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# Public Participation in Risk Management Decisions: The Right to Define, the Right to Know, and the Right to Act

Frances M. Lynn\*

## Introduction

In the 1990's, discussions about whether or not the public should be involved in risk management decisions seem moot. The public is involved — and has been consistently — for over twenty years. Citizen participation in risk management issues began with the workers' health and safety movement in the mid-1960's and led to the enactment of the Occupational Safety and Health Act of 1970.<sup>1</sup> Involvement broadened with the advent of the environmental movement in the late 1960's and the passage of a myriad of laws including the National Environmental Policy Act<sup>2</sup> which gave citizens the right to challenge administrative decisions. In the late 1970's the community of concern broadened beyond the ranks of the unionized and the college-educated. Love Canal, Three Mile Island, Times Beach, Bhopal and Chernobyl cut across class and race and placed the control of industrially-produced risks center stage.

In response to the public's concern and demand to be included, decision makers adopted a right-to-hear-what-has-already-been-decided

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<sup>1</sup> Codified at 29 U.S.C. §§ 651 *et seq.*

<sup>2</sup> Codified at 42 U.S.C. §§ 4321 *et seq.*

approach. Public hearings were required for most regulations and large projects. They were held, however, at the end of the regulatory process, after the parameters of a problem had been defined, and after huge sums of money had been spent in conducting technically sophisticated, although certainly not value-free, analyses. Ironically, the main purpose that such meetings seemed to serve was to give the public free media coverage and to promote solidarity and build support for subsequent legislative and legal battles.

This "right-to-be-informed" approach to public involvement has recently taken a new twist with the advent of "risk communication." Some of those involved in risk communication activities seem to hope that public outrage will diminish if risk messages are more clearly and more cleverly crafted. Others recognize that the public's perceptions and opinions are important. They support two-way communication and are soliciting opinions through polls and focus groups. And this is good. But it is only a first step in the process of involving the public in decisions about risk. The next steps entail ensuring that the public is involved in defining the parameters of the problem, framing questions to be answered, deciding what information needs to be generated, interpreting the information, and choosing among public policy options and means of implementation. For risk managers the challenge is to give public participation plans and activities the same priority and resources as technical studies.<sup>3</sup>

### **The Right to Define the Problem**

Risk practitioners often provide answers before taking the time to find out how the public defines the problem. They supply sophisticated quantitative assessments when public concerns have as much to do with issues of equity, justice, and social responsibility as with a  $10^{-6}$  possibility of contracting cancer. The siting of hazardous waste facilities

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<sup>3</sup> M. EDELMAN, EDUCATING PROFESSIONALS ON PUBLIC INVOLVEMENT (1988).

provides an instance of this phenomena. In state after state, citizens have prevented the siting of large *centralized* facilities where the risks are borne by one community and the benefits enjoyed by all. In contrast, smaller facilities which serve *regional* or *local* needs have been sited.<sup>4</sup>

More significantly, we have become blinded by an economic paradigm which assumes that everything has a price and that at some price people will trade risks for benefits. When thinking about their life, limb and the environment, people use a different value system: instead of looking for trade-offs at the margins, they look toward reduction of toxics at the source. A new ethic is spreading: Ordinary people are challenging the assertion that a regrettable but necessary cost of doing business is environmental damage and other threats to human health.

What is happening in the field of risk is similar to what occurred in the 1960's in urban planning, housing and social welfare. Those affected by policy are refusing to leave decision making to enlightened elites or technicians. The public has increasingly recognized that embedded within scientific and technical decisions are "choices that result in the authoritative allocation of values and benefits in society".<sup>5</sup>

### **The Right to Know and to Generate Knowledge**

Here is a story, reportedly true, from a volume prepared by the International Council for Adult Education:<sup>6</sup>

Once, a huge lorry entered a road tunnel. The tunnel's roof was a centimetre lower than the lorry's. The lorry became stuck in the tunnel entrance. Traffic was blocked and chaos soon reigned on the surrounding highways. The

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<sup>4</sup> Lynn, *Citizen Involvement in Hazardous Waste Sites: Two North Carolina Success Stories*, 7 ENVTL. IMPACT ASSESSMENT REV. 347 (1987).

<sup>5</sup> Carroll, *Participatory Technology*, 171 SCIENCE 648 (1971).

<sup>6</sup> CREATING KNOWLEDGE: A MONOPOLY? 8-9 (B. Hall, A. Gillette, R. Tandon eds. 1982).

police experts arrived, the fire department experts arrived, the tunnel experts arrived. They pondered, conferred and pondered again. But no one could think of a way to get the lorry out of the tunnel — short, that is, of dismantling the lorry, the tunnel entrance or both. Then a small boy stepped out of the crowd that had gathered. "Why don't you let some air out of the tyres?" he asked. The experts reddened with embarrassment, let some air out of the tyres, and so freed the lorry.

In the last twenty years, when we have tried to tackle risk management issues, the last place to which we have looked for wisdom has been the public. The dominant belief has been that, if given data about hazards, the public will "freak out" and become hysterical. With occupational hazards, the attitude has been that the worry caused by informing workers about the risks would be worse than any possibility of their contracting a disease.

This attitude still exists among some public officials and technicians. The difference today is that for the first time in this country's history, we have legislation and regulations which give the public and workers access to data on risks in the workplace and in the community. In 1983, OSHA promulgated its Hazards Communication Standard<sup>7</sup>, and, in 1986, Congress passed the Community Right-to-Know Law, Title III of the Superfund Amendments and Reauthorization Act (SARA)<sup>8</sup>. Both measures provide only data. The challenge for the public is to be able to convert this data into practical understanding and knowledge which can serve as a basis for action. One way for this to occur is for intermediaries to work with the public to help collect this often complex information. This type of help can range from careful translations and interpretations, to equipping citizens to be able to decipher different styles of argumentation, different views of science, and different

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<sup>7</sup> Codified at 29 C.F.R. § 1910.1200 (1989)

<sup>8</sup> Codified at 42 U.S.C. §11001 (1986)

philosophical assumptions.<sup>9</sup>

Another way to address the issue of the public's role in creating knowledge is to incorporate workers and citizens into the investigation of the problem. This latter, more participatory approach, has been used successfully in communities such as Yellow Creek, Kentucky;<sup>10</sup> Bumpass Cove, Tennessee;<sup>11</sup> Love Canal, New York;<sup>12</sup> Los Angeles;<sup>13</sup> and Durham and Greensboro, North Carolina.<sup>14</sup> Citizens in these communities have conducted health surveys, pored over public records and scientific reports, and designed or supervised quantitative assessments of hazards.

A potential pitfall for the public in both a science literacy and a participatory research approach to Right-to-Know is to accept too easily a *scientific* interpretation of what constitutes a *significant* enough risk to take action. Sociologist Richard Couto emphasizes that:<sup>15</sup>

The evidence which epidemiologists require to achieve scientific statements of probability exceeds the evidence required to state that probably something should be done to eliminate or minimize a threat to health... the important political test is not the finding of epidemiologists on the probability of nonrandomness of an incident of illness, but the likelihood that a reasonable person... would take up

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<sup>9</sup> Reaven, *Science Literacy Needs of Public Involvement Programs*, 7 BULL. SCI. TECH. AND SOC'Y. 347 (1987).

<sup>10</sup> Couto, *Failing Health and New Prescriptions: Community-Based Approaches To Environmental Risks* in CURRENT HEALTH POLICY ISSUES AND ALTERNATIVES: AN APPLIED SOCIAL SCIENCE PERSPECTIVE (C.E. Hill, ed. 1986).

<sup>11</sup> J.MERRIFIELD, *Putting Scientists in Their Place: Participatory Research in Environmental and Occupational Health* in WE'RE TIRED OF BEING GUINEA PIGS (1987).

<sup>12</sup> L. GIBBS, LOVE CANAL (1987).

<sup>13</sup> Nuetra, *Communicating Risk: A Community Case History*, 11 HEALTH AND ENV. DIGEST 1 (1987).

<sup>14</sup> Lynn, *supra* note 4.

<sup>15</sup> *Supra* note 10.

residence with the community at risk.

Similarly, with the information on air and water emissions that has become available through the federal Community Right-to-Know Law, the public might be better served to focus less on precise and detailed estimates of risk and more on investigating measures a corporation could use to prevent releases.

### **Participatory Technology:**

#### **The Right To Act To Determine One's Future**

Ultimately, we must move beyond the fact-finding and study phase into proposing policies and monitoring implementation. This territory is considered an arena where the public's comments are more appropriate than in the two preceding stages, problem definition and generating or evaluating scientific information, which have traditionally been the domain of the expert. In this stage of the public involvement process, laws contain notification and comment requirements and the right to sue. In recent years, however, new mechanisms have emerged which, while never eliminating the possibility of suit, nor eschewing the need for federal standards, rely more on direct negotiations and ongoing interactions between those who generate the hazards and those who experience the risks.

Citizens, frustrated with federal enforcement agencies, are choosing to deal directly with industry. In some situations, formal mediators are used.<sup>16</sup> In other situations, citizen and environmental groups are conducting neighborhood inspections of facilities and establishing community review committees.<sup>17</sup>

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<sup>16</sup> Cormick and Knaster, *Mediation and Science Issues*, 28 ENVIRONMENT 6 (1986).

<sup>17</sup> THE CITIZENS TOXICS PROTECTION MANUAL (G. Cohen ed. 1988).

## Conclusions

In a 1971 article in *SCIENCE*, James D. Carroll analyzed "the incipient emergence of participatory technology." He viewed it as "a countervailing force to technical alienation." Carroll, a lawyer, supported this thrust, for he had concluded that "technological processes" had "become the equivalent of a form of law — that is, an authoritative or binding expression of social norms and values from which the individual or group may have no immediate recourse."<sup>18</sup>

What I have suggested in this essay is that, in the almost twenty years since Carroll's article, participatory technology has taken hold. This has made some scientists, some public and private managers and many developers of technology uncomfortable. They have responded by portraying environmental groups and others as Luddites, social deviants or selfish individuals who want to preserve their backyards instead of working for the common good.<sup>19</sup> However, as wastes have bubbled and washed up, and as accidents have occurred, more and more Americans have come to doubt the will and ability of government and industry to protect the environment and human health.

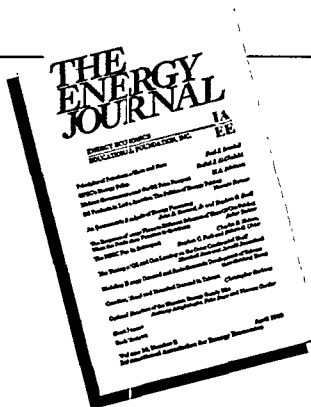
What the American public has been doing in the last twenty years and — more increasingly in the last ten — is very normal and very "American." They have formed volunteer organizations in order to work toward their definition of what is good, right and just. They have, in the process, broadened the parameters of the debate about risk and have become, whether welcomed or not, major actors in the risk management process. I view this as healthy not only for the environment but also for our democracy.

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<sup>18</sup> Carroll, *supra* note 5, at 648.

<sup>19</sup> L. Gerlach, *Protest Movements and the Construction of Risk* in *THE SOCIAL AND CULTURAL CONSTRUCTION OF RISK* (B. Johnson and V. Covello eds. 1987).





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