



Is Environmental Protection Too Important to Trust to the States?

A Debate featuring
P.J. Hill and Kenneth Midkiff

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Washington University in St. Louis

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Participants



Mr. Kenneth Midkiff, Professor Maxine Lipeles, and Dr. P.J. Hill

Mr. Kenneth Midkiff is the program director for the Ozark (Missouri) Chapter of the Sierra Club. He is the legislative lobbyist for the Sierra Club and a member of various task forces and working groups for the Missouri Department of Natural Resources, Missouri Department of Conservation, and the state of Missouri on issues of clean air, clean water, and land stewardship. He received his B.A. in history and philosophy from Eastern Illinois University and has pursued graduate work at Southern Illinois University.

Dr. P.J. Hill is the George Bennett Professor of economics at Wheaton College, Wheaton, Illinois, and a senior associate of the Political Economy Research Center. He is co-editor of *Environmental Federalism and Eco-Sanity: A Common-Sense Guide to Environmentalism*. Dr. Hill is an economic historian by training, with a B.S. in agricultural science from Montana State University and a Ph.D. in economics from the University of Chicago.

Professor Maxine Lipeles, moderator, is director of the environmental engineering program and is a professor of environmental policy and regulation in the School of Engineering and Applied Science at Washington University in St. Louis. She has an A.B. from the Woodrow Wilson School of Public and International Affairs at Princeton University and a J.D. from Harvard Law School.

Introduction

Discussions of environmental protection often revolve around who should have the power to create and enforce regulations. Supporters of environmental federalism believe these powers should no longer rest with the federal government, but should instead be in the hands of state and local entities. Opponents of the idea argue the necessity of federally mandated and monitored environmental standards. The Center for the Study of American Business sponsored a debate on the Washington University campus to consider the question “Is Environmental Protection too Important to Trust to the States?”

Dr. P.J. Hill, the George Bennett professor of economics at Wheaton College, argued that federal officials are too far removed from the particular circumstances of most environmental problems to be able to strike an effective balance between the economic and environmental interests of those affected. Mr. Kenneth Midkiff, program director for the Ozark (Missouri) Chapter of the Sierra Club, countered that devolving environmental authority to states and local governments would result in a “race to the bottom” — sacrificing environmental protection for corporate profits. Dr. Maxine Lipeles, professor of environmental policy and regulation at Washington University, moderated the debate, the content of which follows.

Opening Statements

Dr. Lipeles: This is a very hot topic, and I’m looking forward to an interesting debate. Each speaker will have ten minutes for an opening statement. Mr. Midkiff will go first. Dr. Hill will go second. They will each have five minutes for a rebuttal. Then we’ll open up the floor for questions from the audience.

Mr. Midkiff: I don’t intend to be coy about this. I want my basic premises to be known right at the start. We must have strong federal laws on clean air, clean water, hazardous waste, and other environmental issues with federal oversight of compliance monitoring and enforcement. These laws should set out minimum standards below which no state may fall. However, the other side of the coin is that individual states need to retain the authority to go beyond federal laws and standards to meet site-specific situations and problems.

There are certain assumptions behind these premises. First, polluting industries were forced to clean up their act, not because

of any self initiatives, but due to strong federal laws—the Clean Air Act, the Clean Water Act, and the Resource Conservation Recovery Act, among others. Second, some states lack adequate laws and standards to protect public health and the environment. Third, state governments often lack either the resolve or the resources to take on large industries. Fourth, air and water don't respect state boundaries. There must be protection for citizens living downwind and downstream of other states with weak laws, weak compliance monitoring, and weak enforcement.

Let's take those assumptions in order and examine them in more detail. First, strong laws are the reason we have less pollution now than, say, 25 years ago. The industrial age, along with all of its advantages, brought along with it an unprecedented ability for air and water contamination. While humankind was always capable of small mischief, this was usually on a very localized scale. Deforestation and depletion of natural resources in localized areas by indigenous peoples did happen. They were not always the good stewards living in harmony with the land as some new-agers would now have us believe.

Industrial-strength pollution requires industrial-strength laws and regulations and the full power of the federal government to monitor and enforce those laws and regulations. — Kenneth Midkiff

But only since the invention of the internal combustion engine have we had the power to literally affect the entire globe, or at least entire continents or eco-regions. Some examples are rather striking—strip mining in Appalachia, the glowing steel mills in Gary, Indiana, the dead zone in the Gulf of Mexico. Others are more insidious—ozone transport, acid rain, global climate change, the cumulative impacts from a plethora of air and water contaminants.

But industrial-strength pollution requires industrial-strength laws and regulations and the full power of the federal government to monitor and enforce those laws and regulations. Not until such laws were in place did large polluters clean up their act. They can whine and moan all they want about burdensome regulations and letting market forces and voluntary compliance play out; the fact

remains that things were only getting worse until massive citizen pressure on federal elected officials forced the passage of environmental laws—the Clean Air Act, the Clean Water Act, and so forth.

There can also be no denying that those laws have worked. Our air and water are measurably, visibly cleaner than in the 1960s. The reason that industries are subjected to burdensome regulations is that they refuse to stop polluting voluntarily, preferring instead to “externalize their waste cost”—a fancy phrase for making society, the rest of us, pay.

The second assumption that I mentioned as being behind my basic premises—that some states lack laws to protect the public health and the environment—likewise cannot be disputed. Many, many states passed anti-pollution laws only after being threatened with the loss of federal funding and federal programs. Others simply adopted the federal laws by reference and did not bother to create their own. It is very clear that the reasons most states have clean air and clean water laws is because there are federal standards.

The third assumption—that states lack the resolve or the resources to take on large polluters—can be documented very easily, right here in Missouri or in other states. The ASARCO Mining Company, for example, which operates throughout the United States, responds to notices of violations of environmental laws not by stopping the polluting activity, but by calling in a team of attorneys to file motions and briefs and perform other legal maneuvers to forestall compliance. As long as the lawyers are cheaper—and they’re not real cheap—but as long as they’re cheaper than installing appropriate technologies, equipment, or procedures to reduce contaminants, and as long as the state is unable or unwilling to effectively respond, that will continue to be the situation.

Missouri's attorney general's office has about six attorneys in its environmental division to handle all of the air, water, hazardous waste, and other environmental violations in the state. But the ace in the hole is that the U. S. Environmental Protection Agency (EPA) and the U. S. attorney can step in if the pollution continues unabated. While over-filing by the U. S. EPA and the U. S. attorney general is not common, that threat is present and real.

The second half of this third assumption pertains not to resources but to resolve. Local political leaders often exert considerable influence upon state environmental protection agencies to back off. This is particularly the case when the polluter is a major employer in a community and a major contributor to political campaigns. Jobs and economic development ring loud and clear at the federal level, but the ringing is amplified considerably at the local

political level. The directors of state environmental agencies serve at the pleasure of the governor, and if the governor is not pleased, there goes the director.

The U. S. EPA, which provides oversight to state agencies with primacy, is not so easily influenced by local politicians and tends to be a true bureaucracy, treating everyone alike without awarding special privileges or dispensing special favors. Notice I said it tends to be, not that it totally is.

The fourth and final assumption pertains to the movement of air and water. Two years ago some family farm leaders and I were lobbying in Washington, D.C., for the introduction of legislation to regulate corporate agriculture—the hog and poultry operations, or concentrated animal feeding operations as they are now called. The typical answer at that time was that this issue was more properly handled at the state level.

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Two weeks ago I was making the same rounds in Washington on the same issue. But this time the reception was much more positive. In fact, Senator Tom Harkins of Iowa asked for input on drafting such legislation which was introduced this past Friday. The reason for the turn around was simple: the pfisteria outbreaks in the Chesapeake Bay area had demonstrated conclusively that fecal material does flow downstream and that pollution does not respect state boundaries.

Representative Pat Danner, of the sixth district in northwestern Missouri, had a more local experience. Her constituents' drinking water was being threatened by a large hog operation just across the state line in Iowa — and they could do nothing about it. She felt now, unlike two years ago, that national standards were imperative to protect the citizens of one state from the pollution of another.

The same situation exists with air quality. Ozone-producing emissions from the Midwest are affecting the northeastern states.

It does Vermont little good to have strong air emission standards if the problem is coming from Ohio.

Those are the assumptions behind my premises that we must have strong federal laws with federal oversight for monitoring and enforcement. However, as I mentioned earlier, there is one caveat: states must also have the right reserved to go beyond federal requirements.

Let me propose a quick example. The federal Clean Water Act does not require stricter standards for water contaminants in areas of karst topography — areas of porous bedrock with springs, sinkholes, caves, and other subsurface conduits where surface runoff is quickly converted into groundwater. Missouri requires much more rigid requirements and effluent limitations in karst areas because we have a number of these areas in the southern Ozarks. But there is not much need for the state of Nevada to do this, having neither karst nor very much surface water. One size does not fit all, and states do need to have the ability to go beyond the minimal federal level. It is remarkable to note, however, that the same groups and industries that are pushing for deregulation, or “devolution,” of environmental laws and regulations are the very ones attempting to pass legislation that limits state environmental laws and regulations to being “no stricter than federal” requirements. What this seems to tell me is that it is not devolution that is being sought, but rather an overall weakening of environmental laws and regulations.

I can tell you loud and clear that any politician on any level who attempts to roll back 25 years of environmental progress will be targeted for defeat by environmental, conservation, and public health groups. That happened in the last election, and we’re watching state and federal elected officials very closely to ascertain if the lessons need to be conducted again. Thank you.

Dr. Hill: Nineteen seventy is often the date given for the beginning of the modern environmental movement and environmental regulation. In 1970 we had the first Earth Day, and in that year the Environmental Protection Agency was created by an executive order from President Richard M. Nixon. Now, some 27 years later, we are at a crossroads in terms of our environmental policy. There is general agreement among the American populace that a clean and healthy environment is a worthy goal, and they are willing to pay something to achieve that goal.

But also, when the details of any particular program are examined, those same people react negatively to the methods we have

used and the programs we have instituted to clean up and protect the environment. In the words of one set of critics, "our strategy has not set intelligent priorities, has squandered resources diverted to environmental quality, has discouraged environmentally superior technologies, and has imposed unnecessary penalties on innovation and investment." Or, as another critic said, present policy is "inflexible, inefficient, costly, unduly adversarial, and does not maximize environmental protection." States react strongly to the unfunded mandates that are imposed upon them by national regulation; other citizens find their rights grossly violated by wetlands and endangered species regulations; and numerous studies have identified environmental rules for which the costs are greater than the benefits.

We could simply attribute all of this to stupid people who desire to do bad things. But I would argue that this is incorrect, and it is far more appropriate to characterize the top people at the Environmental Protection Agency and other national regulatory bureaus as hard-working, intelligent, and extremely focused upon a noble goal, namely the cleaning up of the environment. How have we gotten such bad results from such good people? It is because we have used a centralized program of command-and-control regulations that is not sensitive to the particular circumstances of time and place, has poor feedback mechanisms for input from affected citizens, is difficult to monitor, and has generated inappropriate incentives for the bureaucrats, the polluters, and the recipients of pollution.

We need to think seriously of other alternatives, of new ways to formulate and operate our environmental policy. A significant contributor to a more effective policy would be environmental federalism, or the devolution of much of our environmental regulations to state and local jurisdictions. This does not mean that every environmental program should be taken away from the national government. But certainly most could be and should be. I see three significant advantages of environmental federalism, or devolution.

First, a program of local and state control would pay much more attention to particular circumstances. We would move away from a "one size fits all" policy that attempts to write national rules and regulations for what are, in many cases, local problems. As an example, the Safe Drinking Water Act requires all localities to test for an identical set of contaminants, thus forcing states like South Dakota and Minnesota to do repeated, expensive tests for pesticides that are used only in pineapple production. If state and local governments were responsible for dealing with state and local prob-

lems one would see a great deal of variation in regulations: variation that would reflect both the differences in the circumstances across our country and the differences in preferences of population groups for environmental protection. It is simply not the case that all people in all localities desire the same level of cleanliness of their environment, nor are they willing to pay the same price for it. Devolution would recognize that fact.

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Second, environmental federalism would create numerous experiments as states and local governments searched for ways of solving complex problems. There is a great deal of uncertainty about exactly what is the best way to deal with particular environmental issues, and it would be very helpful to have multiple approaches with visible results that could be compared by policy analysts and citizens. Since 1970, we have had a largely national environmental policy where we have had little chance to compare our policies to alternatives. How do we know if we are saving endangered species in the best way possible, or if there are other institutional environments that might do a better job? Has our approach to hazardous wastes sites through Superfund been the best method?

Finally, these numerous experiments would lead to competition among jurisdictions as they searched for the right regulatory programs and the correct level of clean-up. If there is one thing that we have learned over the last several decades, it is that monopolies tend to be unresponsive to consumers and competition is basically healthy. Competition forces innovation, makes competing bodies sensitive to costs, and keeps the question of “are we serving our constituency?” foremost in the minds of those making decisions. This theorem applies to public entities as well as to private organizations. When states have to compete for investment capital and residents, they have much stronger incentives to

search out efficient levels of regulation and appropriate institutional frameworks. If a state does really stupid things with regard to the environment, either over or underregulating, it finds that resources migrate out. Just as we would prefer not to purchase all of our automobiles from a single producer, so we should not be forced to purchase environmental policy from a single provider.

But what problems might we face with significant devolution under environmental federalism? Most people who are concerned about this issue offer two major objections. The first is the so-called “race to the bottom,” or the possibility that states and localities will attempt to attract firms from other areas by lax environmental standards. The argument is flawed for several reasons. First, resources that move between states include real people who have real environmental preferences. If a state tries to attract firms and jobs through inappropriate rules, it will find that the people attached to those jobs react negatively. People vote with their feet. They choose where they want to live on the basis of a host of attributes, which include the quality of schools, the cost of living, the availability of jobs, and environmental amenities. It is possible that special interest groups will push through regulations that do not reflect the will of the general citizenry, but it is just as likely that those regulations will be too stringent as that they will be too lax. There is no more reason to believe in a race to the bottom than a race to the top.

Finally, it is important to note, in the words of Robert Stavins, professor of public policy at the John F. Kennedy School of Government at Harvard University, “even if the race to the bottom rationale makes sense theoretically, it is empirically irrelevant.” Stavins finds that a host of statistical studies fail to produce evidence that firms have moved their plants or established new ones in response to looser environmental rules. It is also important to note that in the 1960s, prior to the advent of national regulations controlling pollution, when such pollution abatement efforts were in the hands of state and local governments, pollution was reduced twice as much as it was in the 1970s.

The final significant objection to devolution is the existence of interstate externalities, or spillovers across state lines. It is the case that there are certain pollution and environmental problems where state regulations may be inappropriate. But it is interesting to note that the Environmental Protection Agency has focused most on in-state pollution problems and land use issues, and it is in those areas that its rules are most stringent. If it were the case that the EPA was primarily to focus on interstate issues, we would have a far

different set of environmental rules than we presently have.

I do not want to argue that all environmental problems can be handled at the state and local level. For substantial and severe interstate externalities, it may make sense to have national regulations, but those externalities are few. It is just not enough to show that an externality exists; it must also be shown that it is severe enough to justify the use of a centralized program with its higher cost, inefficiencies due to monitoring problems, and lack of competition in terms of solutions. In other words, the burden of proof should be on the national government to show why it should be handling particular problems. I would argue that in the case of acid rain, as presently being solved by our SO₂ trading program, the burden of proof would be met, and a national standard would be in order. But there are many other programs that should and could be lent to a lower level of government. Let me give you only a partial list.

The Clean Air Act has just been revised ... Pollution is measured for particular localities. I see no reason why these localities should not be choosing for themselves the level of air pollution that they will accept. That is very much a local issue. — P.J. Hill

The Clean Air Act has just been revised, and the ozone and particulate matter standards have been tightened. Pollution is measured for particular localities. I see no reason why these localities should not be choosing for themselves the level of air pollution that they will accept. That is very much a local issue. The same with the safe drinking water regulations, landfill regulations, and wetlands preservation. Or take the case of endangered species. Our present way of dealing with this at the national level has produced a litany of violated rights and bad incentives for species preservation. A program of state endangered species preservation would produce a multiplicity of approaches and far more sensitivity to incentives and rights. Likewise superfund sites are basically local problems.

In the same way that I would argue that my representative in Congress does not have any particular interest in regulating a landfill in Bristol, Tennessee, neither do I think that the EPA should be

setting the clean-up standards for Aspen, Colorado. Nor is it appropriate for the EPA to stop the building of a chemical plant in the predominantly black southern Louisiana town of Convent, when the citizens of that town value the jobs far more than they fear the infinitesimally small increase in risk of harm to the environment from the plant. Likewise, the Intermodal Surface Transportation Efficiency Act (ISTEA), passed in 1991 and up for reauthorization this year is sold as a way of reducing pollution through the construction of expensive rail transit. But urban transportation is very much a local problem that should be dealt with by the localities. The ISTEA has turned out to be a boondoggle and has wasted millions of dollars on pork barrel projects. There is little reason for the national government to be involved in subsidizing urban transit.

As I noted at the beginning, we now have had almost three decades of experience with national environmental policies. It is time to seriously rethink those and to devolve most of the functions of the national government with regard to the environment to state, local, or private entities. Little is gained and much is lost by the national monopoly on environmental policy.

Responses

Mr. Midkiff: Far be it from me, as Director of the Sierra Club of Missouri, to defend the U. S. Environmental Protection Agency. It certainly has its flaws. In fact, the Sierra Club, more than any other entity, sues the Environmental Protection Agency. We'll probably continue to do so.

However, there is a situation that exists that has been alluded to by both Dr. Hill and me; it is that the U. S. EPA delegates the primacy for enforcement of federal laws to the states, in most cases. The majority of the states are in that situation. Our state agency, the Missouri Department of Natural Resources (DNR)-Division of Environmental Quality, is actually on the first line of defense. Its staff are the on-the-ground people, when it comes to enforcing federal clean air, clean water, hazardous waste, etc. The department receives somewhere between \$9 million and \$10 million dollars a year (although that was cut somewhat, and there were some layoffs). Our state agency enforces federal standards, and it submits quarterly reports to the U. S. EPA to show how it is doing—its compliance record, which industries are not in compliance, and so forth. People like me then look at those reports, and this leads us to take a look at those industries that have problems.

The fact is that much of the compliance monitoring and a lot

of the enforcement monitoring that is done is not done by the U. S. EPA or by the states, but by citizens. But we then do have the two major entities to go to with our problems.

For instance, right now down in southwest Missouri, we have great concerns about what the huge poultry operations have done to that area. The cumulative effects of years and years of degradation and runoff into local streams have caused significant problems. We have major concerns about the lack of enforcement by our Department of Natural Resources, so now we are appealing to the U. S. EPA because the state has not taken care of a local problem, (refuting most of what Mr. Hill had to say).

The delegation of primacy is very important because it does let state officials who know the local situation deal with state problems. But federal standards and federal laws are there to back up these officials. Federal standards set a floor below which no state should be allowed to fall.

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— *Kenneth Midkiff*

Before I go on to more general comments, I do want to refute one specific thing that Dr. Hill said. The pesticide that is now used for pineapples was once used on soybeans. It's a very long lasting pesticide, and it is still detected in water. That is an example of where, if the states were allowed to do so, they probably would stop testing. They would assume that since the pesticide is not used there anymore, they don't need to test for it, when actually it could still be in the water.

Now the issue of companies moving operations to those states where the laws are the weakest — pollution seeking, I guess you could call it. This certainly is not going to happen for established industries. On the other hand, the oil and gas refineries and chemical companies haven't located along the lower Mississippi River in Louisiana by accident. Louisiana has some of the lowest environmental standards, and it has been sited by the U.S. EPA and

“overfiled” on a number of times.

The poultry industry is a very interesting case. When Bill Clinton was the governor of Arkansas, he let Mr. Tyson of Tyson Chicken know that he was interested in running for President, and that it certainly would be to his advantage if he had a good environmental record. The poultry industry was not exactly the cleanest industry around. (I can recall floating on the King’s River in northwestern Arkansas many years ago and being accompanied on my float by chicken entrails floating alongside.) To present a better environmental record, Mr. Clinton did get some clean up and some strong regulations passed on the poultry industry in northwestern Arkansas. The poultry industry moved across the border to southwestern Missouri at about the same time. Companies were seeking a lower common denominator, a state that had fewer rules and regulations than Arkansas did at that time — if you can imagine.

The other example I’ll give real quickly is that the hog industry right now is moving into Alabama because that state has not yet introduced the strong laws and regulations in the concentrated animal feeding operations that other states have.

Dr. Hill: Let me make a couple of points about Mr. Midkiff’s original remarks. First, I would argue that the evidence does *not* say that the states only cleaned up because of federal rules. There is good empirical evidence that the states were doing a good job — the rate of clean up was more rapid in the 1960s than it was in the 1970s. By the EPA’s own measures, air and water quality were improving. The evidence does not show that if we had left pollution control in the hands of the states environmental quality would have gotten worse and worse.

Mr. Midkiff said that monitoring is done by citizens, and it is. The question is, “What’s the best way for citizens to express themselves?” I would say that there is more chance to express yourself in local and state jurisdictions. There is more reason to monitor, and there is more awareness about what is going on at that level than at the federal level.

I’m not willing to bifurcate the world into good guys at the federal level and bad people at the state level. Why would officials in Minnesota and South Dakota really not be concerned about a long lasting pesticide that might have been in use thirty years ago? Why would they be unwilling to test for it in their drinking water, whereas if we leave the decision about water quality testing in federal hands this pesticide will be tested for? I have a lot more faith that state governments will respond to particular needs.

The other thing I think we need to recognize is that trade-offs are unavoidable. There are trade-offs with regard to environmental quality, in terms of jobs, in terms of the costs that you are willing to pay, all of those sorts of things. It seems to me that allowing people more input into those trade-offs is a reasonable way to go — allowing them to express what they are willing to pay in terms of economic opportunities foregone?

I'm not willing to bifurcate the world into good guys at the federal level and bad people at the state level. ... I have a lot more faith that state governments will respond to particular needs.— P.J. Hill

The federal government has just recently said that in Convent, Louisiana, a chemical plant cannot go in, even though the local community, largely a minority community, has expressed very strongly that it wants the plant. It is willing to make the trade-offs in terms of an infinitesimally small risk—but still a risk—in order to have the chemical plant because of the jobs it will bring. The federal government has said, “No we don’t think you are making wise decisions; we don’t respect your sovereignty; we don’t think that you’re intelligent enough to be making these sorts of decisions. And we’re going to step in and keep you from exercising your desire.”

Of course there should be full disclosure. Plants ought not to be sited without people knowing what’s going on. Given the best scientific information available, if a local community then wishes to accept certain trade-offs, I think it ought to be allowed to do so. I’m unwilling to say that if we leave the problems to the local or the state government we will get bad decisions, and if we go to the federal level we will get good decisions.

People care about the environment. They’ve expressed themselves with regard to that in poll after poll. But I would argue we’ll get a much better balance with particular trade-offs and with more institutional flexibility if we devolve power to the local and state level.

We’ll find ways of dealing with problems that centralized decision-making in Washington will not produce. Experimentation is

just so important. We simply do not always know the best way to solve all of our environmental problems. I think that having evidence from state and local experiments to analyze and consider would be very helpful.

A colleague of mine has been looking at the operation of state versus federal forests. He has taken side by side comparisons of forests in Montana, state-operated and federally-operated. He finds that the federal government is *losing* about 51 cents on the dollar from its forests, and the state government is *making* about \$2.15 on the dollar for its investments. By the way, there's also been an environmental audit that says the environmental quality at the end of logging is as good or better in state forests as it is in federal forests. It turns out there are some real efficiencies in more localized management.

If all of the forest were federally owned we would have no basis for comparison. It is because we have a state program that we can compare it with the federal program.

If state and local government had a more authority for environmental decision-making, we would see a lot more innovation at the state level. We will make some mistakes, there's no question about it. But those mistakes are self-correcting. There will be more input into decisions, and there will be more flexibility if environmental regulation is done at the state and local level rather than at the federal level.

Questions from the Audience

Q: Could we clarify one particular issue regarding standards of performance versus methods to achieve performance? Could we leave standards at the federal level and assign responsibility for their achievement to the state level?

Mr. Midkiff: I'll try to answer you in about thirty seconds. Essentially we could care less about how a standard is attained as long as it is attained.

Dr. Hill: I would say both standards of performance and methodology would be better handled at local and state levels than at the federal level. We should allow differences in standards of performance across jurisdictions because people have different preferences regarding the trade-offs involved. How to achieve standards, clearly, could also be devolved.

You could have standards of performance federally imposed

and achievement left to the states, of course. That would be superior to imposing the methods of achieving those goals at the federal level. But my recommendation is to devolve standards of performance and methods of achievement to the state and local level.

I would say both standards of performance and methodology would be better handled at local and state levels than at the federal level. We should allow differences in standards of performance across jurisdictions because people have different preferences regarding the trade-offs involved. — P.J. Hill

Q: How do you deal with the situation where a state won't do something because of the influence of a particular industry — charcoal kilns in Missouri, for instance?

Dr. Hill: Industry influence is both a problem and a benefit. Industries and people can move to areas where they find that the total package of economic opportunities and environmental quality fit their wishes. In some cases particular industries will have too much influence. In some other cases environmental groups may have too much influence, and it's difficult for me to say how that's all going to work itself out if more authority is devolved to states and cities. I have no particular reason to believe that there should be more of a race to the bottom than a race to the top. I think you're going to find both. But you're also going to find some real pressures that will prevent egregious sorts of violations. It may be that in some particular case an industry may have undue political influence, but the federal government is not immune to influence either. Bruce Ackerman has written a book called *Clean Coal/Dirty Air* that shows how federal air pollution standards were heavily influenced by the eastern (high sulfur) coal industries and their unions (a nice symbiosis there), which convinced Congress to require costly scrubbers regardless of the sulfur content of the coal being burned by electric utilities.

Special interests have a role to play and they will probably have a voice at every level of politics. I'm willing to trust more to competition among jurisdictions in order to solve that sort of problem.

Mr. Midkiff: I want to respond to that briefly. I think that state and local agencies can deal quite well with local businesses and industries because those smaller entities respond more to community pressure. If you are polluting your neighbors yard, your neighbor is going to let you know about it

But when we get up to the level of multinational corporations or large industries, such as the charcoal industry, and must deal with the favored industry of the controlling politicians, then local and state interests have a much more difficult time. At one point in time we were a fairly simple society with simple industries, but some of those were polluting industries. Now we are a very complex society with the North American Free Trade Agreement, the General Agreement on Tariffs and Trade, global markets, and so forth. I think that we've lost the ability of states to control the industries that deal on that level.

I think that state and local agencies can deal quite well with local businesses and industries because those smaller entities respond more to community pressure. ... But when we get up to the level of multinational corporations or large industries ...then local and state interests have a much more difficult time. — Kenneth Midkiff

Q: It seems to me that the federal government has more information that it shares with citizens than does state government.

Mr. Midkiff: The Freedom of Information Act is one way to get information at the federal level. The toxic release inventory is another federal source of information. Fortunately Missouri has a very strong open records and meetings act. In fact our state laws are probably better than the federal laws. But that's not the case in other states, so citizens in those states do have to rely on federal laws to obtain these types of information.

Q: Why is the community right-to-know law limited to private business, rather than including public sector polluters?

Mr. Midkiff: You'll find no argument from me; I agree with you. The U.S. military is one of the biggest polluters in the

country, without a doubt.

Q: What would you do with the EPA, Dr. Hill, if states had more authority.

Dr. Hill: The EPA would be mostly an information agency. It would monitor and disseminate information on what's happening in various states. It would fund science with regard to trans-boundary sorts of problems. The EPA could publish model laws based on state approaches that had been tried and had worked in other situations. I would have no problem with the EPA doing a lot with regard to providing information. But I have a lot of problems with their actual promulgation of the regulations.

Q: Cynics have argued that environmental groups prefer federal regulation because it affords "one-stop lobbying." While cost-benefit analysis is supposed to be conducted at the federal level, this requirement seems to be ignored. Does this play a role in these groups' lack of support for environmental federalism?

Mr. Midkiff: Well, the EPA does do cost-benefit analysis. Cost-benefit analyses are very difficult to do, and perhaps that's why there has been a lot of resistance.

The Sierra Club does lobby at the federal level. However, our most effective means of lobbying is our members who are out in the district rather than our lobbyists who are in Washington. We have 24 or 25 with specialties in various areas. They typically "lobby" by informing the membership of the Sierra Club—about 600,000 people around the states—about what's going on in Washington so those people can contact their representatives.

I am a lobbyist at the state level, and the Sierra Club does have lobbyists in most state capitals as well. We also lobby at the local level. We try to cover all the bases, just in case.

With regards to cost benefit analysis, it depends on what is counted as costs and benefits and who is doing the analysis. I don't think there's any perfect way to do this yet. The clean air debate is a good example. You had to take a certain amount of things on faith. The health benefits that the EPA came up with were probably a little bit exaggerated. I suspect the costs that the industry came up with were probably quite a bit exaggerated. It's not science, it's politics.

Q: Dr. Hill, if the federal regulations were set at a minimum

and states were able to pose more strict regulations, isn't the race to the top still available? And is it going on now?

Dr. Hill: It certainly could be. It's really difficult to say because states respond to different citizen preferences.

But I see no reason to impose the bottom level. Why set the minimal levels that, in essence, tell areas that they don't know enough to choose their own level of air and water quality?

Again, it is different if the air and the water pollution comes from out of state. That certainly is a problem, and it has to be dealt with, but there are very few areas in which that is a problem. It's not enough to say that the problem exists; it must be a significant enough problem to outweigh the costs of centralized decision-making. Sure the race to the top could exist now, but with more state authority you have a check on high-cost-low-benefit laws. The state that decides to opt for environmental standards that are extremely tight, will find that it faces competition from other neighboring states that will try to get a better sort of a trade-off. I just think it is very healthy to have a lot of searching for the right rules.

The state that decides to opt for environmental standards that are extremely tight, will find that it faces competition from other neighboring states that will try to get a better sort of a trade-off. I just think it is very healthy to have a lot of searching for the right rules.

—P.J. Hill

Mr. Midkiff: In Missouri's air law we have a provision which prevents our Department of Natural Resources from going beyond federal standards, and it has been problematic. We are steadfastly resisting a move that's been in the state legislature for the last two years to try to impose that same standard on water. We have been told from authoritative sources that there will be legislation introduced again this year to try to prevent Missouri from going beyond federal standards on clean water. I don't think Missourians are going to buy that.

Last week, the U.S. House of Representatives passed a bill which allows persons who think their property rights have been violated by local planning and zoning laws to go immediately to fed-

eral court. This is going to put a real chilling effect on local planning and zoning ordinances. What's ironic about this is that the same people who are talking about giving more power to local control — devolution — were the same ones who pushed for quick access to the federal courts to overturn those very laws, rules, regulations, and ordinances. So again, I state my basic premise that it's not devolution that's being sought; it's an overall weakening of environmental laws and standards.

Q: Where would research on environmental impacts be conducted, if this responsibility was removed from the EPA?

Dr. Hill: Lots of the research is already being done by privately funded groups and universities. Much scientific information is being generated by a whole host of institutions outside of the federal government. Remember, too, that the federal government's resources really come from the states — from people, from businesses. When we say that the states don't have resources to do research, what we're saying is that the very same people are not willing, perhaps, to provide the resources at the state level, but the federal government doesn't have to ask for these resources. I think that we already have competition among research agencies, to try to find out exactly what's going on, but we would have even more with devolution.

Mr. Midkiff: Our Department of Natural Resources in Missouri has no internal research programs. They do have some modest funds to contract with other universities to obtain data; they use University of Missouri quite a bit. The U.S. EPA does have a budget for research and its own research division. Not surprisingly, the same individuals who are talking about devolution cut the U.S. EPA's research budget two years ago. And our Senator Christopher "Kit" Bond led that effort.

So again, there's a diverging point of view here when it looks like what we're really talking about is reducing regulations all together rather than simple devolution. Have I made that point before?

Q: Dr. Hill compared the results of the clean-up in the 1960s to that in the 1970s and attributed the better performance in the 1960s to state management and poorer performance in the 1970s to the management shift to Washington, D.C. Could another explanation be that the easy clean-up occurred in the 1960s and harder

tasks were faced in the 1970s?

Dr. Hill: That's certainly a possibility. With any statistical analysis like that it's difficult to figure out cause and effect.

But critics most often say that when environmental quality was in the hands of the states, nothing was happening; we were not getting clean up. That's simply not the case.

The other thing to remember is that now there is greater environmental awareness, and there's more scientific information available. As a result, the states would probably respond more to environmental pressures now than they did in the 1960s. The evidence of the harm caused by particular pollutants wasn't as strong at that period of time. We didn't know how effective clean up efforts could be. But your point that the first level of clean up is usually cheaper and that it does become more expensive over time is worth noting.

Mr. Midkiff: I remain unconvinced that the states were doing all that much in the 60s. Having essentially grown up in the 50s and 60s, I can recall, from personal experience, some of the major problems, and certainly the dramatic problems, that were occurring at that time. From everything I have read and from all the research I have done, no significant gains were made in environmental improvement across the nation. There may have been pockets where the problems were so great that they had to address them, but a nationwide addressing of environmental problems did not occur until the late 60s, early 70s—particularly with the passage of the Clean Water Act of 1972. There have been dramatic and significant improvements since then.

Dr. Hill: I am citing the work of Robert Crandall, an economist at the Brookings Institution, who has tried to study, in a fairly complete sort of way, the history of air pollution in the United States. It's his data that I'm citing that says that the clean up rate was actually twice as fast in the 60s as the 70s.

Q: Should federal standards completely be abandoned, except for air pollution? Could solutions then be left to state and local officials?

Dr. Hill: I would say that except for significant problems that come from other states, I see no reason to set federal standards for a locality with regard to air quality or with regard to water quality. I

see no reason that a locality cannot decide for itself what it wants in terms of air and water quality.

Under traditional common law, which was trumped by EPA rules and regulations, both private individuals and government entities could sue one another for air and water “trespass.” That was happening in the 50s and the 60s. I would go back to common law rules that prevent people from passing the pollution onto others. That would be much more effective and would solve many of the interboundary problems that we’re talking about.

The state of Missouri and the city of St. Louis have been wrestling (almost literally) over the issue of attainment of ozone standards for the last seven years ... They have just now arrived at a solution. What was driving this whole thing was the federal mandate to clean up the air of St. Louis. — Kenneth Midkiff

Mr. Midkiff: It might be a little difficult to stop all the cars on Interstate 70 that are causing pollution problems. I think probably your scenario might work, *might* work, with stationary sources. I doubt if it would work with mobile sources.

The state of Missouri and the city of St. Louis have been wrestling (almost literally) over the issue of attainment of ozone standards for the last seven years, since Clean Air Act amendments in 1990. They have just now arrived at a solution. What was driving this whole thing was the federal mandate to clean up the air of St. Louis.

If it were left to our local and state politicians, human health would be affected because they would not do what is needed to protect human health, children’s health, and so forth. The fact is that it was the threat of withholding \$400 million dollars in federal highway funds that drove St. Louis and the state of Missouri to clean up the St. Louis ozone problem.

Q: I think it’s wonderful that both the speakers are looking for the same result. It’s just how they get there. And all these rules and regulations cost a lot of money. I’d be interested in knowing how to minimize the ridiculous rules and how to maximize the sensible ones.

Dr. Hill: Competition—competition among jurisdictions. It forces institutions that are doing things in expensive ways to have to face some sort of a cost.

Mr. Midkiff: I think, again, I'll have to go back to the almost ridiculously succinct answer I gave before. There is a lot of emphasis on how to reduce pollution and not so much emphasis on what should be cleaned up. For example, there could be a lot of simplification of regulations for construction permits, but then it would require more effort on the compliance monitoring and enforcement end. There would be a trade-off. I have just as many problems with some of the ridiculous regulations and the way they're implemented—best management practices, best available control technologies, and blah blah blah until one's head reels. What I'm concerned about is what's coming out of the smokestack, what's coming out of the discharge pipe, and what's coming out of the exhaust pipe. And if we could somehow cut through all the clutter and get to that I think we'd all be a lot better off.

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