

Participative justice: The ‘sweet spot’ where impact assessment and empowered community voices meet

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Introduction

In the 1960s, Rachel Carson’s *Silent Spring* and a growing environmental discourse were challenging rampant industrialism (Dryzek 2006). No longer were progress and industrialisation accepted as trade-offs for degradation by pipelines, resource extraction and urbanism. Regulation emerged to ensure the impacts of large projects on the human and natural environment were scrutinised and assessed. Now, half a century after the 1969 US *National Environmental Protection Act*, are we entering the ‘angry autumn’ of the Anthropocene? An era where communities are increasingly alarmed and vocal at ‘the age of man’ using up the planet’s non-renewable resources ‘on a scale akin to the great forces of nature’ (Stockholm Resilience Centre, nd)? Where the incursion of mines into prime agricultural land, fears of fracking harming ground water, intensification of farming and urban sprawl are fanning social movements and political headaches around the world?

When is economic development undemocratic? How can distrusted institutions make a paradigm shift from issuing regulatory licences to taking stock of whether communities have issued a ‘social licence’ (Preston 2014)? Is the greatest political challenge of the 21st century becoming the production, determination and allocation of the benefits and risks of resource industries, as suggested by Dryzek (2006)? How can empowered community voices inform the tough political decisions inherent in weighing up the discrepant perspectives and pluralistic value systems of modern society? Of the chaos, complexity and divided opinions?

First, it is worth considering why regulatory decisions are increasingly fraught and politicised:

- **Trust deficit:** Recent studies point to a trust deficit in companies and institutions (Edelman 2018; Australian Institute of Company Directors 2017).
- **Seismic shift in community expectations:** Social media has created networks of social movements reacting to issues such as climate change, water stress and food security (World Economic Forum 2018).
- **Public distrust of the social licence discourse,** often seen as companies trying to buy not earn community trust for projects that the community would have rejected in the first place.
- **The image of mining:** Deloitte (2018) found the fourth biggest challenge for the mining industry was its image, based on a tarnished reputation, environmental damage and dubious practices.
- **Costs of conflict:** Projects are being delayed, contested in the courts, refused or subject to moratoriums, with costly delays and lost opportunities (Franks et al. 2014). Bice et al. (2017) cite AGL in Australia in 2015 reporting a \$A435M asset impairment when unable to advance coal seam gas projects that were the subject of intense community protests.
- **Paving paradise:** Communities are protesting at incursions into their quality of life, from urban sprawl displacing wineries and horticulture to coal mines displacing farmers. The Ag Institute of Australia (2018) has called for protection of prime agricultural land from mining activities,

citing the importance of agriculture in feeding the world's 7.6 billion people. Where mining once had little impact on agriculture, it suggests that, with large-scale mechanisation and the exploitation of resources such as coal seam gas, mining and agriculture are struggling to co-exist.

These challenges demand more sophisticated approaches to the participation of affected communities in defining, influencing and managing the positive and negative impacts of regulated projects. But what constitutes meaningful participation? How can it go beyond community feedback tacked onto a regulatory trajectory towards project approval?

Justice

This paper conceptualises 'participative justice' as fairness (Rawls 1999). A justice lens is particularly important for Aboriginal peoples, who may bear the brunt of projects moving into remoter regions and for whom the impacts of projects may be profound, life-changing, irreversible, uninvited or perhaps welcomed as a path out of disadvantage.

The traditional symbol of justice is a pair of scales in balance. The yin and yang of this balance means the process – or the how - of participation is just as important as its results, although it is to be hoped that good outcomes (such as social justice, or a better world) follow good process. The scales of justice will be in balance where power, knowledge systems, relationships and ability to influence regulatory and political decisions are symmetrical.

Distributive justice

Impact assessment is asked to assess both the nature and distribution of project impacts. Finding a balance between competing interests calls on insights into different values and perceptions, community definitions of winners and losers, how allocation of impacts might be affected by power imbalances (O'Faircheallaigh 2009) and communities having the right to share in benefits or be compensated for burdens, including inter-generational equity (Preston 2014). Moderate impacts on the nation may have a massive impact on local populations (Dietz 1987). Costs may accrue to fewer people but at an exponentially detrimental scale, such as displacement of other land uses, disruption to the social fabric, reduced land access for traditional activities and a lack of political clout to oppose harmful or unwanted projects (Berger 1977; Lennox 2012). Distributive justice is lacking where the scales of justice look like a seesaw, one side weighted by jobs and economic growth that flow to the more articulate, skilled and capitalised groups in society (Simpson 2000), while community impacts are left hanging in the air.

Procedural fairness

Procedural fairness covers the process of consultation and ability to shape decisions as well as who has influence, access to information, and entitlement to take part in decision-making and review procedures (Preston 2014). For people to believe they were accorded procedural fairness, they must have the time and resources to provide considered input, have access to objective information and trust the independence and impartiality of consultants and regulators.

Justice as recognition

Justice as recognition relates to who is given respect and valued. All people should be accorded respect, dignity and equal worth (Chambers 1996), so they can be confident decisions are not biased by power imbalances or technical credentials, and that the voices of marginalised, perhaps fragmented communities, have equal standing with the aggregated voices of dominant groups.

Environmental justice

Environmental justice considers how some groups might be inequitably affected by projects. Cotton (2017) suggests it is unethical to expose people to harms unless they have provided informed consent. Aboriginal communities may suffer disproportionately from resource extraction or climate change, such as disruption to traditional mobility and hunting patterns and loss of spiritual connections and cultural identity. People in poorer countries may be disadvantaged by less stringent regulatory regimes (Paylor 2017) or limited avoidance options. Media reports of Cape Town's water crisis (Lloyd 2018) describe wealthier people putting down bores to avoid water queues while the disadvantaged, already beset with social and economic inequities, faced losing low-skilled jobs.

Incorporating environmental justice into impact assessment will understand that communities may regard non-renewable resources as a public resource, that extraction is a privilege not a right and that communities have moral rights. This constitutes a paradigm shift from evidence-based outcomes, legal rights to extract resources belonging to the Crown, bureaucratic processes assigning asymmetrical power to technical and scientific knowledge (Dietz 1987) and risk assessment framed as risks to successful project delivery (Kemp et al. 2016).

Participative justice

Participative justice draws on these perspectives to ensure the community can voice concerns and minorities are heard (Preston 2014) rather than framing participation as a list of aggregated 'stakeholders' to be 'consulted' as an input. It acknowledges that impact assessment processes can be bureaucratic and culturally alien for marginalised and disadvantaged people (O'Faircheallaigh 2009), ensures that participation is inclusive, early and meaningful (Government of Canada 2017) and that heterogeneous stakeholders are accorded equitable rights (Cotton 2017).

A key challenge is that by the time people are 'consulted', companies may have invested millions in exploration, studies, capital raising and consultants. For existing operations seeking to expand, companies may have everything to lose, with workers facing job losses and suppliers looking at bankruptcy if regulatory approval is refused. In granting a political licence to projects, governments will be wary of sovereign risk, sensitive to criticisms of 'red tape' and influenced by the promise of economic rewards, quite apart from lobbying by both sides. There is no fairness when the system is geared to create only winners and losers or if projects are at a stage where impact assessment and participation are irrelevant (Dietz 1987).

Participation can be fair only when no decisions have been made, no money invested in project studies, when people can give informed consent at conceptual and exploration stages, provide independent input to terms of reference, define the framing of costs and benefits and feel their voices carry equal weight with those of technical experts. This might be a regional assessment that takes a big picture view of a region's multi-faceted values, assets and potential economic development,

gathers trusted data on natural resources and considers the land's carrying capacity and community's values and aspirations. This sort of land use planning informs policy at a normative stage on appropriate land uses, the preferred pace and scale of development and the ongoing management regime to be applied. It might include a community values assessment and a range of growth scenarios to help communities deliberate about options and implications.

This holistic approach to due diligence helps de-risk projects for all parties, builds trust and relationships, empowers community decision-making and provides certainty for potential investors, instead of running the gauntlet of uncertain approval processes and potential reputation damage. The return on investment may be not just financial but social learning by all parties, early warning of risk, ideas to refine project planning, reduced costs of conflict and a more efficient and effective approval system built on collaborative groundwork.

Aboriginal considerations

In addition, participative justice for Aboriginal peoples facing development on their lands would mean:

- a human rights approach including the concept of free, prior and informed consent (Vanclay et al. 2015) and self-determination, as outlined in the 2017 Aashukan Declaration (IAIA 2017), ideally with Aboriginal people setting and driving the agenda. This is the IAP2 level of 'empower' or 'we will implement what you decide'¹;
- asking a community how it wants to be consulted, with good communication and feedback to show how input influenced decisions;
- inclusions of anthropological or ethnographic studies, capturing narrative about what disturbance to country really means;
- understanding that information may not flow across family and kinship lines in many Indigenous communities, thus necessitating intensive small group consultation rather than polarised community meetings;
- regulatory systems with the mandate, professional skills and resources to give equal weight to different knowledge systems, worldviews, values and multi-disciplinary ways of working.

Conclusion

Realising this ideal calls on new mindsets and skillsets to capture qualitative social and cultural insights. It requires a shift from aggregated demographic data to deliberative spaces where people affected by a regulatory decision can meet, consider information, collaborate on solutions and influence decisions. Rather than headcounts at meetings, quality participation will define the materiality of impacts by their extent, duration, severity and sensitivity (NSW Department of Planning and Environment 2016) from the perspective of diverse and perhaps divided communities. It will challenge dominant cultures to consider that there may be different conceptions of the 'good life' (O'Faircheallaigh 2009).

In a participative era of impact assessment, the interests of all parties have equal weight, relationships are symmetrical and not dominated by the self-interest of dominant parties and the insights of participatory social studies balance the predictive, technical focus of expert studies. Early participation

¹ The International Association for Impact Assessment (IAP2) Spectrum of Participation at www.iap2.org

– at the screening stage of projects - will give communities an influential voice, reduce conflict, de-risk projects, create certainty to all parties, foster mutual learning and reduce the cost of missing the early warning signs of emerging issues. Considering impacts through the lens of participative justice - where processes are fair, outcomes are balanced and decision-making considers all perspectives – will create a community ‘sweet spot’ at the intersection of impact assessment and meaningful participation.

A justice principle might be framed as a promise to the public that ‘decision makers will consider your voice to be equal with those of technical experts, even when you are a minority, inarticulate, marginalised, lack political clout and resources and are disadvantaged by impact assessment methodologies framed in measurable units of analysis’.

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