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On legitimacy in impact assessment: An epistemologically-based conceptualisation

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ABSTRACT

Impact assessment (IA) is carried out as an *ex ante* process to inform decision-making. It includes requirements for engagement with stakeholders (including the public) regarding actions proposed by a proponent. A key issue with the various stakeholders involved is the perceived legitimacy of the IA, which can have implications both for the reputation of the proponent, and the likelihood of conflict over the decision. But the understanding of legitimacy in the IA literature has changed over time in line with an ontological shift from positivism (that scientifically generated information leads to better informed decisions) to the post-positivist acknowledgement of the limitations of scientific method whereby assumptions must be subject to transparency, deliberation and openness. This has led to an epistemological shift towards greater subjectivism which, we suggest, has created new opportunities (which have been realised in political decision-making) to subvert knowledge through the increased use of the Internet and social media. To address the potential for such subversion of legitimacy, we seek to conceptualise legitimacy in the IA context through framing IA around a critical realist ontology and a reliabilist virtue epistemology. This allows us to identify 'knowledge legitimacy' as an equally important component of IA legitimacy along with organisational legitimacy. We conceptualise knowledge legitimacy through literature review drawing on rich understandings of knowledge from IA and other fields of research in order to develop a four-dimensional typology. This includes the dimensions of: knowledge accuracy; knowledge restriction; knowledge diffusion; and knowledge spectrum. This is the first theoretically grounded attempt to understand legitimacy in IA. It is hoped that it will provoke discussion in the IA community to further advance theoretical understandings of IA and legitimacy of practice.

1. Introduction

The legitimacy of IA processes is a key consideration when examining the potential for conflict, or the management of risk from a developer's perspective, for example when hoping to gain a 'social license to operate' (Jijelava and Vanclay, 2017). The legitimacy of an IA process has been defined recently as "*one which all stakeholders agree is fair and which delivers an acceptable outcome for all parties*" (Bond et al., 2016, p.188). This reflects a more modern view in the academic literature of the evolution of IA from a process which focussed on the provision of objective and scientifically-derived evidence for rational decision-making, to a process with increasing levels of public participation (Salomons and Hoberg, 2014) which is more frequently evaluated "*against the expectations of deliberative democracy or collaborative participation*" (Morgan, 2012, p.10). While a realisation of IA along these lines was foreshadowed in early reflections on theory and practice (e.g. O'Riordan and Sewell, 1981), especially in well-developed democracies, this contemporary view in the academic literature reflects an evolution from the roots of EIA (Environmental Impact Assessment) which, as Glasson et al. (2012, p.20) put it, had "*origins in a climate of a rational approach to decision-making in the USA in the 1960s … the focus was on the systematic process, objectivity*" and "*it is now realistic to place the current evolution of EIA somewhere between the rational and behavioural approaches – reflecting elements of both*". This in turn mirrors what Healey (1993) termed the communicative turn in planning (a transition that also occurred in policy theory, see for example, Fischer and Forester, 1993; Hajer and Wagenaar, 2003). This stressed the need to move away from decisions being made based on the rationality of the elite (in the context of IA this means accepting the worldview of scientific experts and not of other stakeholders, including members of the

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public) and being based additionally on broader dialogue to engage additional knowledge. Such arguments are based on the work of Habermas (see Palerm, 2000, for example).

However, whilst this evolution in IA has seemingly resolved legitimacy issues associated with the rationality of the elite, we propose that the shift has created new problems. The acknowledgement of the validity of plural claims for knowledge legitimacy loses sight of the decision context in which IA sits and potentially accommodates false claims and untruths, thereby undermining the validity of decision-making. We argue that this stems from a lack of epistemological consideration in IA practice, which means that what constitutes legitimate knowledge is not clarified. We further suggest that the increasing use of Information and Communication Technology (ICT) exacerbates the potential for legitimacy issues.

Our aim in this paper is therefore to develop a conceptualisation of knowledge legitimacy to fill a current gap in understanding within IA theory and practice. This necessarily involves us adopting a particular ontological and epistemological position which we acknowledge can easily be contested by others. Nevertheless our conceptualisation serves to illustrate that there are legitimacy consequences of ignoring theoretical reflection and positioning of IA. To achieve our aim we begin, in Section 2, by briefly setting the context in terms of the evolution of IA theory and the implications for understandings of IA legitimacy. We also present evidence that the increasing use of ICT is already having legitimacy consequences. In Section 3 we introduce ontology and epistemology in general and specifically with respect to IA. This section explains why it is important to take an epistemological position in particular with respect to legitimacy, and introduces our theoretical positioning of IA. Section 4 then sets out our method for deriving a conceptualisation of knowledge legitimacy. In Section 5 we explain the conceptualisation, introducing four different dimensions of knowledge legitimacy in IA. Conclusions are presented in Section 6.

2. The evolution of IA theory and links to legitimacy

Legitimacy is usually associated with the activities of an organisation or institution, and much of the available literature discusses legitimacy in this context. Here we focus in the main on studies concerning legitimacy in environment-related decision-making. Cashmore and Wejs (2014, p.204), for example, conceptualise institutional legitimacy to include regulative, normative and cultural cognitive categories. We consider that these are analogous to the organisational legitimacy forms identified by Suchman (1995) of pragmatic, moral and cognitive. The basis for these is, respectively, legally sanctioned (regulative); morally governed (normative); and comprehensible, recognizable and culturally supported (cultural cognitive), which incorporates expectations for transparency, accountability and participation (Cashmore and Wejs, 2014). Different forms of organisational legitimacy have also been identified by Demuijnck and Fasterling (2016), whilst Gross (2007) has demonstrated empirically that legitimacy is affected both by the values and attitudes of stakeholders and by their perceptions of the fairness of the decision process, and therefore includes normative elements. Further complexity is introduced by Owens et al. (2004) who find that legitimacy is compromised by contested judgments or frames; indeed, legitimacy is especially an issue in conflict situations (Karjalainen and Järvikoski, 2010). So it is clear that legitimacy is complex, and Suchman (1995) highlights the considerable diversity of types of legitimacy that have been identified in the literature beyond organisational legitimacy.

For IA specifically, the literature does not contain a conceptualisation of legitimacy. There is some discussion of 'process legitimacy' which appears to tally with the cultural cognitive forms of organisational and institutional legitimacy. We argue here that IA legitimacy is typically (implicitly) understood as being equivalent to the cultural cognitive legitimacy expectations of transparency, accountability and participation. Others forms of organisational legitimacy may be associated with those conducting, and financing, the IAs. Thus, for the purposes of this paper we consider that organisational legitimacy as described here is relevant to IA and captures the understanding that relates to how the process is conducted.

There is a known link between epistemology (the study of knowledge) and legitimacy (Mizrachi, 2002) which we believe calls into question the extent to which prevailing understandings of legitimacy fully encompass epistemological considerations. This is important because if understanding of legitimacy is incomplete within the IA community, then even what are considered to be best practice IA processes could still face challenges of legitimacy. Consequently, in this paper we place epistemology centrally in defining the legitimacy of IA. In so doing we aim to redefine legitimacy to not only accommodate the expectations of deliberative democracy (encompassed within understandings of organisational legitimacy), but also the shortcomings in the way knowledge is understood to be valid that enhancements in stakeholder participation alone cannot resolve. To simplify the explanation, we define here two different types of legitimacy as having relevance to IA:

- *organisational legitimacy* as already understood in the literature (for example, Suchman, 1995; Cashmore and Wejs, 2014), with a particular focus on the cognitive legitimacy expectations for openness (accommodating deliberation) and transparency; and
- *knowledge legitimacy*, which we define as an epistemologically-based understanding that places knowledge centrally.

Thus IA legitimacy requires both organisational legitimacy and knowledge legitimacy. Our focus in this paper is to conceptualise knowledge legitimacy only to complement the existing literature on organisational legitimacy. Thus, we argue that IA, at least as described in academic literature, has transitioned to a process that is currently biased towards the delivery of organisational legitimacy.

The assumption that evidence is reliable is challenged by modern ICT. Almost universal access to the Internet and social media has subverted decision processes as recent high profile political events have demonstrated in which the validity of the arguments made has been highly questionable. For example, the referendum vote that will lead to the United Kingdom leaving the European Union ('Brexit') was characterised by a campaign by those in favour of leaving the European Union that was focussed on making emotional connections with people – which does not rely on accurate facts underpinning knowledge – such that many of the claims made by the 'Leave' camp were subsequently admitted to be false, after the referendum (Viner, 2016). This process was repeated in the US Presidential election campaign in 2016/7 leading to increasing media interest in 'fake news', that is, news which is not true but helps to meet someone's political ambitions (Hunt, 2016; Carson, 2017). And despite the unparalleled access to objective evidence that supports knowledge, Internet users experience knowledge which reflects their existing views and biases. This occurs through the restricted nature of discussion on the social media they interact with (i.e. with like-minded individuals), and through filter engines providing attenuated sources for users; a phenomenon known as the 'filter bubble' (Pariser, 2011). Anyone has the potential to influence populations through the Internet (see example of Christina Chan in Hong Kong described in Sinclair et al., 2017, p. 150); and anyone can interpret, or introduce apparent 'facts' or 'evidence'. The Internet has created new spaces for knowledge to be manipulated and we argue that this has created the need to reconsider understandings of legitimacy in IA by the community of practitioners, moving away from a major focus on process and rebalancing it with a complementary focus on knowledge.

This research is timely because information is communicated in a different way than in the past; with Hanna et al. (2016) highlighting the role ICT now plays in changing the form of protest related to unwelcome project interventions. Publishing fake news prior to the Internet was "*nearly impossible*" (Carson, 2017), but now is open to