



Original Article

Lawyers in Australia's coal seam gas debate: A study of participation in recorded community forums



David J. Turton*

Fenner School of Environment and Society, Australian National University, Linnaeus Way, Acton, ACT 2601, Australia

ARTICLE INFO

Article history:

Received 16 February 2015
 Received in revised form 18 June 2015
 Available online 2 July 2015

Keywords:

Coal seam gas
 Australia
 Lawyers
 Legal geography

ABSTRACT

Seeking to encourage greater scrutiny of lawyers in Australia's coal seam gas (CSG) debate, this paper analyses lawyer–community interaction at six recorded CSG community forums held between 2011 and 2014. Using the concept of a lawyer as a ‘translator’ of client concerns from the legal geography literature and viewing the identified forums as informal exchanges of legal knowledge, it is argued that lawyers informed audience members about land access laws relating to CSG, translated audience anxieties and questions about CSG into legal claims, and framed critiques of CSG laws around personal experiences of the legal process to call for law reform at these forums. Acknowledging the broader context in which these community forums were held, financial and political factors are considered as potentially relevant for driving the involvement of some lawyers in forum speaker panels, noting the apparent absence of CSG industry legal representatives from all recorded community forums. Potential future research avenues are also highlighted.

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1. Introduction

In recent years, the coal seam gas (CSG) industry has been a prominent feature of media headlines and political debate in Australia (e.g. Manning, 2012), particularly in the eastern States of New South Wales and Queensland. Coal seam gas, also known as coal bed gas, is a source of methane found in underground coal seams (Williams et al., 2012). Support for its development is partly due to a need to reduce rising greenhouse gas emissions caused by the use of fossil fuels, such as oil and coal. As the largest sources of energy for humans globally, on some calculations it is claimed that coal and oil ‘produce 1.4–1.75 times more greenhouse emissions than natural gas’ on a lifecycle basis (Barnett, 2010: 1). Some observers therefore view CSG as a step towards a necessary transition to low and zero carbon-emitting energy sources (Barnett, 2010). The possibility of fugitive methane emissions from CSG production may diminish the potential greenhouse benefits of this resource, but currently incomplete information and inconsistent assessment measures complicate research findings on this question (Day et al., 2014; Vickas et al., 2015). These scientific investigations are of great significance, given the need for appropriate CSG regulation and the extent to which this might be challenged in the future through climate change litigation, as

has occurred with other fossil fuels both internationally and domestically (Osofsky, 2011, 2013; Peel, 2007).

Critiques of CSG from across the physical and social sciences generally highlight its economic potential or argue that the industry should be extinguished on the basis of negative social and environmental impacts (Lave and Lutz, 2014). Others favour a cautious approach to the industry's expansion in view of potential cumulative risks to water aquifers and surface ecosystems as a result of CSG extraction processes and the placement of associated infrastructure, among other concerns (Randall, 2012; Tan et al., 2015). Despite academic interest in the activities of the anti-CSG social movement Lock the Gate, an alliance between environmentalists and farmers in Australia against coal and CSG development (Lloyd et al., 2013; Mercer et al., 2014; Kutch and Titus, 2014; Colvin et al., 2015), similar scholarly attention has not been extended to the nation's lawyers. A lack of targeted research into the involvement of lawyers in CSG issues may be the result of a researcher preference for speaking with parties directly affected by the industry (rather than their agents), or a perception that ‘legal studies and business scholars tend to take neutral or positive stances towards fracking, and [appear] to ignore questions of fracking's potential environmental or social harms’ (Lave and Lutz, 2014: 746). Such ‘neutrality’ may be off-putting to some researchers, who are perhaps better acquainted with the broader social science literature concerning CSG, which is often laden ‘with claims that fracking has intensely negative environmental impacts’ (Lave and Lutz, 2014: 745).

* Tel.: +61 2 439010303.
 E-mail address: David.Turton@anu.edu.au

This article challenges such views by arguing, through the study of six recorded community forums, that an individual's legal expertise and social values are pertinent for their interactions with the wider community and potentially also the legal system – informing and influencing those around them: from law students (Hamman et al., 2014), to university legal educators (Graham, 2014; Carruthers et al., 2012; Author interview with Kate Galloway, 2014; Author phone interview with Dr Chris McGrath, 2014), government regulators (Hanson, 2011), industry and social movements. The term 'fracking' is itself subject to various connotations that have not gone unnoticed by lawyers in the United States, with at least one senior attorney in the Natural Resources Defense Council observing that: '[Fracking] obviously calls to mind other less socially polite terms, and folks have been able to take advantage of that' (Quoted in Evensen et al., 2014: 130; see also House, 2013). Law may be 'too important to be left to the lawyers' (Friedman, 1986: 780), but this does not mean that these socially privileged actors should be ignored in CSG analyses, given their involvement in so many aspects of this controversial resource. Individuals with legal training are not usually thought of as key actors in the social construction and contestation of landscapes (Blomley, 2014), but are nonetheless deeply implicated in shaping land use claims (Delaney, 2003). It is worth noting that the influence of lawyers has been interrogated fruitfully in many other contentious settings, such as wind energy lobbying (Songsore and Buzzelli, 2014; Dobliger and Soppe, 2013), carbon markets (Lovell and Ghaleigh, 2013), and urban planning arrangements (Davies and Atkinson, 2012).

As Turton (2015) has outlined, indications of the involvement of lawyers in Australian CSG developments can be gleaned from a wide array of sources, including: parliamentary deliberations, government inquiries, legislation, court judgements, media reports, regulatory updates on law firm websites, as well as law and industry journals. Blogs authored by lawyers can be added to this list (Aidan Ricketts, 2015; McCullough Robertson, 2015). Lawyers have a significant input into CSG discussions across several platforms extending from academic commentary, to litigation advocacy, law reform, drafting legislation and their broader participation as concerned members of their community. Despite recognition of the blurred multiplicity of their roles in the socio-legal literature (Sugarman, 1994), and their strong presence in commentary surrounding CSG so far, lawyers themselves have not – as a group – been subjected to intensive analysis. While legal commentary relating to CSG is readily accessible to researchers (e.g. law journals and court judgments), it is important to recognise that wider socio-legal understandings of 'the law' encompass not only how it is represented in these official legal texts, but also how lawyers, lay people and social groups engage with, think about and contest legal concepts, formal law and legal ideologies (Barkan, 2011; Chouinard, 1994). Given that 'law is lived' (Chouinard, 1994: 432) and interpreted by people through everyday exchanges in society (Darian-Smith, 2013), there is merit in investigating how legal information about CSG is imparted to the general public by lawyers in Queensland and New South Wales through relatively informal settings, such as the community forum.

Seeking to challenge Lave and Lutz's (2014) claim that legal commentary on unconventional gas is 'neutral' in much of its tone, this paper will examine how lawyers at six recorded CSG community forums relayed information about CSG laws as well as rhetoric about this resource, both in their presentations and in response to forum audience questions. Community CSG forums constitute informal engagements between the public and lawyer forum speakers, serving as occasions when so-called non-legal actors were drawn into the practice of the law (Jeffrey, 2011). Using the lens of legal geography – a stream of scholarship that seeks to explore how law is shaped by space and vice versa (Braverman

et al., 2014) – it is argued that lawyers informed forum audience members about land access laws relating to CSG, responded to audience anxieties and questions about CSG by translating them into useable legal claims, and drew upon personal experiences of the CSG legal process to frame their calls for law reform at these forums (Martin et al., 2010). Reference is also made to publicly accessible media sources where relevant to illustrate the wider political and financial context of lawyer involvement in CSG disputes – suggesting its potential relevance to lawyer participation in community forums, with the absence of CSG industry lawyers from available recorded forums being acknowledged as a significant research gap.

As a controversial land use, CSG is fraught with data collection challenges for researchers and Section 2 discusses the reasons for relying primarily on recorded community forums and publicly accessible documentary sources rather than interviews with lawyers. After noting literature that addresses the place of lawyers in mediating between mining corporations and communities in Section 3.1, theoretical insights from legal geography briefly noted above are explained further. Analysis of the six recorded community forums will then follow in Section 4, with a short background provided on their content in Section 4.1 before focussing on land access issues raised in the forums in Section 4.2. While the author cannot claim to offer a complete picture of the myriad interactions between lawyers, the general public and CSG – providing only a snapshot of one of the spaces occupied by this profession and this contested resource – potential areas for future research are noted, as are data collection obstacles.

2. Methods

Legal geography is a sub-discipline seemingly bereft of a common methodology (Delaney, 2015). This is partly a reflection of its disciplinary origins, as many legal geographers have been trained in the discipline of the law – which is arguably 'not as reflective as many other disciplines about its methods' (Braverman, 2014: 122; Fisher et al., 2009). However, there is growing recognition that discussing methodological choices is worthwhile in order to expand the horizons of legal geography (Braverman, 2014). Therefore, this research commenced with an acceptance of the diverse range of roles performed by lawyers in Australian society, drawing on Tomasic's typology (1978), who conceived lawyer functions and associated lawyer occupations as falling into particular 'types': advocate (criminal lawyer), technician (academic lawyer), manager-planner (tax lawyer), holder of knowledge (commercial lawyer), advisor (corporate counsel), public servant bureaucrat (parliamentary counsel), investigator (litigation lawyer) and manipulator of situations (legal aid lawyer). Notably, an overarching definition of a 'lawyer' is elusive, beyond perhaps the unifying feature of all individuals holding legal qualifications (Howarth, 2013; Lovell and Ghaleigh, 2013). Some individuals would also wear several hats in Tomasic's typology.

With a broad conception of the activities performed by lawyers in mind, a search was made for publicly accessible CSG community forums featuring contributions from lawyers. The search parameters have necessarily meant that some forums were excluded from analysis, by virtue of not being recorded, or having no accessible transcript (Anonymous, 2011b). A total of six recorded, publicly available community forums were found using combinations of the following search engine terms: 'forum', 'seminar', 'meeting', 'CSG', 'coal seam gas', 'legal', 'lawyer', 'judge', 'solicitor' and 'barrister' (Australian Earth Laws Alliance, 2012; Independent Coal Seam Gas Science Forum, 2014; Centre for Rural Regional Law and Justice Deakin University and the Environmental Defenders Office, 2014; Clarence Environment Centre, 2012; National Parks Association of NSW, 2011a,b; Conservation Council SA, 2011). It is

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