCM I or II expressed serious concerns over the standards and practice of the meetings along with power or respect. Despite the shortcomings identified by some core participants most participant stakeholders simultaneously expressed a belief the NCM process made a real difference. Participants

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<sup>162</sup> Some core participants this suggests that the NCMII was not internally successful in important and potentially even deliberative ways. While not a matter of respect, core participants like Tom Bowerman or Liz Cawood might argue that this is partial evidence of the lack of important and deeper deliberation in NCMII. At a minimum these core participants felt that NCMII itself did not but could and should have generated real deliberative consensus in a practical and applied manner. For example, Cawood states "we didn't even come to consensus. I mean people were, I wouldn't call it horse trading but it was not a pretty picture in the end in terms of, you, because you had this pressure to write something, you know, a lot of what I do on my work is writing and I am a quick writer, but you have to know what the content is to be able to write. And we had not come to consensus on content" (Cawood, Liz. Personal Interview. 12 October 2007). Tom Bowerman supports the perception of being rushed to generate a consensus that did not necessarily exist. "I think that it didn't turn out the way that she wanted or that we were hoping that it would... there was definitely the sense that we didn't have that commonality that was intended to be achieved during the process" (Bowerman, Tom. Personal Interview. 5 October 2007).

often found more common ground than they expected before the meetings started.

Participants like John Koekkoek support the voluntary acceptance of and incorporation of NCM rules and standards along criteria of mutual respect:

In the first weeks we met, we read about this kind of thing. About participation, about seeking other people's views, thoughts and things rather than dominate, a group dynamic orientation. This helped... Gayle was very strong on not compromising position, but compromise on way in which carry out convictions – rejection, judging, evaluating, rejecting people on that basis – and I think you know, even the situation with Nadia, our ability to deal with it as or make this an issue or I can care about you as a human being. So I think sometimes it was the group, sometimes it was the orientation, the way Gayle set it up (Koekkoek, John. Personal Interview. 11 October 2007).

NCMII may have been a disappointment to some or even many of the core participants in meeting the perceived deliberative goals of “efficiency,” or “solving” the problem, or in reaching community “consensus” or achieving some other goal of larger community impact. However, NCMII *was* remarkable in meeting the deliberative measures employed in this case, namely perceived relative parity and respect within NCM I and II.

Within the NCM I and II, meeting participants report perceived adequacy along minimum deliberative respect conditions. Participants felt included, genuinely listened to and taken seriously by meeting participants and the Landt. This is illustrated in Table 16 below.

Table 16: Perceived Respect within NCMI and II

<b>Min. Ideal Del. Conditions</b>	Inclusion	Heard	Incorporated
DV: Perceived Adequacy	Yes: participants reported feeling very satisfied that all core participants were equally included	Yes: participants reported feeling they and others were more than adequately heard	Yes: participants reported feeling taken seriously and their perspective was brought into discussions and decisions

## 2. Respect and Perceived Adequacy outside the NCM

Findings- Polarized, exclusionary, and at times disrespectful attitudes were common in the larger community preceding NCMI and II. No direct concerns about respect were raised by interview subjects in either NCM case when core participants were explicitly asked about concerns along perceived respect. However, there may be some indirect indicators of perceived respect concerns by those outside the NCM project. At times, stakeholders expressed an interest in participation as core participants or in another capacity (e.g. Community Leaders Panel), and some interested stakeholders were excluded from core participant positions. At times, core participants within each NCM project also implicitly suggested some concern over the closed nature of the NCM process. This is evidenced in questions about success, where interview subjects indicated feelings that the process was inefficient or opaque. These claims will be examined in the following section.

### A. Perceived Adequacy

*NCMI*- A lack of general respect among community stakeholders existed outside and before the NCM process began. This lack of respect is clearly acknowledged by all

interview subjects in NCMI. NCMI core participants also felt that NCMI increased levels of respect in the larger community.

Participants were especially upset by the exclusionary and disrespectful nature of community discussion about the gay rights issue. As previously mentioned, participants also agree that the efforts of OCA and other conservative and liberal stakeholders or members of the public were actively seeking to exclude and marginalize each other. This served to entrench interests and exacerbate disagreement and policy stalemate in the public mind and in the political arena.

All interview subjects admit that the community was extremely polarized and that disrespectful statements and actions were common. One statement by Telsey captures on side of this overall sentiment in the gay rights issue:

I think the whole community was incredibly damaged by what happened around that ballot measure. It was hideous. It created rifts in neighbors, in workplaces, in everywhere. I may have told you this before but one of my motivations was, I used to patronize a little, I liked to patronize local businesses, and I used to go to this gas station that was these two older guys, and I felt that I had to ask these guys, do you support this ballot measure that says I am the same as a pedophile and a necrophiliac, and they said yes, and I said I cannot come here anymore, and they said but but but, and I said I can't do it and I left in tears and *I thought I don't want to live in this community* [emphasis added]. I may have had an extreme reaction but I think it was indicative of the feeling in the area (Telsey, Nadia. Personal Interview. 9 July 2007).

Many attribute the creation of and eventual willingness to sit down and try out the NCMI process was due to the contentiousness and escalating lack of respect in the larger community. Telsey captures this feeling when she states "It was so damaging and I think people were really tired of it. And I think the conservative community could point to things the Gay and Lesbian community did that they felt like that were and mean and

attacking and vice versa. It sort of went downhill to not the best behavior on anybody's part" (Telsey, Nadia. Personal Interview. 9 July 2007).

When explicitly asked if all relevant interests felt included in NCMI, Telsey states "No. I am sure there are some people who feel their perspective was not there. Different religions, parts of the gay and lesbian community, youth, no one was going to touch that, they were impacted in a big way but not represented at all. And I am sure there are others" (Telsey, Nadia. Personal Interview. 9 July 2007). Also, the press claimed (according to Landt) to be largely unaware of these proceedings and expressed frustrations over this perceived exclusion, resulting in reduced and at times less favorable coverage (Landt, Gayle. Personal Interview. 27 June 2007).

There is no direct data that would readily account for perceived lack of respect with the process outside the NCM, if it did exist. However, core participants expressed that other stakeholders probably felt excluded. Core participants also felt that stakeholders would have felt more adequately included if the NCM process had sought more public involvement. For example, one NCMI participant feels that NCMI might have enjoyed more success on the public had been more active follow-up to involve the public after the substantive meetings. "There was no public awareness of it, probably never reached 5%. So there was that, I mean it could've been done" (Interview 6). Additionally, while not clearly demonstrated in explicit terms, previously mentioned comments about the lack of understanding with or ineffectiveness of the NCM model may reflect a larger feeling of perceived disrespect by the outside community. This may also be due to actual perceived shortcomings in the process. Either way it suggests that

*greater legitimacy and effectiveness in the NCM model could be accomplished by incorporating public and stakeholder feedback* into the NCM design, implementation, and possibly the meeting process itself. Some of this could have been accomplished without the need to sacrifice a private meeting space.

Despite the potential perceived lack of respect by the outside community in framing and implementing the NCM projects, Telsey believes the results of the NCM process did impact the larger community along respect measures:

I think it [NCMI] had a tremendous impact. One thing is it changed the nature of the discourse because things had gotten so hideous. And because Gayle had structured it so that there was an advisory committee and all these other people that had bought in and we were aware of them, that the ripple effect was immediately felt and immediately changed some of the conversations. I know that a lot of us got flak from our communities for participating. And yet I think our experience, I think a lot of people listened to it. I know that was true for me. I know that was true for John K and a guy named Rick Rencher. He was used to being seen as a renegade in the Christian community, on the edges. John K got a lot of really hideous flak. But then being on Christian radio I think a lot of people could hear him (Telsey, Nadia. Personal Interview. 9 July 2007).

Telsey also later states that “I don’t think things ever got to that point again. And I don’t think people would tolerate the kind of language that was put in that” (Telsey, Nadia. Personal Interview. 9 July 2007).

The precise impact outside the NCMI meetings is unclear and varies across interview subject. However, all interview subjects mentions informal effects NCMI may have had on the larger community attributed to the increase in respect among NCMI participants. For example, another member of the Christian perspective states:

You know the participants were called, reconvened when the Promise Keepers came to town. Every heard about that? And there was an effort to stop them from using Autzen Stadium, so we got together about that. And that was a bigger

group, involved Promise Keepers, involved New Community Group meeting, involved other members of both communities (Interview 6).

Telsey also cites specific instances of community action and personal influence that was a product of the respect that was built in NCMI.

We got together a year later, seems like something happened and we all got together again and issue a statement. Then there were offshoots of this, there were the Promise Keepers and there were issues involved with that. There was a series of series of meetings around feminism at Mother Kali's books. There were some of the same people in that. I remember the whole group got together around something but I don't remember what it was. And some of us have just stayed in touch. I am in touch with Rick Rencher still – forever (Telsey, Nadia. Personal Interview. 9 July 2007).

This evidence - cited to support community impact - often concerns informal examples. These include attitudinal or cultural shifts in the style of community forum discourse *or* personal examples of change on the part of the NCM participants and their behavior post NCM. The larger community's perceived respect is not clearly demonstrated in existing evidence such as meeting minutes, secondary sources, or interview transcripts. If the community had been more closely and actively involved in the formulation and evaluation of the NCM process, especially in its initial design and implementation, there may have been more clearly measurable, formal instances of larger community impact along measures of mutual respect. However, these examples demonstrate transformation along respect over time that continues to impact this community to this day.

*NCMII*- Interview subjects widely acknowledge a general lack of respect in the community outside of and before the NCM meetings began. Meeting participants were upset by the nature of and lack of constructive discussion or movement toward any

meaningful resolution of sustainable development issues. Interview subjects cite controversy over the West Eugene Parkway – which continues today- as one example that preceded NCMII. Participants suggested that “politics as usual” was only serving to entrench interests and exacerbate disagreement and policy stalemate in the public mind and in the political arena.<sup>163</sup>

Within the NCMII process, Tom Bowerman recounted feelings of frustration with the pace of the meeting and a sense of inefficiency in the process. This is evidenced by statements that maintained the NCMII process did not reserve enough time and attention to tackling the substantive issues of growth and sustainability. For example, “my opinion is that it was rushed because Gayle did a poor job of projecting how quickly or how slowly that things were going to be done and that she got started on the heavy lifting too late” (Bowerman, Tom. Personal Interview. 5 October 2007). Liz Cawood also reiterated some of these concerns as did Larry Schanz in NCMI.

These concerns may have partially resulted from a sense of exclusion or lack of stakeholder ownership in the features of the NCM design and process. At times Bowerman or Cawood suggested a different direction or frustration with the process. Participants recall that Landt would reply by saying “you are going to have to trust me on this. The way the system works is that we have to really get comfortable with each other and I don’t think we are there yet” (Interview 9).

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<sup>163</sup> For more information on some of the historical and current controversy over the West Eugene Parkway (WEP) see the following sites: <http://www.oregon.gov/ODOT/HWY/REGION2/wep.shtml>  
[http://www2.eugeneweekly.com/2001/01\\_04\\_01/coverstory.html](http://www2.eugeneweekly.com/2001/01_04_01/coverstory.html)  
<http://media.www.dailymerald.com/media/storage/paper859/news/2001/01/09/News/West-Eugene.Parkway.Stopped.For.Now-1972724.shtml>

Admittedly, NCM interview subjects did not often explicitly state any direct respect concerns associated with Landt's largely insular and closed creation and facilitation of the NCM model. However, one NCMII interview subject reported that the meeting process had little impact in the community and suggested that "I think there might have been some better credibility if there had been some sampling in some way of public comment or public sentiment" (Interview 8). As this interview subject points out, there were no community meetings that would have afforded perceived exclusion or other concerns or comments to be voiced whether they existed or not.

The city of Eugene and the larger Lane County area remain polarized along issue of growth and sustainable development.<sup>164</sup> However, according to previous studies, meeting minutes, and interviews with NCMII meeting participants and meeting facilitators, levels of respect among NCMII stakeholders increased significantly over the time period when NCMII meetings occurred. This time period for these meetings was January 1997 to September 1998. This increase in community respect outside of NCMII over time is indicated through indirect larger public and community interactions as measured by newsletter text, the resulting Statement of Agreement, and interview statements from NCMII participants.<sup>165</sup>

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<sup>164</sup> This is supported in meeting minutes from October 6<sup>th</sup>, 2005 during the Eugene "Mayor's Sustainable Business Initiative Task Force Roundtable," which met to discuss polarization over what was characterized as "economic vs. environmental concerns." This is also regularly supported in NCM meetings and other local publications such as *Impact Weekly* or *The Register-Guard*.

<sup>165</sup> Specifically, newsletters reflect improved in type and tone among previously alienated individuals and organizations in the business and environmental communities. Second, the two constituencies increasingly referred to each other in more positive and less alienated tones of reference over time. These findings will be examined below.

A study of NCMII by Patricia Gwartney published in *Negotiation Journal* demonstrates increased levels of community wide respect. This increase in respect occurred along issues of sustainability and growth that temporally correspond to the NCMII meetings. As noted earlier, NCM core participants were chosen because of their leadership roles in community organizations representing business and environmental interests. The members of these organizations periodically distribute constituent newsletters, which were then used by OSRL and Gwartney as data sources for NCMII for methodological evaluation.

These studies were published in *Studies in Negotiation Journal* and sought to measure changes in outside community respect over time. Specific community newsletters were used as a proxy measure of changing levels of respect over time. In a study by Patricia Gwartney entitled *Measuring the Long-Term Impact of a Community Conflict Resolution Process: a Case Study Using Content Analysis of Public Documents*, she justifies the usefulness of this particular data set.

Newsletters are valid gauges because they capture how organization members speak to each other about significant decisions, important events, emergent issues, and ongoing activities. Newsletters are also public organizational records; for example, one organization's articles of incorporation require that newsletters announce upcoming organizational elections a certain number of weeks in advance. In addition, constituents of opposing organizations sometimes read each other's newsletters (Gwartney 2002, 58).

Thus, according to Gwartney, divergent organizations understand and may actually produce their newsletters knowing and even intending that nonmembers of their group might read it. It follows then that newsletter text is considered a form of social interaction between competing organizations' constituents (Gwartney, 2002).

In the research originally conducted by OSRL, four newsletters were selected for analysis in the Eugene-Springfield area. Each publication represented a group actively involved in the ongoing community dispute over growth and sustainable development: the leading business newsletter, a nonaligned citizens' group newsletter, and two leading environmental organizations' newsletters. *These newsletters were examined for three months before NCM's first meeting to six months beyond the final meeting (21 months in all).*<sup>166</sup>

Survey analysis by Oregon Survey Research Laboratory shows that the core participants were more likely than community members (that did not participate in the NCMII) to engage in activities with someone who is known to oppose their views on development and the environment. For example,

The change in the mean response of the core participants was significantly greater than that of the control group (t-test,  $p < .05$ )... 'Activities' consisted of: defending the viewpoint of, asking advice from, conveying a viewpoint of, defending the reputation of, building a friendship with, sharing a meal with, and asking someone with opposing viewpoints to speak to their organization" (Final Report for the NCM II, September 2000, 14).

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<sup>166</sup> The six-month post-meeting data collection is intended to capture long-term impacts of the 17 community leaders' participation in NCM's conflict resolution process and the dissemination of their experiences to their constituents. Coded newsletters comprised: 1. Eugene Area Chamber of Commerce monthly newsletters from January 1997 to September 1998, including a combined November/December 1997 issue. The newsletter mailing list numbers 2,200 business interests in the region. 2. City Club of Eugene monthly newsletters from January 1997 to September 1998. The City Club has 270 members. Its newsletter was chosen because the organization strives for informed independence and membership includes prominent citizens in the private and public sector. 3. Citizens for Public Accountability (CPA) occasional membership newsletters from November 1995 and February 1998. Dates are approximate, as documents were undated. CPA represents environmentalists and non-business interests on development and land use issues. Its mailing list comprises 730 people. 4. Friends of Eugene (FOE) occasional membership newsletters from January 1996, February 1997, March 1998, and May 1998. Dates are approximate, as most documents were undated. FOE's agenda largely overlaps CPA's. FOE's mailing list of 560 overlaps CPA's by about 200.

Measures of respect over time (T1/pre, T2/during, T3/post) are established over time.<sup>167</sup> OSRL (and Gwartney) analyzed the content of monthly newsletters from the Eugene Area Chamber of Commerce, City Club of Eugene, Citizens for Public Accountability, and Friends of Eugene. Each of these organizations had representatives in the NCMII. The following is paraphrased from the OSRL report found on page 12 of The Final Report for the NCMII September 2000:

The results of the analysis demonstrate a notable decline in negative passages, phrases and sentences when referencing ideas or positions of opposing organization around growth issues. Coded passages in organization newsletters became steadily more positive over time. For example, 54 percent of alienate/polarize passages and two-thirds of don't listen/respect passages occurred before August 1997. Over 60 percent of all positive passages occurred in or after March 1998 (61 percent of listen/respect, 61 percent of cooperate, and 64 percent of citizen participation/involvement).

The Figures below show these changes over time. Figures 3-5 are reconstructed from Patricia Gwartney's 2002 article entitled "Measuring the Long-Term Impact of a Community Conflict Resolution Process: A Case Study Using Content Analysis of Public Documents" (Gwartney 2002, 68-69). These graphs combine all three sets of positive, negative, and neutral tones of reference. The patterns show that each of the three organization's positive comments increased and negative comments decreased over time.

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<sup>167</sup> "The documents' marked passages, sentences and phrases were substantively coded in three dimensions: *tone of reference*, to *whom or what* text referred, and *issues mentioned*. See Table One for code lists. After briefings on NCM and intensive review of documents, one seasoned coder designed, developed and tested the coding scheme and trained two additional coders. Each coder independently coded a complete document set. After coding, they conferred and compared results. Differences between coders were rare and were resolved in discussion." Table 1 on page 60 shows how these phrases were coded (Gwartney 2002, 59-60).

Figure 3: Eugene Chamber of Commerce, Phrases' Content in Percents by Month, January 1997-September 1998

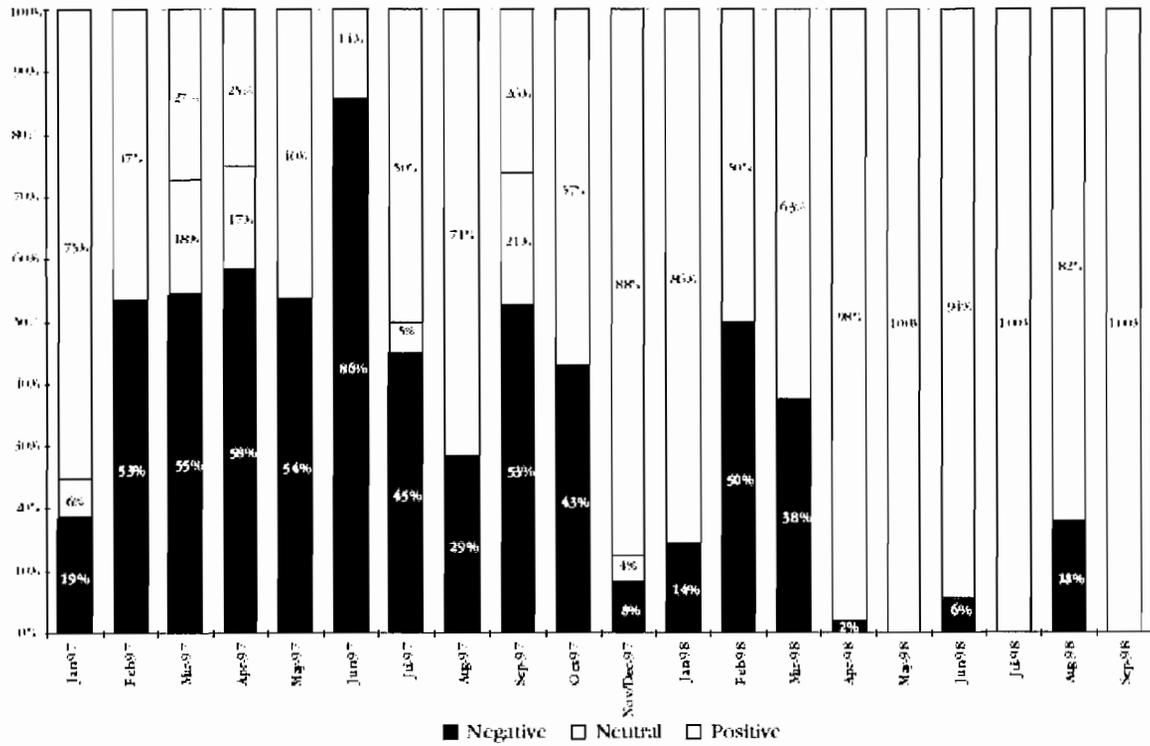


Figure 4: City Club of Eugene, Phrases' Content in Percents by Month, January 1997 September 1998

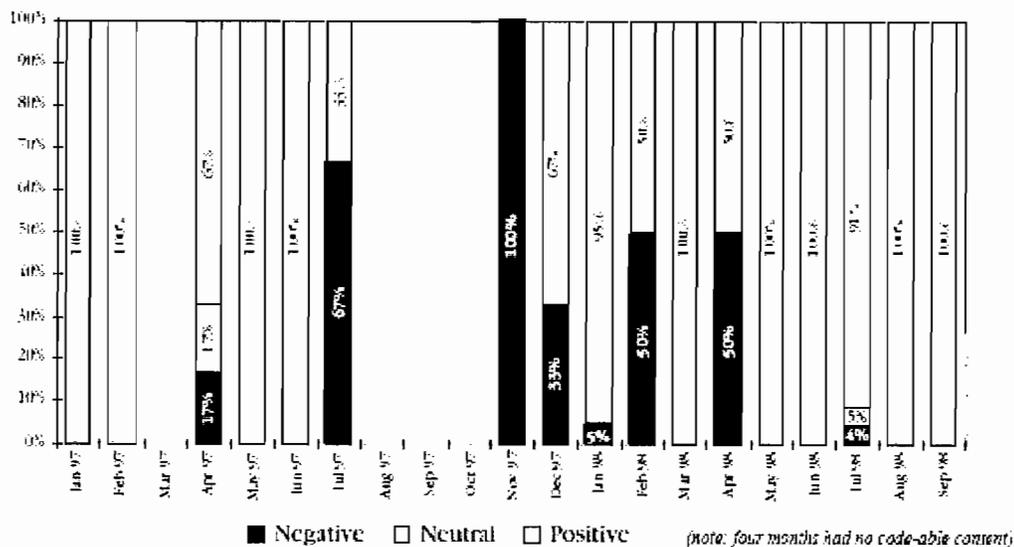
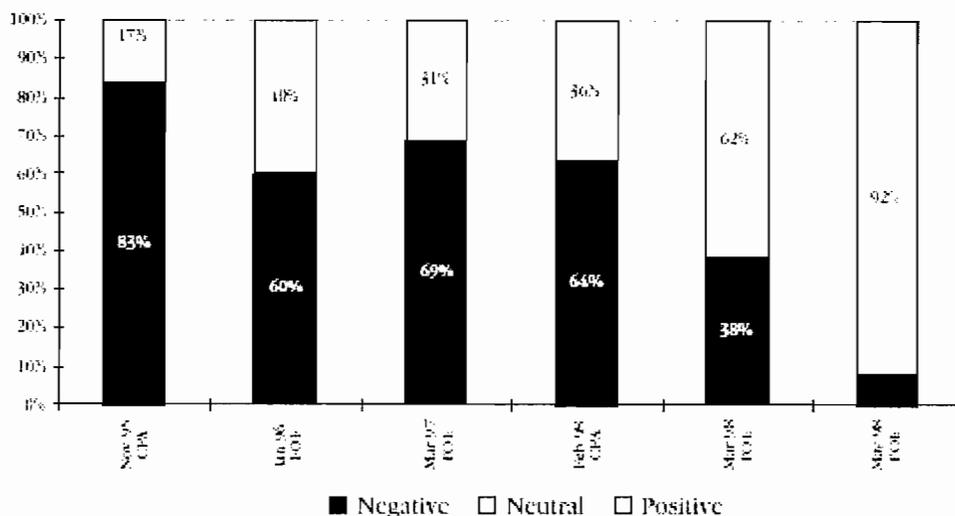


Figure 5: Citizens for Public Accountability and Friends of Eugene, Phrases' Content in Percents for Available Months, Nov. 1995-May 1998



As Gwartney explains,

Comparing 1997 and 1998, all organizations' newsletters showed substantial increases in the number of positive passages and substantial decreases in the number of negative passages per month. For example, the Chamber of Commerce averaged 7.0 positive passages per month and 5.7 negative passages per month in 1997, but 19.1 positive passages and 2.0 negative passages per month in 1998. The City Club in 1997 averaged 1.1 positive passages per month and 0.7 negative passages per month, but in 1998 it averaged 9.0 positive passages and 0.4 negative passages per month. Environmentalists' newsletters show similar changes. The three publications before 1998 averaged 3.7 positive and 9.0 negative passages, while those in 1998 averaged 9.0 positive and 6.7 negative passages. The notable decline in negative passages in the membership newsletters of the business and environmental groups over about two years occurred at the same time that NCM was in progress. While there is some possibility that the change could have been attributable to events and conditions unrelated to NCM, we have no data that would allow us to disentangle causality to explain this observed change in civility (Gwartney 2002, 67).

Did these improvements occur because the core participants encouraged their constituent stakeholder groups to interact in more positive, collaborative ways with stakeholders they were previously alienated from? Gwartney (2002) believes this is readily supported in the coding analysis. Gwartney's analysis shows a drastic shift in respectful tone over the time period that NCMII was occurring.

The quotes from participants' constituent organization newsletters suggest an affirmative answer. They show that two NCM core participants actively promoted new attitudes and behaviors among their constituents. Evidence from other studies in NCM's evaluation shows that many other core participants also exhibited such behaviors (Gwartney 2002, 71).

The change in respect did occur during the time period of the NCMII. However, both the original study conducted for Landt's Conflict Resolution Center by The University of Oregon Survey Research Laboratory in September of 2000 and Gwartney's (2002) analysis conclude that "It is not possible to say for certain if NCM was the *cause* of the

improved regard measured in the newsletters...but the change is indisputable and dramatic” (Gwartney 2002, 69).

Respectful perceptions and statements after and outside the NCMII meetings were clearly occurring with increasing frequency. However, one core participant was not satisfied with the perceived level of respect occurring outside of the NCMII forums. In an interview in 2007, Cawood complained of another perceived set of outside interests at the table. Cawood also expressed concerns that core participants were discussing the issues outside the forum. For example, “You could tell from discussions that people who tended to be more progressive, were seeing each other all the time and were at least having related conversations” (Cawood, Liz. Personal Interview. 12 October 2007). No other interview subject made this claim nor did they express any reservations with the request to avoid discussions outside of and relating to the substantive discussions taking place within the NCM forums.

The aforementioned evidence suggests that the NCMII process helped restrain disrespectful outside public commentary (at a minimum). Despite this, stakeholders and members of the larger public—such as those represented by this particular interview subject—may have felt the NCM process did not always meet their perceived thresholds of respect.

Is there evidence of any larger community impact that fits evidence along respect measures (pre and post NCMII)? Interview subjects believe that NCM made a difference due to perceived adequacy concerning respect outside of NCMII. For eighteen months after the formal NCM process ended, half the participants continued to meet monthly

(Landt, Gayle. Personal Interview. 27 June 2007). Some individuals reported the formation of and/or the continued and current existence of new friendships and a willingness to attend events they had previously viewed as the domain of the “other group” (like the country fair) with members of the “other” group. Other informal measures included calling or contacting members of the “other” group when issues came up that in city council meetings that did not seem to fully reflect the position of the “other” interests (Fitch, Tammy. Personal Interview. 26 October 2007).

Additionally, in *Evaluating the Success of the NCM* (November 1999) page seven lists nine joint acts of cooperation undertaken by NCM core participants.<sup>168</sup> While disappointed with some of the outcomes in NCMII, Susan Ban states, “the model of bringing diverse opinions a common table has been used again and again since that time [in the larger community]” (Ban, Susan. Personal Interview. 12 October 2007). A former elected city councilor and NCMII participant states believes that there were other informal but direct community impacts of NCMII as well.

It gave us a good idea, for example, when I got on city council, how to really scope out what we were really asking of special groups. Whether it was a blue ribbon panel or whether it was a short term committee we wanted something from. Of how to better sculpt their task and how to make sure we filled the committee with a whole range of ideas, not just similar to us (Interview 10).

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<sup>168</sup> These acts are presented by Landt in *Evaluating the Success of NCMII* (September 2000) as evidence of increased levels of community respect that emerged after the NCMII meetings. These acts are: 1) Request for extension of the Land Use Code Update Public Input Deadline; 2) Response to the Mayor’s request for joint input to the Land Use Code Update; 3) Jointly sponsored public Information hearings; 4) Reactivation of city’s Service Development Charges Committee; 5) Joint cooperation on selection of new Planning and Development Director; 6) Introduction of new Organization Officers to one another; 7) Joint meetings on nodal development to give input to city; 8) Joint information meetings with elected officials; 9) Continued monthly meetings of NCM Core Participants. This list of joint acts of cooperation outside NCMII and a brief discussion of these acts can be found in “*Evaluating the Success of the NCM*” (November 1999, 7-8).

This same respondent states that the larger community also learned from the failures of NCMII and not just its successes.

But also one of the things we learned from the group was how to make sure we spelled out clearly enough the question we were asking of them so that they would have an idea that, so when we reach a decision, or get enough information on this we can come to a conclusion and bring back our recommendation. [We also learned to] put a sunset on things. Give it a timeline (Interview 10).

Gwartney also claims “NCM core participants and their previously alienated constituencies increasingly collaborated to benefit the entire community” (Gwartney 2002, 70). Another core participant echoes this sentiment. Elected as the Commerce President during the NCMII meeting, this participant states that “it was the year we joined forces with members of the Friends of Eugene, the Neighborhood Leaders Council and yes, even the Citizens for Public Accountability, where we worked together on the land use code update. Who would have thought that possible a year ago?” (City Club of Eugene, 12/98, 3).

After NCMII, one interview subject believes it may not have “solved” the problem of defining a community consensus on sustainability and growth or even in tangibly moving toward implementation. Nevertheless, they believe the meetings had a larger community impact in facilitating respectful dialogue. This was observed first-hand in local governance issues.

I saw it occurring not only on city council in Springfield but I saw it occurring somewhat in Eugene on the city council. Saw it in different venues where people were on different boards and going through different activities that were pretty tough over the next couple of years and thought wow, maybe that little bit of influence from Gayle and the activities may have changed an outcome on how a non-profit board handles something just because they were able to engage each other rather than just step away (Interview 10).

This participant felt that city government and individuals and organizations in the community learned to how to draw from the success of NCMII such as how to design and conduct a deliberative meeting process to facilitate respectful dialogue.

One interview subject felt that NCMII presented a mechanism of discourse to transcend the larger politics as usual that surround issues of sustainable development in Lane County. The following quote supports the perceived informal, powerful impact of NCM on the larger community in conducting community policy-making, especially around controversial and complex issues.

It (NCMII) was successful in showing that there are other ways to accomplish things, that given some parameters you can get opposing views in a room. And not necessarily winning either side or having, but try to have a win-win. Try to find some things that you can agree to agree upon. And not lose your core values and for the betterment of the community (Interview 10).

This interview and others clearly suggest a larger community. This impact appears to have shifted public commentary and action to more respectful behavior. This indicates that NCMII mattered and was successful along deliberative criteria of perceived adequacy.

However, outside of the NCM I and II, previous research suggests a shift in outside respect that corresponds to NCMII forums. Stakeholders also report perceived inadequate minimum conditions of deliberative respect within NCM I and II. Participants did not feel all positions were adequately included, genuinely listened to or taken seriously by Landt outside the NCM meeting process. This is illustrated in Table 17 below.

Table 17: Perceived Respect outside the NCM

<b>Min. Ideal Del. Conditions</b>	Inclusion	Heard	Taken Seriously
DV: Perceived Adequacy	No: participants and outside stakeholders report feeling excluded from forums	No: participants and outside stakeholders report not feeling heard due to meeting exclusion	No: a few participants report poor or biased representation, implying some stakeholders were not taken seriously

#### **IV. Discussion: Representative Deliberation, Institutions, Respect, Issues Area, and Openness**

The NCM model was not explicitly designed as a deliberative institution it was referred to in extensively deliberative terms. Both NCMI and II failed to meet a number of ideal and perceived deliberative standards. However, after a review of the evidence, it appears that NCMI and II met ideal and perceived deliberative standards *during the meeting process within both NCMI and II*. This finding, by itself partially disconfirms numerous ideal deliberative hypotheses. That is, respect, issue area, and openness findings in NCMI and II illustrates numerous instances where non-ideal deliberative scholarship refutes ideal deliberative assertions. Specifically, the NCM case comparison supports previous case study findings (OHCR and OWEB) that suggest the adequacy of representative deliberation and the importance of adequate centralization standards. Also, less respect does not appear to necessarily indicate reduced deliberation. Next, deliberation appears to be more likely in issue areas that concern values while less likely in issue areas that concern implementation. Finally, a closed process does not preclude deliberation. That is, less openness does not necessarily result in less deliberation. I will examine these findings in the following discussion.

## 1. The Role of Representative Deliberation

Simply because a representative demographic sample exists in a given deliberative forum does not mean these positions are any more likely to deliberate. In fact respondents in this case support the satisfaction with representative deliberation in policy-making, regardless of their ideal preference for a more robust participatory process. NCM participants insisted that forums that consist of participants that are more open-minded, have a larger community audience and influence, and can fully articulate their respective constituent group (whether through direct or indirect representation) are more likely to be successful in terms of measures like participant satisfaction along respect than those that have participants with fewer of these traits.

The evidence in NCMI/II supports this position. Gayle intentionally recruited high profile, influential, and concerned yet capable subjects - not just taking *any* willing or eager recruit simply because they represented a diverse category of interest or demographic trait (e.g. poor and non-white). Landt affirms the belief that core meeting participants were voluntarily recruited according to their capacity to deliberate, articulate a particular position, and to impact the larger community. “[Participants were chosen according to] their ability to articulate their constituent group/s, to ensure that all major perspectives were included in the meetings, and their perceived ability to act as viable leaders whose resulting decisions their constituent groups would follow” (Landt, Gayle. Personal Interview. 27 June 2007). Other core participants in NCM support this position. “I think really that the criteria based on, was not on race, was not on male or female, it was your position on economic growth and sustainability” (Interview 10).

While ideal deliberativists often disagree, Landt and core participants in NCMI and II recognize what some policymakers take for granted: the need to have practical, institutional mechanisms to adequately (while not ideally) cope with problems of representation and participation. In the absence of evidence that ideal deliberative standards actually exist in practice or can be achieved in complex and controversial issues with entrenched and influential stakeholders, the findings in NCMI and II suggest the deliberative literature could more fully appreciate the need for practical standards and evaluative deliberative mechanisms.

## **2. Non-ideal Deliberative Institutions Matter**

The NCM process suggests that non-ideal institutionalized deliberative standards can work to break policy stalemate by generating some levels of agreement through adequate parity and respect among stakeholders, even in the most controversial issues such as gay rights. Examples in this case directly violate ideal deliberative standards and include: a) limited group size; b) new representative standards such as discourse representation (Dryzek 2008); c) a very selection intensive deliberative process (that seeks traits such as openness and community influence) and; d) an institutional process that initially institutionalizes a private deliberative space.

While not ideally deliberative, these institutional standards appear capable of generating perceived adequacy in terms of parity and respect. These standards can be readily institutionalized, implemented, and evaluated. Non-ideal deliberative institutional standards are replicable and generalizable. Conversely, ideal deliberative measures that hold deliberation to standards of extensive type and numbers of inclusion without

indicating when policymakers have crossed a minimum deliberative threshold, or have gone “far enough” do not appear in and are therefore impossible to evaluate in existing empirical research. As a result, ideal deliberative participatory standards alone appear impractical and often unhelpful to formulating applied deliberative policy procedure.

### **3. Less Respect ≠ Less Deliberation**

Deliberative theorists like Jane Mansbridge or Fung and Wright (2003) often insist that less respectful attitudes and treatment toward other relevant stakeholders in a given issue area will result in less genuinely deliberative behavior. That is, if we demonize or write off another group of people representing a position we are uncomfortable with, other divergent stakeholders are unlikely to see our perspective and may even seek to avoid us entirely – like Nadia Telsey and the gas station attendants – or refuse to work with them at all. Initially in NCM I, many participants were not willing to sit down with those “other people” and thought that Landt was “crazy,” or “out of her mind” to expect these people to listen to each other and to engage in anything resembling deliberative behavior.

But that is exactly what happened in the NCM I case. At the end, core NCM I participants universally spoke highly of Gayle, reported high levels of respect for the “other position,” and agreed to a third option that none of the stakeholders had originally endorsed entering the community forums.<sup>169</sup>

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<sup>169</sup> In the Statement of Agreements, participants expressed that we all live together and are willing to tolerate our respective decisions concerning sexuality, whether we agree with it or not (Statement of Agreements, 1994). NCM I interview subjects recall the transformative effect along respect measures that occurred in NCM I and attribute this to the level of emotion and the manner in which the issue was handled. “Gayle mentioned this didn’t happen in NCM II. I mean we got down to the guts of it and I think part of it

Additionally, both NCM exhibited changes in respect, though the changes were clearly more dramatic in NCMI. When speaking about this transformative behavior, NCMI participants no longer used terms like them or other. Instead participant stakeholders spoke about us, and used terms like we and our community. In addition, there were lasting relationships formed between previously oppositional groups. For eighteen months after the formal NCMII process ended, half the participants continued to meet monthly (Gwartney 2002; Patricia, 2007). Landt and other NCMI core participants have publicly stated that the NCMI participants were more committed 2 years later (Landt, 1996). Some NCMI core participants feel the experience was one of their most profound experiences and forever changed their lives.

These statements represent a profound alteration of the previous status quo in NCMI. Furthermore, these findings challenge the ideal deliberative hypothesis that lower levels of respect decrease the likelihood that relevant stakeholders will engage in genuine deliberation. In fact, Gayle Landt believes, and the NCMI and II cases support that lower levels of respect can actually make deliberation a more attractive option when compared to normal politics than draw on a competitive model of political conflict resolution. This community divisiveness in NCMI may have actually *helped* contribute the energy necessary to sustain a protracted and conflictual process. More clearly polarized camps with fewer positions makes an issue less complex. It also makes people passionate. According to Landt, this passion provides exactly the energy needed to sustain the slow paced and often onerous task of deliberative conflict resolution (Landt, Gayle. Personal

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was because it was such a personal issue and so it became very emotional, and just very real” (Telsey, Nadia. Personal Interview. 9 July 2007).

Interview. 27 June 2007). The NCMI findings suggest a needed reconciliation between ideal deliberative theory and the findings in NCMI.<sup>170</sup>

#### **4. Issue Area Matters: Values or Implementation?**

In NCMI and II all major identified independent variables in both cases were held roughly constant. Despite this, the examined evidence suggests different levels of satisfaction with and impact on the involved core participants and the wider local community. How can this be explained?

Issue area was the only major variable that varied. That is, NCMI concerned the issue of gay rights while NCMII broadly concerned the notion of sustainable development. In NCMI the issue of gay rights was clearly defined. The gay rights issue generally situates stakeholders into two major positions. While there were clearly variant positions within these camps they were respectively generally defined as for or against a full constitutional expression of gay rights.

Conversely, in NCMII, *all parties agreed that sustainable development was desirable and recognized the potential long-term economic and consensus building potential of divergent community interests around a shared conception of sustainable development.* Therefore NCMII seemingly began with some consensus. To some core participants, the initial appearance of agreement itself suggested greater issue tractability.

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<sup>170</sup> The statements from core participants in NCMI represent a profound alteration from the previous status quo. Furthermore, these findings challenge the deliberative hypothesis that lower levels of respect decrease the likelihood that stakeholders will engage in genuine deliberation. More recent and applied, policy-based deliberativists have begun to assert that deep disagreement may not be correctly associated with less deliberation. For example, deliberative scholars like (Gutman & Thompson, 1996) support this idea and Beierle and Cayford argue that “while good preexisting relationships are conducive to public participation success...a history of conflict is not itself a barrier to the prospects of [deliberative] success” (*Democracy in Practice* 2002, page 39).

In fact, in NCMII positions over sustainability and growth were less clearly defined. While stakeholders often attempted to or conceptually reduced the positions within the sustainability debate when they described other outsiders as either corporate pro-growth or anti-development factions, respectively the issue was not that simple. There was intense disagreement over not only the proper implementation of “sustainable development” practices but disagreement also persisted even in defining the term itself. What exactly did sustainable development mean? What were its boundaries? If a definition could be approximated, what were its specific priorities and how are they to be arranged?

Constructing a shared notion of what sustainable development would mean in practice—as opposed to a more clearly defined position of opposed to or for a full expression of gay rights—involved real yet undefined stakeholder costs (jobs, resource allocation) and arguably would be significantly enhanced through policy expertise. Further complicating the issues, relevant stakeholders might oppose development type X (industrial park) in their backyard but advocate for it if they were not directly affected. Conversely, participants in the gay rights issue exhibited more stable preferences that did not shift in this way. Gays and lesbians already lived in the community. They already lived next door or attended local schools and churches. The “problem” was there and it was not going away. However, in NMCII, due to the lack of a defined issue over defining a future course of action, the number of stakeholders and stakeholder positions themselves remained unclear.

Rather than simply agreeing to cease and desist—in NCMI this meant no longer seeking to impose legal limitations or “costs” onto another stakeholder (taking away or refusing to grant legal rights to)—NCMII potentially entailed substantial resource investment as well as livelihood issues. *This process of implementation is substantially different than a deliberative process (as in NCMI) that seeks consensus over values.* This is reflected in the disappointment many core participants felt relative to generating any consensus among divergent stakeholders as far as agreement over actual implementation in the NCMII process. As one NCM core participant recalls in an interview,

I went home and opened and read the file and I read the document and I thought this really is not what I thought it was. This is not as nice a product, even though I had my reservations and I thought there were some rough areas I had given it more credit in my memory than it really deserved and I went back and read it fresh for the first time in like 6 or 7 years and I thought you know this is not a very good product (Interview 9).

These findings suggest the difference in deliberative success, to the extent that it existed in NCMI and II, may be attributed to the tractability of the NCMI issue itself. If an issue concerns implementation rather than values a deliberative process is less likely to succeed in important ways. By important ways I mean generate higher levels of respect and perceived adequacy for defining and implementing policy, as evidenced by the NCMI/II comparison.

The participants in NCMII did exhibit higher levels of respect over time (T1-T3). NCMII participants perceived relative parity was achieved in these meetings. Ultimately however, the NCMII process did not generate concrete, measurable agreements in defining the problem and its solutions. NCMII did not generate specific agreement among the core participants on problem definition and solution. Many interview subjects

believe there were many significant informal and incremental aspects to the influence of the NCMII process. Ultimately, according to the same interview subjects, NCMII did not clearly impact the community in terms of direct or formal impact. Often pointing to the Statement of Agreements that was ultimately produced, this document was the most direct embodiment of an NCMII process that failed to forge a sense of agreement on how to define, set goals for, and implement ideas on sustainable growth and development in Eugene and Lane County. This same frustration was not expressed among NCMI interview subjects. Instead, NCMI was spoken of in adequate if not transformative terms.

Even if participants are carefully selected, even if ideal levels of relative parity and respect are achieved, in a contentious and complex issue with poorly defined issue area parameters and priorities, specific policy and or transformative agreement utilizing a purely deliberative model of decision-making may be less inappropriate or viable.<sup>171</sup> The NCM findings suggest a more robust examination of the role of issue area in institutionalizing a deliberative process. By more clearly understanding the issue area conditions under which deliberation might be ripe for implementation, deliberativists might begin to form a more cogent response to critics that dismiss deliberative governance as utopian, overly abstract, and impractical.

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<sup>171</sup> While not commonly articulated among deliberative scholars, institutional or policy based deliberativists like Fung and Wright (2003) or Beierle and Cayford (2002) tentatively suggest that deliberative democracy may be more appropriate in different issue areas. Some non-ideal deliberativists have begun to acknowledge this. For example, “We thus begin, tentatively and abstractly, to sketch Empowered Participatory Governance by laying out three general principles that are fundamental to all these experiments: First, a focus on specific, tangible problems...” (Fung and Wright 2003, 15) Or, “Certain kinds of environmental issues *may* [emphasis added] be less conducive to public participation than others” (Beierle and Cayford in *Democracy in Practice*, page 36).

## 5. Openness: Inclusion, Publicity, and Transparency

The NCM findings also contradict deliberative hypotheses concerning standards of openness. Deliberative theory hypothesizes that less openness allows and therefore is associated with reduced civility and therefore deliberation (Gutman and Thompson, 1996; 2004). In *Democracy and Disagreement*, Gutman and Thompson (2004, chapter 3) devote an entire chapter to the cause of publicity and the many reasons it should be valued over “secrecy.”

For example, “even in the face of some secrets that would promote better deliberation, [in the short term] the publicity principle should prevail” (Gutman and Thompson 1996, 126). Gutman and Thompson believe that uncompromising standards of publicity will lead to more deliberation over time. Publicity provides a mechanism for citizens to “decide together what kind of politics they want... The hope is that as they offer [publicly] reasons for what they want, we will find a common moral ground... In this way publicity provides the necessary means for transcending its own limits” (Gutman and Thompson 1996, 127). Gutman and Thompson concede there are exceptions to the rule that publicity will *always* lead to greater deliberation but overall they believe publicity will produce more deliberation. This justifies their ideal position for unfettered publicity.<sup>172</sup>

Deliberative scholars never attempt to question the need for public deliberation as fully as possible. However, other less idealized conceptions of deliberative theory have

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<sup>172</sup> Other deliberative theorists like John Elster (1986) and Jürgen Habermas (1975), also suggest that unconstrained (or public) discourse will produce a common interest. Among others, Iris Young (2000), and Shawn Rosenberg (2007) believe that secrecy over publicity would often lead to reduced deliberative claims along multiple indicators such as power, centralization, and especially inclusion.

more relaxed assumptions about the need for openness and inclusion under any and all circumstances. The evidence in NCMI and II supports this position. In practice however, every interview respondent in the NCM cases confirmed—at a minimum—perceived adequacy regarding institutionalized conditions of relative parity and respect.

Some deliberativists are willing to concede the need for privacy if the issue is particularly contentious or threatening to major stakeholders. This is important in order to better facilitate “genuine buy in.” To facilitate deliberative behavior, there must be institutional space where these stakeholders can state their *real* concerns and have them acknowledged, no matter how unpopular to some, in order to proceed to deliberative engagement. This may necessitate a safe, private space where these opinions will not be demonized and alienate these stakeholders, as in NCMI (Landt, Gayle. Personal Interview. 27 June 2007).<sup>173</sup>

A private safe space for the major stakeholders also implies a particular order for building deliberative institutions to better facilitate deliberative strategies by relevant stakeholders. That is, these private spaces are needed early in the process or at least before public deliberation. This means that in particularly contentious issues, these initial deliberative forums must still be as deliberative (open) or unconstrained as possible. They should also be limited in size but work hard to identify and include all relevant

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<sup>173</sup> Deliberativists like Jane Mansbridge are willing to partially relax or qualify openness and inclusion standards. The evidence of success in NCMI and II, at least along core participant satisfaction along deliberative parity and respect criteria, supports this position. Mansbridge acknowledges the need to consider the nature of the issue and the phase in the deliberative process when making decisions about openness. For example, Jane Mansbridge states that “Transparency is not always good. When complex bargains must be struck, closed doors let negotiators speak freely, try out potential solutions that on reflection they may not want to stick with, and forge relationships out of the spotlight of publicity” (Mansbridge in *Deepening Democracy* 2003, 194).

stakeholder representatives. Finally, within these practical considerations, deliberations must always work toward moving the forum to public deliberation as soon as possible (Mansbridge in Fung and Wright, 2003).

Deliberativists generally have yet to adequately cope with deliberative institutions in sequential terms along parity and respect criteria. Doing so implies a need to consider ideal standards such as Gutman and Thompson's full publicity (1996). At a minimum, the findings in NCMI and II suggest a needed reconciliation between the ideal deliberative demands of full publicity and the practical reality of broad deliberative stakeholder satisfaction and larger community impact associated with NCMI and II. To reconcile these divergent perspectives, deliberativists might continue to explore mechanisms that satisfy yet seek to continually improve robust standards of publicity within practical institutional constraints.<sup>174</sup>

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<sup>174</sup> More pragmatic deliberative research suggests a movement in this direction. Mansbridge's normative proposition acknowledges a practical space for deliberation that can be temporarily "good enough" yet it also carries normative expectations as well. That is, policymakers are expected to take all reasonable steps - using existing standards arrived at with public and stakeholder involvement - to refine and improve their methods. This justifies a higher threshold and rejects fixed deliberative standards as sufficient. Institutional deliberative forums must continue to find ways to increase all measurable participation. The deliberative process must be open as early and fully as possible. Notions of deliberative adequacy then become moving targets, subject to subjective and higher standards as deliberative innovation continues and diffusion occurs. Further research in this direction would serve to challenge deliberative critiques that question the practicality and appropriateness of deliberative governance.

## CHAPTER V

### CASE COMPARISON CHAPTER: HSC, OWEB, AND NCMI/II

#### **I. Introduction**

The purpose of this chapter is to broadly summarize and then assess the HSC, OWEB, and NCMI/II along comparative measures of inside and outside ideal (theoretical deliberative standards) and perceived parity and mutual respect (actual participant perceptions). A summary descriptive account of the empirical findings in HSC, OWEB, and NCMI and II illustrates a few comparative findings which I will discuss in the following order:

- 1) Ideal deliberative parity is not associated with perceived parity.
- 2) Parity and respect are more closely associated outside of deliberative forums than within.
- 3) Variance in outside relative parity does not influence the perceived adequacy of inside relative parity.
- 4) Varying levels of relative parity do not result in variation of internal perceived respect.
- 5) Increased deliberative satisfaction within participatory forums does not result in increased perceived ideal outside parity.

At the end of each finding discussion I will relate these comparative findings back to the deliberative literature and discuss their significance for the policy-making process in a

concluding section entitled deliberative significance. The following is a brief summary of the deliberative significance section discussion that will follow in order:

First, what ideal deliberativists consider necessary to ensure deliberation within participatory forums may not be that important (on deliberative terms) to actual deliberative participant stakeholders. This finding suggests, for example, a new participatory standard (Dryzek 2008) or at minimum a disjuncture and needed reconciliation between theoretical (ideal) parity standards and perceived parity (participant criteria and thresholds) overall (non-ideal).

Next, a participatory forum designed to manage issues like parity and respect appears to be more successful on these terms than an environment that does not attempt to manage these issues. This finding illustrates the design and implementation of deliberative institutions needs to focus more deliberative attention to the outside process before and during participatory forums and how it may contribute to viewing participatory forums themselves in less legitimate terms.

Third, participant stakeholders can be satisfied with a deliberative forum and the process within it despite the various outside deliberative transgressions that may occur outside of the participatory forum. Participant stakeholders can independently assess and be satisfied with the deliberative forum itself even according to non-ideal or alternate deliberative criteria and thresholds such as an initially closed process as leading to increased levels of respect.

Fourth, respect and power do not seem clearly associated or dependent on one another, as suggested in the deliberative literature. Even when parity varies inside and

outside of HSC, OWEB, and NCM these cases do not result in a variation of inside perceived respect. This suggests that high levels of respect can be build without high levels of parity.

Last, deliberative forums appear to be affected by the process that occurs outside of (prior to and during) the participatory forums themselves. No matter how deliberative the forums, outside imbalances in power appear to affect participant perceptions about the quality and extent of participation in deliberative forums themselves. This finding suggests that *both* deliberative theorists and policymakers need to more carefully account for or shift their analytic gaze toward outside conditions of parity and respect utilizing the same criteria and when possible measures or thresholds in order to implement more robust deliberative forums. Figure 6 below summarizes the overall findings in HSC, OWEB, and NCMI/II by these theoretical deliberative variables and their overall associated values.<sup>175</sup> Figure 7 offers a comparison of each case by variable.

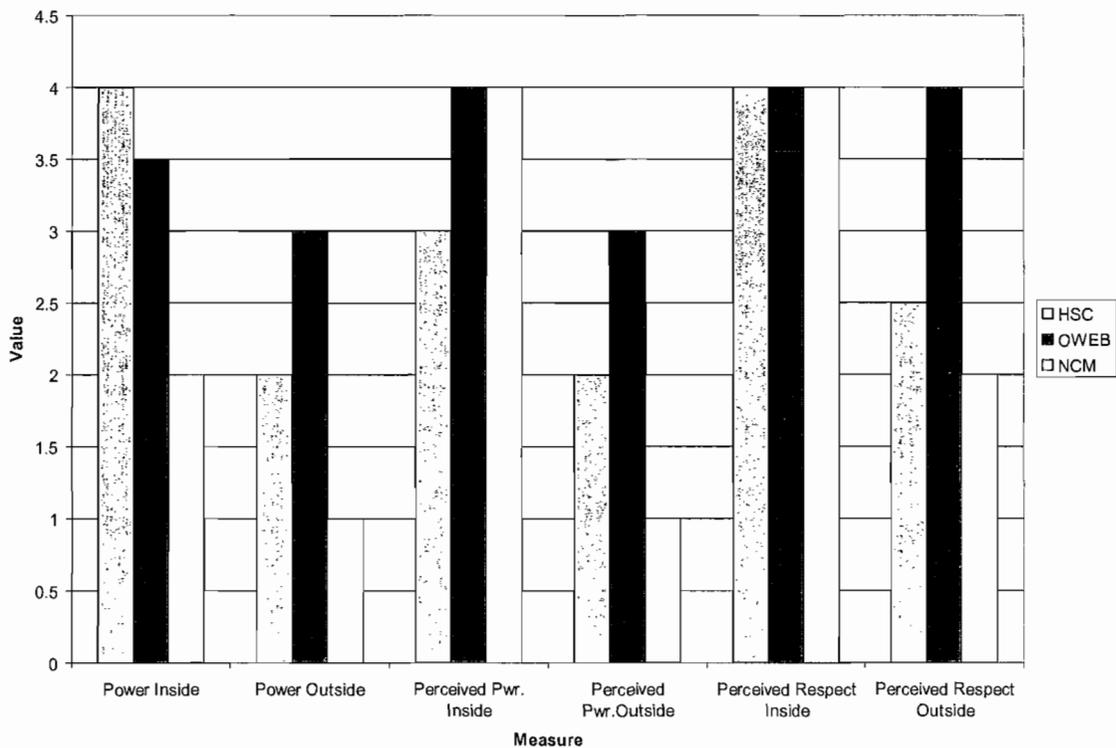
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<sup>175</sup> The overall measures and values associated with each variable are rough approximations drawn from evidence in each case to form conclusions. The measures themselves consist of a range of approximate ordinal values which were generated subjectively and to help order and categorize the existing case data in aggregate terms. These values consist of: very low, low, medium, high, and very high. The process of ordinal data classification was originally developed by psychologist Stanley Stevens Smith (1946). His article is entitled "On the theory of scales of measurement." This article was first published in *Science* 103: 677–680.

Figure 6: Inside and Outside Case Comparison by Parity and Respect

Case	IV: Parity Inside	IV: Parity Outside	DV: Perceived Parity Inside	DV: Perceived Parity Outside	DV: Perceived Respect Inside	DV: Perceived Respect Outside
HSC	High	Low	Medium	Low	High	Medium Low
OWEB	Medium High	Medium	High	Medium	High	High
NCM	Low	Very Low	High	Very Low	High	Low

Figure 7: Case Comparison (HSC, OWEB, NCM) by Variable



## II. Comparative Chapter Findings

Figure 6 and 7 illustrate several comparative findings which will be discussed in the following section. These aggregate figures roughly capture the overall values for each

independent and dependent variable by case. The following section discusses each of these comparative findings separately and in more detail within and across each case. Among the comparative findings in Figure 6 and Figure 7, the following observations emerge:

**1. Finding 1- Ideal deliberative parity is not associated with perceived parity.**

The values for ideal deliberative standards of relative parity within HSC, OWEB, and NCM do not match values for perceived adequacy of relative parity within the cases examined. That is, participants within each participatory forum reported either higher or lower perceived parity relative to ideal deliberative parity scores in each participatory forum. Restated, no matter how hard forum organizers tried to create parity in each case, those efforts had no effect on perceptions of equality and representation by the participants themselves

Each case failed to meet ideal deliberative participatory requirements. Neither extensive and (at a minimum) proportional stakeholder participation or actual institutional goals of extensive participation among the most marginalized populations (as in OHCR) were achieved in the cases examined. For example, both NCM cases failed to meet ideal participatory deliberative standards. Group membership was carefully controlled and screened. Despite this, high levels of relative parity and respect were reported among core participants. This result was found within each deliberative forum examined.

However, the HSC set extremely high participatory thresholds and worked extremely hard to achieve them. The HSC was open to and incorporated public

participation. 4 of 11 HS Commissioners were lay public representatives. This arguably granted the public a substantive stake in HSC decision-making. Despite these high scoring indicators of ideal deliberative parity within the HSC, the participatory health care forums were perceived in the lowest adequate parity terms of the cases examined. Within the HSC, high levels of ideal parity were actually perceived in adequate or medium terms.

Within NCM and OWEB, significantly lower ideal deliberative parity efforts and scores were perceived in highly adequate terms along parity criteria. OWEB did not and does not necessarily set participatory thresholds comparably high (to HSC). While OWEB meetings are open and decisions are comparably transparent, OWEB does not necessarily actively solicit the participation of all relevant stakeholders in its decisions. Not only was the public not actively encouraged to participate in NCMI/II, the entire substantive NCMI/II forums and their decision-making processes were closed entirely to the public. Participants were carefully screened and severely limited. Despite failing to set or adhere to ideal deliberative conditions of institutional parity, the practices within *OWEB and NCMI/II were perceived in highly adequate terms while the HSC was not.*

*Finding 1: Deliberative Significance*

Why do stakeholders perceive OWEB and NCMI and II in highly adequate terms when the HSC tried much harder to meet ideal deliberative standards such as more openness and actively seeking extensive participation? The criteria for and amount of deliberative parity that stakeholder participants perceive may be very different that what deliberativist would argue is actually necessary. After all, NCM was almost entirely

closed and extensive participation was severely limited in standards (NCM) or in results in all cases examined (OHCR, OWEB, NCM) yet participants perceived participation in adequate terms and parity in exemplar deliberative terms, especially in NCMI/II where the least amount of openness was displayed.

What ideal deliberativists consider necessary to ensure deliberation within participatory forums may not be that important (on deliberative terms) to actual deliberative participant stakeholders. For example, participant accounts across case suggest that if participation is “good enough” - access to decision forums, reasonable information and decision-making transparency, and some measure of formal influence by the major stakeholder interests is articulated and incorporated - then the actual process of balancing competing interests and discourses within the participatory forums is much more important to participants than whether participants are actively solicited and show up in large numbers and aggressively participate.<sup>176</sup>

This supports empirical chapter findings that dispute Cohen’s (1989) notion of extensive participation for a non-ideal participatory standard that Dryzek recently refers to (2008) as discursive representation. That is, having different directly representative types at numbers proportionate to the population (at a minimum) or extensive or disproportionate numbers of participants (relative to their position of disadvantage) may be *not* be a necessary minimum condition for deliberation. Extensive deliberative participation may not only be largely unachievable in practice but also possibly

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<sup>176</sup> Again, NCMI/II offers an example for support. NCM was almost entirely closed and extensive participation was severely limited in standards (NCM) or in results in all cases examined (OHCR, OWEB, NCM) yet participant’s perceived participation in adequate terms and parity in exemplar deliberative terms, especially in NCMI/II where the least amount of openness was displayed.

unnecessary for deliberation. Across case, meeting participants repeatedly suggested that careful selection of meeting participants that could and would articulate the major relevant stakeholder interests, were able and willing to respect one another, and were able and willing to move from their polarized position was strongly linked to perceived relative parity and respect among relevant stakeholders.<sup>177</sup>

Perhaps careful participant selection to ensure minimum participatory representation is more important than extensive participation. Whether participant selection standards should stress attention to personality type (Landt, 2007)<sup>178</sup>, ability to represent a particular discourse (Dryzek, 2008), or the institutional process (Dorf and Sabel, 1998)—such as the OWEB Board selection or meeting process—discursive representation appears able to engender a process where other interests can and are genuinely considered among stakeholder participants within a participatory forum.<sup>179</sup> Each case examined supports the finding that deliberative success can be engendered

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<sup>177</sup> My interviews with Dave Powers, Gayle Landt, Paul Kirk, John K, and many others support the principle of *discursive representation*, which is just beginning to be acknowledged in the deliberative literature by theorists like John Dryzek (2008).

<sup>178</sup> To resolve this apparent contradiction between ideal minimum standards which require extensive participation and actual successful deliberative practice, the research in NCMI/II suggests (and Landt maintains as the NCM model is predicated on this assumption) that the type of individuals selected to participate may be just as or more important than the demographic they represent. For example, power concerns among relevant stakeholders over lack of diversity and disproportionate representation of certain demographic groups were assuaged in these cases if individuals actively demonstrated other characteristics. These characteristics generally consisted of the ability of individuals to articulate and represent their constituent groups and a willingness to move from their position and respect the “other” perspectives. These traits may be more powerful indicators of deliberation than the actual diversity and total numbers that participate, as suggested by these case studies.

<sup>179</sup> This finding is of course tentative and largely outside the scope of this project as far as testability. However, the idea that selection is more important than extensive participation of large numbers of individuals affected proportional the total population or issue area impact is certainly an interesting finding and important as a potential finding to more carefully explore to determine if this is true and what kind of selection would lead to more deliberation seeking and emergence.

without meeting onerous ideal deliberative participatory standards which are arguably unachievable anyway.

The implications of the discrepancy between stakeholder participant standards and ideal deliberative standards suggest a needed reconciliation of ideal and non-ideal deliberative theory along standards of parity. One viable example of this needed reconciliation includes a reassessment of participatory criteria. At a minimum, greater attention should be paid to the criteria and criteria measurements and thresholds of participants than a focus merely on idealized deliberative standards, such as those surrounding participation.

**2. Finding 2- Parity and respect are more closely associated outside of deliberative forums than within.**

Power is more closely linked to respect outside of deliberative forums. Specifically, less balance of power and lower levels of respect were exhibited outside of each participatory forum compared to within. Within participatory forums, respect remains constant and high while parity varies considerably over case. However, outside of these forums as power becomes more balanced perceived outside respect only increases slightly and is not necessarily adequate. Figure 1 illustrates that the values for ideal deliberative standards of relative parity are higher inside the HSC, OWEB, and NCM relative to deliberative standards of relative parity outside the cases examined. Ideal standards *and* perceived outside deliberative parity and respect measures are lower in each case when compared by variable within each case.

Outside of the HSC, medical health professionals and health care industry stakeholders were given special access to policymakers and politicians when considering

OHCR and the HSC while other stakeholders are excluded from these discussions. This exclusion and marginalization leads OHCR stakeholders to perceive conditions of outside (and even inside) respect in inadequate terms. Or, in NCMI/II, relevant stakeholders were almost entirely excluded from NCM design, conceptualization, and to a lesser extent implementation. This appears to also have generated issues of outside respect as community stakeholders complained of feeling excluded from participating and accessing both NCMI and II.

In sum, along ideal parity criteria within the HSC, OWEB, and NCM the values are high, medium-high, and low respectively. Along ideal parity criteria outside the participatory forums, the values for the HSC, OWEB, and NCM are low, medium, and very low. Perceived parity within and outside these participatory forums follow this pattern as well. That is, outside perceived parity is lower than perceived parity within HSC, OWEB, and NCM. Excepting OWEB (where perceived in and outside respect are equivalent), values along perceived mutual respect are also lower outside than inside participatory forums.

*Finding 2: Deliberative Significance*

These findings suggest that deliberative forums matter. These *forums appear capable of transforming participant capacity to view interaction in highly respectful terms even when parity is highly unequal*. Outside of these forums an increase in parity does not result in large increases or even necessarily adequate levels of perceived respect. This means a participatory forum designed to manage issues like parity and respect is more successful than an environment that does not attempt to manage these issues.

This is not surprising. When the playing field is made or attempts are simultaneously made to balance stakeholder parity and generate increased level of respect, stakeholders are generally more satisfied with these participatory forums that grant attention to these issues than those that do not. Interestingly, however, a lack of deliberative concern or careful attention to the outside process before and during participatory forums may contribute to viewing participatory forums themselves in less legitimate terms. Deliberativists generally have not fully appreciated the need to deal with outside parity and respect with the same tools and standards exacted upon participatory forums. This is evidenced by the lack of similar or careful attention to managing outside issues of parity and respect and will be discussed in more detail in Finding 5 below.

**3. Finding 3- Variance in outside relative parity does not influence the perceived adequacy of inside relative parity.**

Stakeholders can be satisfied with a deliberative forum and the process within it despite the various outside ideal deliberative transgressions that may occur prior to the formation of and even during the participatory forum itself (e.g. when ideal outside parity is low). This suggests that appropriate institutional structures and proper participatory facilitation within these institutions can satisfy criteria of perceived adequate parity within participatory forums despite the lack of ideal outside deliberative parity.<sup>180</sup> This is evidenced though an examination of the findings in each case examined.

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<sup>180</sup> Importantly, it should be noted that this does not mean that participants are satisfied with outside conditions (along parity and respect) or are unaware or unconcerned that outside factors may influence the participatory forums themselves. This concern will be directly addressed in Finding #2 and 5 below.

*Figures 3-5:* The HSC, OWEB, and NCM do not meet ideal specific and overall deliberative parity standards according to ideal deliberative parity measures examined outside each participatory forum. Despite this, participatory forums may be perceived in adequate terms despite the considerable variation in parity outside of HSC, OWEB, and NCM. The following discussion illustrates the considerable variance in parity across case through a summary account of the evidence examined in each case.

The inception, framing, and composition of the HSC were closed to the public and a full range of interested stakeholders. Former governor Kitzhaber (then a state legislator) convened a small group of key interest groups to conceptualize and frame the nature of Oregon health care reform. This process led to legislation which created the HSC and endowed the governor -Neil Goldschmidt at the time – with the authority to compose the HSC. Former governor Goldschmidt constituted the HSC largely according to the recommendations of Kitzhaber and Friends of SB 27 (Pinkerson, 1992).

This process - which preceded the HSC itself - violates a number of ideal deliberative criteria.<sup>181</sup> There was no formal meeting access in the process of creating the HSC. No formal input such as a vote was given to a full range of stakeholders. The initial meetings that discussed the nature of health care reform and the creation and composition of the HSC not only failed to actively recruit the public, they were closed entirely. They were also non-transparent. This led numerous relevant stakeholders to view the HSC and its decisions in skeptical terms.

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<sup>181</sup> See previous methodology section discussion for a review of the theoretical deliberative criteria used to measure parity. These theoretical measures are independent variables that predict deliberation.

In OWEB, Kitzhaber – who had then become governor - was careful to consult and work with key governmental agencies and other important stakeholders early in the process of conceptualizing the Oregon Plan, which later led to the formation of OWEB. However, the formation of OWEB itself consisted of a legislative process. Formal access to the legislative sessions that considered the formation of OWEB was granted. However, relevant stakeholders did not receive a vote. Public involvement was not actively solicited.<sup>182</sup> In the end, the legislation that created OWEB also vested authority for Board composition in the hands of the governor rather than a public process with any formal public transparency or input. Additionally, the legislation that created OWEB did not devolve significant authority over budgetary control. Additionally, the legislation that created OWEB was driven by a concern for voluntary support of local watershed activity. Accordingly, OWEB was not vested with the authority to mandate basic deliberative standards among local watersheds.

Finally, the NCM was not a product of any formal state level activity. The NCM model was conceptualized, implemented, constituted, and facilitated entirely by Gayle Landt without formal public transparency or input. Landt sought extensive community feedback in generating an initial list of potential core participants. However, participant selection was driven by Landt without any formal public transparency or input.

Overall, ideal deliberative conditions varied considerably in each case examined. Overall, outside ideal deliberative parity scored low in HSC, medium in OWEB, and very low in NCM. These findings indicate that stakeholders can be satisfied with a deliberative

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<sup>182</sup> This information was acquired from an interview with an OWEB staff member in June of 2009.

forum despite a lack of parity that may occur prior to the formation of and even during the participatory forum itself. This is illustrated in the following set of figures (8-10) below:

A. IV: Power OUTSIDE Deliberative Forums

Figure 8: OHCR: OUTSIDE HSC

<b>Power Measures</b>	<b>Level of Outside Parity</b>
Type of Devolution	No control over inception, framing, and composition
Formal meeting access	No
Stakeholders receive formal vote	No
Actively solicit feedback	Low: Stakeholders excluded at times
Transparency	Low: Meeting proceedings were closed

Figure 9: OWEB: OUTSIDE BOARD

<b>Power Measures</b>	<b>Level of Outside Parity</b>
Type of Devolution	No control over inception, framing, or composition
Formal meeting access	Yes
Stakeholders receive formal vote	No
Actively solicit feedback	Low: Public feedback not actively sought
Transparency	Medium: Formal proceedings were public

Figure 10: NCM: OUTSIDE NCMI and II

<b>Power Measures</b>	<b>Level of Outside Parity</b>
Type of Devolution	Control over all institutional decisions
Formal meeting access	No
Stakeholders receive formal vote	No
Actively solicit feedback	Low: Public involved only in initial pool
Transparency	Low: All parts of NCM driven by Landt

*Figures 11-13:* Despite this considerable variation in ideal deliberative parity measures, participant stakeholders reported—at a minimum—satisfaction along criteria

of relative parity within each participatory forum. HSC stakeholders reported medium (or adequate) levels of satisfaction along relative parity. OWEB stakeholders reported high levels of satisfaction along relative parity. In NCM—where ideal deliberative parity scores were very low—stakeholders also reported high levels of satisfaction along parity criteria.

The HSC, OWEB, and NCM are perceived in adequate terms according to parity measures within each participatory forum. This supports the finding that participatory forums may be perceived in adequate terms despite the considerable variation in parity outside of HSC, OWEB, and NCM. The following discussion illustrates this finding through a summary account of the evidence examined in each case.

The HSC—as a deliberative body—institutionalized and practiced a uniquely public process in Oregon health reform. The HSC is exceptional in its aggressive and creative attempts to involve the public and traditionally marginalized populations such as the medically poor. Despite the excellent work of the various Commissioners and their efforts to involve and incorporate public values into prioritization decisions, stakeholder participants also felt the HSC itself and community forums were overly represented by physicians and the health industry rather than lay members of the public or representatives of the poor. Additionally, participant stakeholders that represented the medically poor felt that the list rankings were ultimately driven in an opaque, closed process.

Conversely, stakeholder participants expressed satisfaction with OWEB representation in Board constitution and behavior. The perceived balance in stakeholder

representation coupled with the voluntary nature of OWEB generates high levels of satisfaction, enhancing the credibility of OWEB's process and decisions. While OWEB may not always actively reach out to solicit stakeholder feedback, local watershed representatives expressed satisfaction with OWEB's efforts due to the voluntary nature of the program, the respect and assistance granted when local watershed representatives do ask OWEB for assistance, and the tendency for OWEB to reach out to relevant stakeholders at appropriate moments (such as when attempting change or implement new policies).

The NCM do not initially appear to meet most ideal deliberative conditions of parity. Formal meeting access was not granted. The meetings themselves were not open to the public and meetings deliberations were not reported or discussed while the NCM was in progress. Landt did not actively solicit community feedback and tightly controlled participant selection. However, the high levels of satisfaction along parity within the NCM forums are exceptional and far exceed perceived parity in either the HSC or OWEB forums. Despite failure to meet these ideal deliberative parity criteria, NCM core participants expressed extremely high levels of satisfaction with the NCM's non-ideal deliberative mechanisms of establishing parity within NCM forums. This was particularly evident in NCMI. Without exception and at a minimum, core participants expressed high levels of satisfaction with and attributed the institutional process and Landt herself in adequately balancing power within the NCM forums.<sup>183</sup> In NCMI, overall participants

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<sup>183</sup> It should be noted that these statements assumed non-ideal evaluative criteria. At least one core participant is on record as stating that power imbalances did exist in NCMI but that power imbalances would *always* exist and that Landt took a number of adequate steps to ameliorate power imbalances

expressed very high levels of satisfaction with the representatives that were chosen by Landt and their behavior in meetings. In NCMII the representation was also expressed in adequate terms while multiple interview subjects also expressed high levels of satisfaction with participant selection and behavior.<sup>184</sup> This is illustrated in the following Figures (11-13) below.

#### B. DV: Parity and Perceived Adequacy INSIDE Participatory Forums

Figure 11: Parity and Perceived Adequacy INSIDE HSC

<b>Parity Measures</b>	<b>Perceived Adequacy</b>
Formal meeting access	Yes
Stakeholders receive formal vote	Medium: HSC inc. multiple interests
Actively solicit feedback	Very High: HSC tries “everything”
Transparency	Medium: rankings process “opaque”
Overall meeting process	Medium: Good efforts, dominated by elite

Figure 12: OWEB: Parity and Perceived Adequacy INSIDE BOARD

<b>Parity Measures</b>	<b>Perceived Adequacy</b>
Formal meeting access	Yes
Stakeholders receive formal vote	High: Board perceived as highly rep.
Actively solicit feedback	Medium: Locals report often not solicited
Transparency	Medium High: grant decisions opaque
Overall meeting process	High: representative, open, responsive

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including the selection process, rules of communication, and facilitating mediative steps when power imbalances did emerge.

<sup>184</sup> Again, the evaluative criteria for these statements were generally based in non-ideal terms. That is, a few core participants are on record as feeling that the core participant did not meet ideal demographic or socio-economic representative standards. One NCMII core participant goes on record, stating that the ideological representation seemed slightly skewed to the left. However, even in this statement the subject qualifies this critique, noting the potential difficulty enlisting adequate discourse representation. In this case, representation was adequate at worst. As a whole core participants generally considered representation more than adequate along standards such as discourse representation.

Figure 13: NCM: Parity and Perceived Adequacy INSIDE NCMI and II

<b>Parity Measures</b>	<b>Perceived Adequacy</b>
Formal meeting access	No
Stakeholders receive formal vote	Medium: All participants incorporated
Actively solicit feedback	Low: At times public felt left out
Transparency	Very Low: Public upset w/ closed process
Overall meeting process	Very High : Participants felt inc., parity

*Finding 3: Deliberative Significance*

At a minimum, each participatory forum exhibited significant shortcomings along ideal parity criteria. Despite this, participant stakeholders reported, also at a minimum, adequate perceived levels of parity within HSC, OWEB, and NCMI and II. As mentioned, this finding suggests that appropriate institutional structures and proper participatory facilitation within these institutions appears capable of satisfying criteria of perceived adequate parity within participatory forums despite the lack of ideal outside deliberative parity.

Ultimately, policymakers are usually limited to and therefore more concerned with and a deliberative forum that meets non-ideal or alternate deliberative criteria and thresholds. This finding suggests that institutional limitations may not be an insurmountable obstacle for designing and achieving deliberative institutional processes even when outside parity among stakeholders is substantially unequal. That is, institutions are capable of generating deliberative outcomes that are perceived by stakeholders as adequate along central deliberative measures like parity and respect.

For example, consider openness, a bedrock principle and measure for most deliberativists to begin to establish any minimum claims of deliberation.<sup>185</sup> Multiple ideal deliberative scholars hypothesize that the more public and open a participatory process, the more deliberative the forum is likely to be. These findings do not fully support this conclusion. If perceived adequacy along criteria of relative parity and respect among core participants within the NCMI/II are viewed as valid measures of deliberation, the evidence examined suggests that more openness does not necessarily increase the likelihood of deliberation within a participatory forum. Less outside openness does not necessarily result in less deliberation. The cases examined suggest this basic openness hypothesis should be refined and further tested.

Some non-ideal deliberative scholars concede the practical shortcomings of ideal deliberative theory and suggest further refinement of hypotheses which link increased transparency and openness to enhanced deliberation. For example, Jane Mansbridge states that a good criterion for deliberation would not mandate full accountability in the creative stages of the process but only in the later most public stages (Macedo 1999, 222), or in *Deepening Democracy* states that transparency is not always appropriate for deliberation when problems are particularly complex (Fung and Wright 2003, 194). However, the deliberative literature, to the extent that it acknowledges the need to qualify the ideal deliberative demands of complete openness and transparency still generally avoid framing these propositions as testable hypotheses.

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<sup>185</sup> This is perhaps most notably established by Iris Young in her 2000 work entitled *Inclusion and Democracy*.

The implications of this discrepancy between ideal standards of openness and perceived parity within participatory forums further suggest a needed reconciliation of ideal and non-ideal deliberative theory along standards of parity such as participatory measures and openness. At a minimum, greater attention should be paid to the criteria and criteria thresholds of participants than a focus merely on idealized deliberative standards, such as those surrounding openness.

**4. Finding 4- Varying levels of relative parity do not result in variation of internal perceived respect.**

These findings indicate that participatory forums can facilitate and build adequate perceived internal respect, even if ideal deliberative parity remains unbalanced within or outside of participatory forums.

*Figures 14-16:* Along ideal deliberative parity criteria within the HSC, the HSC enjoyed considerable devolved authority. The HSC was open to the public. The HSC very actively solicited public and stakeholder involvement. HSC proceeding and decisions were made publicly with formal and significant authority granted to relevant stakeholder interests. OWEB enjoyed authority over grant criteria and awards while being severely constrained along budgetary and centralization standards. However, OWEB is open to the public and transparent in its proceedings and decisions. At times OWEB attempts to solicit relevant stakeholders in its participatory forums. In practice, OWEB also grants numerous relevant stakeholders a formal stake in OWEB decision making in its composition. NCM was not granted with any formal state authority. NCM was not open to the public and was not transparent. NCM did not actively solicit or grant

formal access or influence to the public or relevant stakeholders in the proceedings or decision-making.

Levels of perceived mutual respect remained measurably high within the HSC, OWEB, and NCM despite significant variation along ideal deliberative parity within and outside the HSC, OWEB, and the NCM. Along criteria of relative parity both within and outside each participatory forum respectively, the cases exhibited the following: the HSC met high levels within and low levels of relative parity outside; OWEB met medium high levels of parity inside and outside of its participatory forums; and the NCM exhibited low and very low parity scores inside and outside the participatory forums respectively.

Despite this considerable variation, perceived mutual respect within HSC, OWEB, and NCM all remained high in each case. This is illustrated in the following Figures 14-16 below:

#### A. IV Ideal Parity Measures INSIDE Participatory Forums

Figure 14: OHCR: Ideal parity INSIDE HSC

<b>Parity Measures</b>	<b>Level of Inside Parity</b>
Type of Devolution	HSC list control; no HSC composition control; no total funding control
Formal meeting access	Yes
Stakeholders receive formal vote	Most: Multiple interests receive HSC vote
Actively solicit feedback	High: Surveys, meetings, informal efforts
Transparency	High: Decisions justified, made publicly

Figure 15: OWEB: Ideal parity INSIDE BOARD

<b>Parity Measures</b>	<b>Level of Inside Parity</b>
Type of Devolution	Local grant control; no Board composition control; no total budget appropriation control; partial budget control
Formal meeting access	Yes
Stakeholders receive formal vote	Most: Multiple interests receive OWEB vote
Actively solicit feedback	Medium: Solicits at but not to meetings
Transparency	High: Decisions justified, made publicly

Figure 16: NCM: Ideal Parity INSIDE NCMI and II

<b>Parity Measures</b>	<b>Level of Inside Parity</b>
Type of Devolution	Control over all institutional decisions
Formal meeting access	No
Stakeholders receive formal vote	No
Actively solicit feedback	Low: Only core participants are solicited
Transparency	Low: Meetings are not discussed publicly

*Figures 17-19:* In each case, within the participatory forums, participant stakeholders reported high levels of adequate mutual respect. Interview subjects and meeting minutes repeatedly mention feeling included in the meetings (even if not always actively recruited), feeling heard, and report feeling that their perspective/s were taken into account by the Commission, Board, or other core participants (even if their perspective did not alter existing or subsequent decisions).

The HSC took—and HSC participants confirm—extensive and exemplary steps to make sure all participants got a chance to speak at the meetings. Testimony was not censored and extra time was given if needed to incorporate all manner of testimony and participants. HS Commissioners also reported—and HSC participants confirmed—that the public and stakeholder values were clearly incorporated into the general

ranking/prioritization scheme of the HSC. OWEB staff and Board members report—and OWEB meeting participants confirm—the Board works hard to make decisions and distribute information in a very public manner. The Board and staff also report—and participants confirm—that OWEB works hard to incorporate public and stakeholder feedback, even when highly critical.

Finally, Landt reports—and NCM core participants confirm—the NCM was designed and Landt actively practiced mechanisms to grant space for and actively solicit extensive participant feedback through extensive rapport and communication exercises and practices given to, expected of, and actively practiced by all NCM participants. Additionally, Landt granted control of the substantive content—as evidenced by the Statement of Agreements and supported in participant interview responses—to the meeting participants themselves rather than dictated by or through any institutional mechanism or standard. This is illustrated in the following Figures 17-19 below:

B. DV: Mutual Respect and Perceived Adequacy INSIDE Participatory Forum

Figure 17: OHCR and Mutual Respect

<b>Respect Measures</b>	<b>Perceived Adequacy</b>
Stakeholders feel included	High: Interviewed participants felt included
Stakeholders heard	High: Interviewed participants felt heard
Stakeholders feel incorporated	High: Interviewed participants felt incorporated

Figure 18: OWEB and Mutual Respect

<b>Respect Measures</b>	<b>Perceived Adequacy</b>
Stakeholders feel included	High: Interviewed participants felt included
Stakeholders heard	High: Interviewed participants felt heard
Stakeholders feel incorporated	High: Interviewed participants felt incorporated

Figure 19: NCMI/II and Mutual Respect

<b>Respect Measures</b>	<b>Perceived Adequacy</b>
Stakeholders feel included	High: Interviewed participants felt included
Stakeholders heard	High: Interviewed participants felt heard
Stakeholders feel incorporated	High: Interviewed participants felt incorporated

*Finding 4: Deliberative Significance*

Deliberativists agree that parity and respect are essential criteria to consider when implementing a deliberative process. Despite uncertainty or disagreement as to measures and thresholds, deliberativists would also agree that some minimum level of basic parity and respect are also essential to facilitating genuine deliberation. Implied in this discussion is the notion that parity and respect are also closely related if not dependent on one another. That is, without some level of parity you cannot have real respect or that without some minimum level of respect you cannot claim sufficient parity. These comparative findings partially refute this assertion. Perceived mutual respect within participatory forums is not neatly associated or even clearly associated with ideal measures of parity. *Stakeholders within various participatory forums can build and actively perceive high levels of respect regardless of levels of actual parity – according to ideal deliberative criteria - within or outside these forums.* Appropriate institutional structures and facilitation can build mutual perceived respect inside participatory forums without fully meeting criteria of ideal outside or inside parity.

However, this does not necessarily mean that respect and parity are not closely related or that parity does not affect participant behavior within participatory forums. Instead, this finding indicates, at a minimum, that ideal parity and perceived respect

appear to be measures that are distinguishable or somewhat independent of one another. This may be because stakeholders can be and feel respected even under conditions of low relative ideal parity, as suggested by these comparative findings. Alternately, ideal parity measures may not accurately capture stakeholder criteria of parity and respect, when in fact these concepts may be similar or closely related (e.g. mutually dependent) on one another. Perhaps high levels of inside perceived respect can be explained *due to adequate minimum perceived conditions of parity within all participatory forums* (See Figure 6). That is, parity does not have to be relatively balanced to foster respectful dialogue. If parity is “good enough” then participants may be willing to engage relevant stakeholders and feel listened to, taken seriously, and incorporated into policy considerations.

**5. Finding 5- Increased deliberative satisfaction within participatory forums does not result in increased perceived ideal outside parity.**

No matter how respectful or equal a participatory forum—along criteria of ideal deliberative parity or perceived parity or respect within the HSC, OWEB, or NCM—participant stakeholders will continue to perceive inadequate levels of parity outside of the participatory forums to the extent that they exist along ideal deliberative parity criteria. That is, ideal outside deliberative parity criteria scores match levels of perceived outside parity regardless of the variance in ideal deliberative parity, perceived parity, or perceived respect within the HSC, OWEB, or NCM. Restated, forum participants appear to be clearly aware of and sensitive to the level of outside parity no matter how deliberative (in terms of both ideal and perceived deliberative parity and respect) the participatory process within these forums.

*Figure 20-22:* Neither the HSC nor any other public forum was endowed to provide public information about, access to, or formal stake in the conceptualization, framing, or composition of the HSC. HSC Participant stakeholders expressed frustration and uncertainty about this process and the influence it had on the HSC and its composition, its procedures, and decisions that reflects ideal deliberative measures of outside parity.

The conceptualization, framing, and composition of OWEB conform most closely to orthodox pluralist political process, namely interest group liberalism. This process took place in Salem through a traditional legislative process rather than through extensive deliberative statewide community forums. The hearings on OWEB were open to the public but public participation was not actively solicited. Information about legislative hearings could be obtained but the public was not actively educated about these proceedings. Relevant stakeholders could testify in Salem but had exercised no formal influence over any decisions.

Finally, NCM had no formal state authority. NCM did not actively solicit public involvement in or grant formal meeting access to or stake in NCM conceptualization, framing, or composition of the NCM. This process was closed to the public and relevant stakeholders and was intentionally non-transparent.

Ideal deliberative parity scores within the HSC were high, OWEB parity was medium high, and low within NCM.<sup>186</sup> As discussed, the HSC enjoyed considerable devolved authority, was open to the public, and actively solicited public and stakeholder

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<sup>186</sup> For ideal deliberative parity scores within HSC, OWEB, and NCM see figures 14-16.

involvement. HSC proceeding and decisions were public and granted significant authority to relevant stakeholder interests. OWEB exercised authority over grant criteria and awards but was constrained along budgetary and centralization standards. OWEB is also open to the public and transparent in its proceedings and decisions. At times OWEB solicit relevant stakeholder involvement in decisions and grants numerous relevant stakeholders a formal stake in OWEB decision making. Finally, NCM was not granted formal state authority, was not open to the public, and was not transparent. NCM did not actively solicit or grant formal access or influence to the public or relevant stakeholders in the proceedings or decision-making.

Perceived parity scores were medium within HSC, high in OWEB, and high in NCM.<sup>187</sup> The HSC was a uniquely public process. The HSC aggressively attempted to involve the public and traditionally marginalized populations. Despite this, stakeholder participants also felt the HSC itself and community forums were overly represented by physicians and the health industry. Additionally, participant stakeholders at times felt that the list rankings were ultimately driven by elites in a closed process.

Stakeholder participants expressed satisfaction with OWEB representation and behavior due to a perceived balance in stakeholder representation coupled with the voluntary nature of OWEB. While OWEB may not always actively solicit stakeholder feedback, local watershed representatives expressed satisfaction with OWEB's efforts. Finally, the NCM do not meet ideal deliberative conditions of parity. Formal meeting

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<sup>187</sup> For perceived parity scores within the HSC, OWEB, and NCM, see figures 11-13 above and review the discussion that follows.

access was not granted, meetings were not open to the public and deliberations were not reported or discussed publicly. Landt did not actively solicit community feedback and tightly controlled participant selection. However, participant stakeholders expressed satisfaction along parity within the NCM forums despite failure to meet these ideal deliberative parity criteria. For example, in NCMI and II, participants generally expressed high levels of satisfaction with the representatives that were chosen by Landt and their behavior in meetings.

Additionally, along perceived respect criteria within the HSC, OWEB, and NCM, all cases exhibited high levels of perceived adequacy.<sup>188</sup> As previously mentioned, in each participatory forum, participant stakeholders reported high levels of adequate mutual respect. Interview subjects and meeting minutes repeatedly mention feeling included in the meetings (even if not always actively recruited), feeling heard, and report feeling that their perspective/s were taken into account by the Commission, Board, or other core participants (even if their perspective did not alter existing or subsequent decisions).

Despite this variation and high scores along these parity and respect criteria within each participatory forum, outside ideal deliberative parity and perceived outside parity respectively remained constant. That is, the HSC scored low along in and outside parity measures, OWEB scored medium along in and outside parity measures; and NCM scored very low along in and outside parity measures.<sup>189</sup>

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<sup>188</sup> For perceived respect criteria and scores within HSC, OWEB, and NCM see figures 17-19 and review the previous discussion of finding 4.

<sup>189</sup> For ideal deliberative outside parity scores see figures 8-10 above and the discussion in finding 3.

As mentioned, the inception, framing, and composition of the HSC were closed to the public and a full range of interested stakeholders. There was no formal meeting access in the process of creating the HSC. No formal input such as a vote was given to a full range of stakeholders. The initial meetings that discussed the nature of health care reform and the creation and composition of the HSC not only failed to actively recruit the public, they were closed entirely. They were also non-transparent. This led numerous relevant stakeholders to view the HSC and its decisions in skeptical terms.

In OWEB, Kitzhaber consulted key governmental agencies and other important stakeholders early in the process of conceptualizing the Oregon Plan, which later led to OWEB. However, the formation of OWEB itself consisted of a normal legislative rather than deliberative process. Also, the legislation that created OWEB also vested authority for Board composition in the hands of the governor rather than a public process with any formal public transparency or input. Additionally, the legislation that created OWEB did not devolve significant authority over budgetary control and mandated that OWEB was to be driven by voluntary support of local watershed activity.

Finally, the NCM was not a product of any formal state level activity. The NCM model was conceptualized, implemented, constituted, and facilitated entirely by Gayle Landt without formal public transparency or input. Landt sought extensive community feedback in generating an initial list of potential core participants. However, participant selection was driven by Landt without any formal public transparency or input. Figures 20-22 will be discussed below. These figures illustrate perceived outside parity scores for HSC, OWEB, and NCM.

A. DV: Power and Perceived Adequacy OUTSIDE Participatory Forums

Figure 20: OHCR: OUTSIDE HSC

<b>IV: Parity and Xs 1-5</b>	<b>DV1: Perceived Adequacy</b>
X1: Type of Devolution	Low: Stakeholders expressed frustration with inception, framing, and composition
X2: Formal meeting access	No
X3: Stakeholders receive formal vote	No
X4: Actively solicit feedback	Low: Stakeholders felt excluded at times
X5: Transparency	Low: Stakeholders report frustration with closed meetings

Figure 21: OWEB: OUTSIDE BOARD

<b>IV: Parity and Xs 1-5</b>	<b>DV1: Perceived Adequacy</b>
X1: Type of Devolution	Medium: Future concern expressed with inception, framing, or composition
X2: Formal meeting access	Yes
X3: Stakeholders receive formal vote	No
X4: Actively solicit feedback	Medium: Stakeholders do not report active solicitation
X5: Transparency	Medium: Stakeholders do not report extensive transparency

Figure 22: NCM: OUTSIDE NCMI and II

<b>IV: Parity and Xs 1-5</b>	<b>DV1: Perceived Adequacy</b>
X1: Type of Devolution	No formal devolution
X2: Formal meeting access	No
X3: Stakeholders receive formal vote	No
X4: Actively solicit feedback	Very Low: Stakeholders felt excluded
X5: Transparency	Very Low: Stakeholders report frustration with closed meetings

*Finding 5: Deliberative Significance*

Even the most ideal deliberative forum structure and facilitation cannot overcome awareness of and concerns over outside parity issues such as low relative parity. Outside imbalances in power matter. Outside imbalances of power affect perceptions about the fairness, legitimacy, and appear to influence the actual quality and extent of participation in deliberative forums themselves. To ameliorate the influence of outside parity on the quality and extent of participation within participatory forums and the organizations that conduct them, more deliberative attention to the process of policy and participatory forum conceptualization, framing, and composition of participatory boards - immediately preceding and outside these participatory forums - is likely to enhance deliberative behavior within them.

The findings in NCM I/II support the need to focus on appropriate deliberative measures and thresholds applied outside of participatory forums. For example, the fortuitous ability to study NCM I/II under similar or controlled conditions - excepting issue area - suggests that outside conditions like issue area itself matter. That is, issue area influences participatory forums along criteria of parity and respect.<sup>190</sup> When comparing NCM I and II, the evidence examined suggests different levels of satisfaction with and impact on the involved core participants within each NCM forum and among the wider local community. This variance can be at least partially explained through attention to the role of outside parity and respect along issue area itself. The different

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<sup>190</sup> In both NCM I and II important independent variable were controlled: institutionalized rules, meeting facilitator, geography, political culture, group size, time period, and so forth.

issue areas in NCMI and II appear important to resolving the different outcomes and perceptions when comparing NCMI and II.

Again, issue area was the only major variable that varied considerably. That is, NCMI concerned the issue of gay rights while NCMII broadly concerned the notion of sustainable development. In NCMI the issue of gay rights was clearly defined, had fewer but more clearly divergent stakeholder, and exhibited lower levels of respect (than NCMII). That is, to the general community and core participants, the issue was largely dichotomous. The gay rights issue generally situates stakeholders into two major positions. While there were clearly variant positions within these camps they were respectively generally defined as for or against a full constitutional expression of gay rights.

Conversely, in NCMII, *all parties agreed that sustainable development was desirable and recognized the potential long-term economic and consensus building potential of divergent community interests around a shared conception of sustainable development.* Therefore NCMII seemingly began with some consensus. To some core participants, the initial appearance of agreement itself suggested greater issue tractability.

In fact, in NCMII positions over sustainability and growth were less clearly defined. While stakeholders often attempted to or conceptually reduced the positions within the sustainability debate when they described other outsiders as either corporate pro-growth or anti-development factions, respectively the issue was not that simple. There was intense disagreement over not only the proper implementation of “sustainable development” practices but disagreement also persisted even in defining the term itself.

What exactly did sustainable development mean? What were its boundaries? If a definition could be approximated, what were its specific priorities and how are they to be arranged?

Conversely, participants in the gay rights issue exhibited more stable preferences that did not shift in this way. Gays and lesbians already lived in the community. They already lived next door or attended local schools and churches. The “problem” is there and it is not going away. However, in NMCII, due to the lack of a defined issue over defining a future course of action, the number of stakeholders and stakeholder positions themselves remained unclear.

As previously mentioned, the process of implementation is substantially different than a deliberative process (as in NCMI) that seeks consensus over values. This is reflected by the lower change in and overall levels of respect as well as the disappointment many core participants felt about failing to generating any consensus among divergent stakeholders as far as agreement over actual implementation in the NCMII process.<sup>191</sup>

These findings suggest the difference in deliberative success, to the extent that it existed in NCMI and II, may be attributed to the tractability of the NCMI issue itself. If an issue concerns implementation rather than values a deliberative process is less likely to succeed in important ways. By important ways I mean generate higher levels of respect

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<sup>191</sup> As one NCM core participant recalls in an interview “I went home and opened and read the file and I read the document and I thought this really is not what I thought it was. This is not as nice a product, even though I had my reservations and I thought there were some rough areas I had given it more credit in my memory than it really deserved and I went back and read it fresh for the first time in like 6 or 7 years and I thought you know this is not a very good product” (Interview 9).

and perceived adequacy for defining and implementing policy, as evidenced by the NCMII/II comparison.

The participants in NCMII did exhibit higher levels of respect over time (T1-T3) within this case. NCMII participants perceived relative parity was achieved in these meetings. Ultimately however, the NCMII process did not generate concrete, measurable agreements in defining the problem and its solutions. However, more success was felt among NCMII interview subjects. NCMII was spoken of in adequate if not transformative terms, as NCMII participants experienced higher levels of internal perceived adequacy than in NCMII. Additionally, the Statement of Agreements, while not generating concrete and specific agreement, is perceived as having substantially altered the antagonistic discourse surrounding gay rights issues in Lane County.

Even if participants are carefully selected, even if ideal levels of relative parity and respect are achieved, in a contentious and *complex* issue with poorly defined issue area parameters and priorities, specific policy agreement utilizing a purely deliberative model of decision-making may remain unlikely. While not commonly articulated among deliberative scholars, institutional or policy based deliberativists like Fung and Wright (2003) or Beierle and Cayford (2002) tentatively suggest that deliberative democracy may be more appropriate in different issue areas.<sup>192</sup> The findings in NCMII and II suggest a more robust examination of the role of issue area in institutionalizing a deliberative process. By more clearly understanding the conditions under which deliberation might be

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<sup>192</sup> Some non-ideal deliberativists have begun to acknowledge this. For example, “We thus begin, tentatively and abstractly, to sketch Empowered Participatory Governance by laying out three general principles that are fundamental to all these experiments: First, a focus on specific, tangible problems...” (Fung and Wright 2003, 15) Or, “Certain kinds of environmental issues *may* [emphasis added] be less conducive to public participation than others” (Beierle and Cayford in *Democracy in Practice*, page 36).

ripe for implementation, deliberativists might begin to form a more cogent response to critics that dismiss deliberative governance as utopian, overly abstract, and impractical.

Restated relative to the comparative empirical findings, without focusing on ideal and perceived parity and respect both within *and outside* participatory forums, it would be difficult to resolve the disjuncture between ideal and non-ideal deliberative theory by accurately testing deliberative propositions. With a focus on outside parity and respect it is possible to assess the influence the outside environment may have on what happens inside these participatory forums, i.e. that the outside issue area influences ideal and perceived levels of parity as well as perceived respect. Recognizing the role of issue area as an independent, outside explanatory variable may in turn limit or enhance the potential efficacy of institutionalizing a deliberative process. Regardless of the findings, an acknowledgement of the need to partially broaden deliberative analytic focus would likely shed some light on the role of outside variables on participatory forums along criteria of parity and respect.

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