Do stakeholder committees produce fair policy outcomes?

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Abstract

When developing stream flow management plans, a common approach is to appoint a range of stakeholders such as water users, environmental interests, indigenous interests, and natural resource management agencies to an advisory committee to make difficult management and policy choices regarding the sustainable use of water. This paper looks at factors that affect the ability of these types of committees to develop fair outcomes. Fairness in this context has recognition, distribution, procedural and social norm components. Based on case studies, this paper shows how institutional arrangements, participant power bases, and networks affect the outcome of this process. It concludes by outlining some key considerations for natural resource managers who use such committees in policy development.

Keywords

Water, social justice, fairness, water reform

Introduction

The way we manage our rivers and streams is changing. The multi-billion dollar National Water Initiative builds on the 1994 COAG process of water reform and aims to achieve efficient and sustainable use of water resources. Recognising water for environmental purposes, separating land and water rights, vesting water rights with individual users, and allowing markets/trade to resolve water use conflicts and create efficiency gains are key elements of this initiative (McKay, 2004). Implementation relies on developing water sharing agreements for each water source through a community engagement process. Water reform therefore signifies not simply a change in the way we manage our rivers, but also more sophisticated, transparent and comprehensive water planning.

To date the development of water sharing agreements has been an area of social turbulence: goals and objectives are frequently contested; significant uncertainties exist about the effects of different management actions; and temporal and spatial scales are difficult to conceptualise. Such uncertainty means decisions are often hotly contested. Getting to an agreement therefore involves learning, relationship building, and ownership in order to achieve social and political acceptability.

Evaluation of participative planning processes in similar situations has led to identification of key factors that make a community engagement process a 'success' (eg. Leach & Pelkey, 2001). However participatory planning and policy development not simply about getting an outcome because it affects the people involved in ways separate from, and in addition to, the outcome. Understanding the internal dynamics of these processes is important if government is to truly enter into a partnership with the community. In this paper I attempt to first 'unpack' the goals of the participative process used to create water sharing plans in rural New South Wales, and then compare these to the participants' views and recollection of the process. The key question I want to address is can stakeholder committees, such as the one uses to develop water sharing agreements in NSW, produce fair outcomes?

What is "fairness" in water reform?
Directly associated with water policy and its sub-components of sustainability and conflict resolution is the concept of fairness and equity. This association is stated explicitly in the new water legislation. For example, the NSW Water Act (2000) states its goal is to provide for the orderly, efficient and *equitable* sharing of water and that planning is designed to ensure *fair* and balanced representation of all interest groups. Similarly paragraph 23 of the National Water Initiative states a key goal is to underpin Australia's ability to manage responsively and *fairly*. However fairness is also more broadly associated with water policy as it is

seen as a key part of public policy in natural resource management more generally and a ubiquitous part of a decision maker's day to day activities (Syme & Nancarrow, 2002).

If a fair decision is desired by the new water reform process, how is it defined? Terms such as equitably, fairness and transparency are terms used in water reform with no criteria about what they mean. While socio-psychology cannot determine what is fair or unfair, it can document how people feel and think about justice issues. My brief review of the literature in this area suggests fairness has four different components/perspectives:

1. Recognition: People may view the decision as fair even if their only involvement is that have been acknowledged (Schlosberg, 2004). Young (2000) argues that society is a place of struggle. Lack of recognition in the first place inflicts damage not only on different communities but also on the image of these communities to the wider community. If you are not recognised you do not exist.

2. Distribution: Put simply this is the belief that people should get equal parts of the pie. However its focus is best viewed as the distribution of the content. That is, rather than have truly equal parts, fairness exists when each persons pay off is proportional to their input into the group's effort (Homas, 1961). So while equality is a special case, fairness is equity.

3. Procedural: Procedural fairness involves giving people an adequate opportunity to speak and have an appropriate degree of influence over the outcomes of negotiation (Tyler & Blader, 2003). In other words people may accept outcomes that are less than what they want because the process has led to outcomes that they regard as fair. This is because participants recognise in most real life situations; everyone differs in respect to choice and consequence. Unfavourable outcomes might be fair so long as stakeholders are treated with courtesy and respect (Wade-Benzoni *et al.,* 1996);

4. Social Norm: Once a system is in place, participants expect all others to accept and adhere to the rules and regulations imposed to promote the greater good. From security flows substance, abundance and payoffs for labour. In some literature expectation is seen as the interpersonal aspects of procedural fairness (Tyler & Blader, 2003).

Participant interviews
The regional governance process in New South Wales appoints people to the different committees because they represent different: government agencies, nature conservation interests, landholder interests, indigenous interests and/or scientific interests (NSW Department of Land and Water Conservation, 2002). Surveys by Tisdell *et al.,* (2001) and Nancarrow and Syme (2001a) suggest that community attitudes support the idea that irrigators and the environment are key legitimate stakeholders in the water. They are also those stakeholders who represent the largest resource allocations in these Stakeholder Committees (i.e. nature conservation or landholder interests). These two groups became the focus of my interviews.

Data were collected through in-depth, in-person semi–structured interviews (Kvale, 1996). The questions were typically asked of each interviewee in a systematic and consistent order. I allowed interviewees freedom to digress and often probed far beyond the answers to the prepared standardised questions. However I also took notes and flagged some of these during the interview in order to go back to points of interest and explore these in more depth without interrupting the flow of conversation (Kvale, 1996). Interviews were transferred and tape recorded verbatim and this data formed the empirical foundations of the research. I completed forty-two personal interviews with most interviews lasting between 1-1.5 hours and taking place in the respondent's office or home. The questions in the interview focused of four key areas: process (eg. events that occurred); power (eg. how decisions were made); fairness (eg. whether participants felt their views were being heard) and; co-operation (eg. communication between participants).

To triangulate the interviews I also interviewed the Chairs and facilitators of each Committee and obtained meeting minutes where possible. Any other printed material issued during the process (eg. press releases, progress reports) where also used to provide rigour to the interview data.

Data analysis was based on the development of an organising system to identify predominant themes (Boyatzis, 1998). The software package Nvivo was used as it allows each unit to have more than one code

and can create hierarchical coding systems. The aim of this type of analysis was to discover patterns amongst the data in order to point to theoretical understandings (Boyatzis, 1998). The first part of my coding was open coding designed to break down, examine, compare and conceptualise the responses. Having completed the initial phase of coding, I then started axial coding in order to create relationships between categories and sub-categories. I then used the meeting minutes, and published committee documents and press releases to support the interview findings.

Results

Fairness as recognition
The Agencies knew that forming a small committee means that some key groups are inevitably not recognised. I asked one facilitator about a lack of representation from the lower part of one regulated river and his reply was: *"We did and we did not. It is a very complicated thing. Although realistically I think there is enough of provisions in the plan to allow for additional environment flows to cater for that, but brings up a very interesting issue about representation. People have not been represented above the dam. People from our regional centres said they weren't represented and so too people from one major irrigation area. It is really a bit of the too hard basket".* The horticulturalists also claimed they were not involved in some regulated river plans (Millar, 2006). Another facilitator's response was: *"Because I think it is just a standard concern with a committee of about a dozen people - you can't have representatives from everywhere. Certainly there were a lot of guest speakers.....people coming to give presentations. So people were heard".* Yet participants' views on the recognition process were best summarised by one comment: *"essentially the community doesn't feel like they have ownership over the plan you know the process was flawed from the start."*

However participation does not necessarily lead to recognition because each participant gets typecast. For example participants were typecast, even denigrated, as greenies: *"I was of the view that if you are going to war you don't have a priest. Same thing with these committees and the conservationists and greenies... they don't put water on your grapes".* For a Groundwater Committee, participants were typecast according to how long they had been extracting water. Even Government representatives did not escape this typecasting. For example, representatives from the Department of Agriculture were believed to support production values, whereas representatives from the NSW National Parks and Wildlife Service were believed to support conservation values. One participant on an Unregulated Committee said *"The Department of Agriculture had an irrigator focus, is more aligned and will sit with them; whereas the EPA is more an environment focus".* In one case, a peak stakeholder group made complaints to the Minister when an agency representative did not side with them as expected.

Fairness as distribution
There was a lack of scientific information which could have been used to guide the any decision based on fairness as distribution. The Water Commission's review of planning processes used by New South Wales expressed concern that the ecological science that was used was inadequate to inform decision-making in the water systems for which plans were being prepared (National Water Commission, 2005). The lack of information is also reflected in the interviews: *"if you put the water in at the wrong time you may do more harm to it. I find it quite worrying in as much as people say they want a healthy river, but what is a healthy river at the end of the day?* This statement reflected a common frustration expressed by participants about attempting to deal with a complex problem without good science.

This lack of information made advocating any change from the status quo difficult. One participant stated: *"You know instead they basically maintained current extraction rates. It has cut them off on average by 0.5% and it was business as usual".* One environmental representative stated*: "It wasn't about distributing or sharing water, it was about drawing a line in the sand and saying no more".* Indeed the planning process in both Victoria and NSW seemed largely based on history of use with ineffective allocations of water being given to the environment (Ladson & Finlayson, 2002; Millar, 2006).

Some participants also stated the rules imposed by Government on these Committees made it difficult to distribute water fairly or improve the current situation: *"...for example, Coopers Creek in northern NSW is an unregulated river and has a lot of the debate. There was a causeway that was a major impediment to threatened fish species passage, and if the water sharing plan had of been a water management plan like the*

government originally said it was going to be, it could have allowed for a trade off so the cease to pump could have been lower and the causeway removed." This was used an example of where there could have been improved distribution of water but it was outside the Committee's control.

Fairness as procedure
Many participants said it was not fair because they did not feel they had a chance to influence the process or be heard because voting blocks occurred: *"The irrigator representatives are an old boys club, they have been on various boards, and they have rode out different Director-Generals and various situations. They have been chairs and have been working with people, so they know it and they sit as a group".* One participant said: *"They were set up on consensus and had to work through this together, then it became a majority voting forum and many interests were basically outvoted. This left many people being disheartened with the process".* One facilitator stated: *"The highest priority is the environment but really in the water management plan the irrigators win out. The reason why is that it is not by consensus - it is by majority rule. And of course when you look at the make-up of the committee it tends to be very heavily biased towards irrigators to the detriment of the environmental representatives."*

There were also several statements saying the government processes were not fair. Government was accused of restricting involvement or changing things in the plan that had been agreed to by the committee: *"...the water sharing plan was such a dog's breakfast. There were things that were going to be added to plan that the committee was not going to be able to review and vote on before it went to the Minister's office. I was just thoroughly disgusted with the whole process".* Another said *"Well the government used to come down and say you know this is government policy you better stick to it and the committee would say if you have got your own agenda then run with it but you are not going to get our support".*

Part of the issue was that procedure had not been worked out by the Government. Many of the regional staff complained about the processes within Head Office. One facilitator said: *"They see something and like it and they tell me. That's the process. What a joke!"* And a senior staff member said: *"they wait until they see it all then they make the rules. We are happy with this bit and we'll look at the other bits around the edges and tell you later"*

Fairness as social norm
There was a general undercurrent in the interviews that suggested that people thought others were cheating and using other avenues to influence the outcome. One general security licence holder referred to high security licence holders this way: *"Here they are being offered more because they are a pain in the arse...and they are off to Sydney to try and get their full allocation".* Another remarked, *"we* [the water users] *had people* [in the Administration] *who told us he* [Minister for Environment] *was the stumbling block. The bureaucrats told us so. We had good enough information to know a revolving door process* [with the Greens] *was going on here. Not all the bureaucrats are from the far left of politics; we knew what was happening".*

Yet participants were able to rationalise their own forum shopping: *"spoken to him* [Minister for Land and Water] *many times and we knew he was doing his best".* Another said: *"We wrote to the Minister, we talked to the local politician, and we sent information to the New South Wales Farmers Federation about what we were doing".* Similarly environmental participants said *"I mean we had negotiations with both Ministers throughout the process and we sent all the submissions to both Ministers so they knew our position right from the start and there are some people who are more to the right and others who are more supportive of the environment".* Perhaps it was best exemplified by one irrigator who said: *"There is no use sitting inside the tent when everyone is on the outside pissing in."*

Discussion

In some natural resource management circumstances, there may in fact be no reason to consider all the elements of fairness identified in this paper. For example Hardin (1968) suggested that the morality of the act (fairness) is a function of the state of the system at the time it is performed. This view suggests only when a resource becomes unable to replenish itself as fast as it is being consumed then fairness and justice need to be considered. Rawls (2001) asserts achieving distributive fairness may not be appropriate when science is poor and temporal scales are ill defined. On the other hand, some components of fairness may be critically

interconnected. For example, Nancarrow and Syme (2001b) report on the difficulty of implementing procedural fairness when recognition components are missing. The relative importance of any component of fairness depends on the nature of the water resource, the competing values and the outcome required. In this case water policy and planning was being developed simultaneously within a number of layers and there were a large number of public and private actors working different levels and functional areas of government to influence the outcomes. When policy games occur at different levels and involve negotiations about problem formulations, procedural governance and solutions, each stakeholder group try to influence the rules of the game so that the outcome will go their way (Van Bueren *et al.* 2003). Each has its own interest in and capacity to influence environmental decision making. Winning or losing a policy decision depends on not just on what occurs within a Committee but whether a stakeholder group can also draw on their network connections to co-ordinate greater quantities of political resources to support their position on an issue at various levels. Thus to some degree procedural and social norm fairness was not possible in this case study.

At its most basic level, trust is a key component of these participative processes (Leach & Pelkey 2001). The rational choice literature defines trust as an assessment about a person's willingness and ability to make promises. Trust is influenced by pre-existing beliefs, procedural fairness and lack of alternative venues. In this NSW water reform process the phenomena known as devil shift occurred. This is where the participants see their opponents as being more powerful and more evil than they actually are (Leach & Sabatier 2005). Participants typecast other participants and accused them of having access to other more powerful forums of policy reform. These actors often impugn the motives and actions of their opponents while they perceive themselves as reasonable. As fairness is often viewed from the perspective of what other participants get in terms of recognition, resource allocation, and having a voice, it becomes difficult for them to view any decision as being 'fair' (Schlosberg, 2004).

This makes it imperative in any highly contested participative process to not only understand human values, motivations and paradigms of conflict, but also an understand the relationships and structures surrounding the process. In managing our rivers and streams, representation tends to be sectional and policy is still evolving. Equity issues do not just apply to ensuring all stakeholder groups have access to the negotiating table (i.e. represented). It depends on having stable and well articulated arenas that are thought out beforehand. This is because stakeholders often operate at various levels simultaneously. This causes power imbalances which not only undermine trust, they inhibit weaker parties in advancing their respective views in a clear and forceful manner (Gray, 1985). There is considerable evidence to suggest that unless stakeholders have equal power to influence direction; good participative planning cannot take place (Gray, 1985)

Solutions for planners in this situation might be found in applying a Rawlsian (2001) theory of justice as fairness. A Rawlsian position posits a social contract should exist in advance of these committees and that the participants would agree upon this before participating. It would also commit citizens to viewing one another as free and equal in a system of co-operation. Each participant must think reasonably of the others who participate. Participation must be free and equal, not dominated or manipulated or under pressure of an inferior political or social position. While Rawlsian concepts of fairness have been considered as a possibility during the process of deliberation (e.g. Tisdell 2003), I am suggesting planners should apply it beforehand when formulating the participative process.

An alternative view, is to suggest that fairness and justice are not necessarily the domain of the committees but the prerogative of the democratically elected politicians (Nancarrow & Syme 2001b) This a view that does not see policy as some logical process but formed by clusters or complexes or organisations which consist of links and actors that operate within various political opportunity structures (Carlsson, 2000). Indeed despite over five years of effort and with over $117 million spent, at the end of the day it looks like the water reform process in New South Wales was driven by the political landscape.

In answering the question do Stakeholder Committees produce fair policy outcomes? In this case I suggest the answer was no. If this water reform process was not fair, how might have been improved? From my research, I see there may have been two ways achieve a more fair process. The first may have been to acknowledge the process is genuinely transformative and to set up and clearly spell out the rules of the game

beforehand. The second is to acknowledge it is largely a process of maintenance and let issues of fairness and justice be determined in other (political) arenas.

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