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Does the use of 'the public' in some debates about environmental decision making properly reflect the different publics involved in the decision making process?

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Abstract

The focus of this paper is a distinction between the public-in-general and publics-in-particular. It first considers Mike Michael's (2009) argument, focused on the practice of science, that the public-in-general is far too blunt an instrument, then it adopts Michael's schema to the analysis of debates about environmental decision making, in order to argue that the different publics involved in this decision making might be better analysed and described in terms of their particularity. Secondly, it criticises some contributions to debates about the role of lay legal advocates in environmental decision making for relying too heavily upon a notion of the public-in-general. And thirdly, by way of enhancing their approach, it discusses the advantages of focusing upon particular publics of environmental governance.

Keywords: environment, environmental law, public interest, public-in-general, publics-in-particular

Introduction

Some recent contributions in the sociology of science have developed a distinction between the public-in-general and publics-in-particular (Michael 2002; 2009; Michael and Brown 2005). In this paper I propose a similar distinction in regard to debates about environmental decision-making. A number of those who study environmental decision making argue for the importance of involvement by the public (Bonyhady 1993; Bonyhady and Christoff 2007; Peel, 2008; Preston, 2006; 2010; Millner and Ruddock, 2010). In arguing for this position, these scholars tend not to reflect sufficiently on the diverse character of the different publics that actually constitute 'the public' (in the singular) which they champion.

In the first section I will outline Mike Michael's (2009) argument that the public-in-general is far too blunt an instrument for the analysis of the role of 'the public' in science; to help overcome this problem Michael offers a schema in which different publics are analysed and described in terms of their particularity. I will also show in this section how this distinction can be usefully applied to the analysis of environmental decision making. In the second section I will criticise some contributions to debates about the role of lay legal advocates in environmental decision making (Bonyhady and Christoff 2007; Peel, 2008; Preston, 2006; 2010;

Millner and Ruddock, 2010) for relying too heavily upon a notion of the public-in-general. And in the third and final section, by way of enhancing their approach, I will discuss the advantages of focusing upon particular publics of environmental decision making.

From the particular publics of science to the particular publics of environmental decision making

For Mike Michael (2009: 609, 620), 'the public' is 'neither static nor singular'; rather 'publics are dynamic and relational'. Individuals and groups assume the role of public actor 'through identification with, and differentiation from other publics of various sorts', as much as by how they situate themselves in relation to scientific expertise institutions and practices. In developing this line of analysis and applying it to the broad operation of science, Michael makes a distinction between the 'public-in-general' and publics-in-particular'. The 'undifferentiated whole' of the public-in-general is of little interest to him, principally because any analysis of how the public-in-general engages with science is necessarily limited by the non-specific and amorphous nature of its supposed involvement. Its very amorphousness means the public-in-general, like 'society-in-general', is readily subject to any number of 'over-arching characterizations': disillusioned, skeptical, fickle, profoundly ignorant or savvy (2009: 621). The public-in-general is only of interest to Michael to the extent that such a public has been juxtaposed to 'science-in-general' in the political and rhetorical process through which the public's engagement with science has emerged and been framed (2009: 619). He argues that the capacity of the public-in-general has shifted as discourses of 'the public's' (largely passive) understanding of science have refocused to encourage and facilitate 'the public's' (more active) engagement with science (2009: 621-2). Michael notes that the more active discursive frame has tended to normalize the 'citizenliness' of the public-in-general. 'The public' which engages with science is assumed to have 'an in-principle political capacity to deliberate, to participate, to engage' and a concomitant 'abstracted commitment' to taking up these deliberative opportunities (2009: 622). Michael's project, then, is to conceptualise the emergence of these capacities and deliberative opportunities.

Michael observes that rather than being defined by an interest in science-in-general, publics-in-particular 'emerge with technoscientific issues' and that 'such emergence is a complex and variegated process' (2009: 623). He argues that the reasons particular lay-publics take up these sorts of issues go beyond the opportunity or encouragement to engage with specific matters of technoscientific concern. Empirical research by Michael and Brown (2005: 40; see also: Goodie, 2008) demonstrates that the processes by which lay people problematise, identify with, articulate and act on particular concerns are subject to a 'complex of considerations (that connect to civic, familial and personal responsibility)'. For Michael, there is little room to take account of these sorts of complexities when 'the public' is understood as the public-in-general.

In adopting Michael's insights to the study of environmental decision making, I begin with Cameron Holley's observation (2010: 390):

> To date, theorists, policy makers and NEG [new environment governance] research (including this article) tend to variously refer to participants in NEG

> using terms such as "stakeholders", "nongovernment actors", "community" and similar neologisms. While all of these terms call to mind actors from civil society they do so in terms that are broad, vague, under informative and potentially misleading … There are in fact many different kinds of "participation" going on that may have different normative implications for democracy (and quite probably environmental outcomes).

From here it is not difficult to see how Michael's distinction between the public-in-general and publics-in-particular can be helpful in assessing the 'normative implications' of public engagement for the governance of the environment, as well as for the governance of science, or indeed for the governance of any other matter that has significant consequences for a population's well being.

There are significant parallels between public-science relations and the public's interest and involvement in environmental decision-making. Public involvement in environmental decision making has become an accepted part of environmental governance, just as it has in relation to science (Dryzek, 2005; Harding et al, 2009; Hajer, 1995). The 'involvement of wider public constituencies' in both scientific and environmental governance is encouraged as a means of maintaining the legitimacy of decision making in the face of 'chronic uncertainty' (Michael and Brown, 2005: 40; Dryzek, 2005; Harding et al 2009; Hajer, 1995; Steele, 2001). In both scientific and environmental governance, public knowledge and values variously confront, complement and complicate prevailing expertise (Michael and Brown, 2005: 40; Darier, 1999; Harding et al., 2009; Hajer, 1995; Steele, 2001). The 'publics' with a stake or interest in environmental governance are as diverse as those who engage with science. As such, their capacity for involvement and the forms of their engagement with environmental governance are equally particular and disparate (Dryzek, 2005; Harding et al, 2009; Holley, 2010; Steele, 2001).

Some problems with generalising about the public's participation in environmental decision making

Over the last three decades the law has increasingly recognised the right of lay environmental advocates to challenge the outcome and process of specific environmental decisions. Litigation as participation has emerged as one of significant ways that the public can influence environmental governance (Bonyhady, 1993; Bonyhady and Christoff, 2007; Harding et al., 2009; Peel, 2008; Preston, 2006; 2010; Steele, 2001). Most of the burgeoning body of climate change litigation has been initiated by lay individuals or organisations who do not bear the status of expert or lawyer, but who have been able to claim a legal right to challenge or intervene in a decision making process impacting climate change mitigation or adaptation obligations of developers or government[i]. Through the litigation the public has taken a modest, but not inconsequential, role in shaping Australia's relatively nascent climate law and the way it addresses the particular dilemmas posed by climate change, including: the global and cumulative effect of anthropogenic greenhouse gas emissions; uncertainty surrounding the temporality, degree and shape of climate change impacts; and the disproportionate consequences of climate change for some communities over others.

The legal commentators mentioned above have largely been of one voice in extolling this litigation for transforming the largely aspirational principles of 'precaution' and 'intergenerational equity' into a normative basis for the legal recognition of the need to mitigate and take adaptive action to prevent irreversible environmental damage (Bonyhady, 2007; Bonyhady and Macintosh, 2010; Millner and Ruddock, 2011; Peel, 2008; Preston, 2010).

This body of commentary pays significant attention to the ways in which public involvement has enhanced the quality and legitimacy of environmental decision making (Bonyhady and Christoff, 2010; Millner and Ruddock, 2011; Peel, 2008; Preston, 2006; 2010). It is, mindful of how hard won the legal recognition of the lay environmental advocate has been (Bonyhady, 1993; Goodie and Wickham, 2002). The Honorable Brian Preston, Chief Justice of the NSW Land and Environment Court, a noted champion of the lay environmental legal advocate, for instance, argues extra-judicially that public interest litigation initiated by these advocates has allowed the courts the opportunity to develop a jurisprudence on matters of environmental governance such as climate change, which are otherwise inadequately regulated (2006; 2010). In his reported decisions, Preston CJ expressly acknowledges the value of the alternative perspective and insight lay public involvement brings to the legal determination of environmental disputes (*Taralga Landscape Guardians* 2007 NSWLEC 59) but, there is little scope in those decisions for Preston CJ to reflect any further upon the diversity of lay public advocates, or examine the understanding or motivations that underwrite their advocacy.

But while this body of legal commentary is implicitly recognising the diversity of public engagement, in arguing for the extension of the opportunity for public involvement and the removal of legal impediments to participation (Millner and Ruddock, 2011; Bonyhady, 2007), it never does so explicitly. Instead, the rhetorical focus of their commentary is on the success and legitimacy of lay public involvement *conceived in general terms*.

Conclusion: developing a more particular understanding of the lay environmental advocacy

It is precisely because of the impact of public interest litigation on the shape of environmental decision making that it is important to know in a much more particular sense who these lay environmental advocates are and how they understand and problematise environmental governance. Generalised accounts of the practice of lay advocacy cannot achieve this goal, not least because the inherent complexity and uncertainty of many environmental problems, such as climate change have driven a 'new understanding of the public's potential contribution to environmental decisions' (Steele, 2001: 415). The imperatives of contemporary environmental governance mean there is potential for a more diverse range of individuals and associations to be affected and take up the public personae of the lay environmental legal advocate.

The legitimacy of environmental decision making is now measured against the ecological imperatives of sustainability, which demand collective judgments incorporating the views of a wide range of particular-publics rather than top-down forms of governance (Holley, 2010: 360; Harding et al, 2009: 171; Steele, 2001: 437).

These principles also necessitate environmental governance incorporate the interests of future-publics and indigenous-publics. Increasingly expert assessments of the potential for adverse environmental impact are evaluated against situated, lived understandings of specific environments (Harding et al, 2009).

Despite the general consensus that sound environmental decision making requires more diverse and particular deliberation, particular-publics are not 'transparently obvious entities' (Michael, 2009: 625). Investigation of who particular lay environmental advocates are requires attention to the complex of factors and processes by which those particular lay advocates come to identify with and exercise their legal authority. Lay environmental advocates are not only made though the 'techniques by which their voice is encouraged to find "expression"' (Michael, 2009: 619), but also by the ways in which advocates identify themselves 'with particular versions of publics available' (Michael, 2009: 619). In his genealogy of ecological modernisation, Maarten Hajer (1995) observes that it was the 'argumentative struggle' between different groupings within the environmental movement, and the active rejection by some groups of the stratagems and policies of others within the movement, that shaped the course of twentieth century environmentalism away from the politically isolated agendas of conservationism towards ecological modernisation (1995: 90-3).

The formal recognition of the legal authority of environmental lay advocates has never rested on their personal 'intellectual or emotional' concern for the environment, but rather upon their capacity to articulate and align themselves with certain scientific and epistemological constructions of the environment (Goodie and Wickham 2002: 45). To account for the legal authority of different lay advocates and its location in the wider narrative of environmental governance, a closer analysis of the particularity of their participation is called for. Identifying the factors (such as location, community, political practice, experience, proprietorial interests) that ground the 'authenticity', 'reality' and legal authority of particular litigating publics is crucial (Michael 2009: 625). As Holley observes, despite the political aspiration for wider participation in environmental decision making, the reality is that 'most citizens at a local level will be unlikely to have greater voice, and those people who are already active on the issue will continue to be the major political players' (2010: 388). To thoroughly test the breadth or impact of lay advocacy its particularity must be at the centre of any analysis.

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[i] *Greenpeace Australia Ltd v Redbank Power Company* (1994) 84 LGERA 143; *Re Australian Conservation Foundation v Latrobe City Council* (2004) 140 LGERA 100; *Drake Brockman v Minister for Planning* (2007) LGERA 349; *Gray v Minister for Planning* [2006] NSWLEC 720; *Wildlife Preservation Society of Queensland Proserpine/Whitsunday Branch Inc v Minister for the Environment & Heritage* [2006] 232 ALR 510; *Re Xstrata Coal Queensland Pty Ltd & Ors* [2007] QLRT 33; *Taralga Landscape Guardians v Minister for Planning* [2007] NSWLEC 59; *Minister for Planning v Walker* (2007) 157 LGERA 124; *Minister for Planning v Walker* (2008) 161 LGERA 423; *Aldous v Greater Taree City Council* (2009) 167 LGERA 423; *Gray v Macquarie Generation* [2010] NSWLEC 34.