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Water citizenship

Advancing community involvement
in water governance in Victoria

Funded by the Lord Mayor's Charitable Foundation



'Community involvement in water governance'

- Exploration of public participation in water management, especially environmental and cultural (public interest) dimensions.
- Exploration grant looking at 'constraints and opportunities for community involvement' incl legal and social research
 - Informed by workshops and discussions: Geelong, Apollo Bay, Horsham, Bairnsdale, Bendigo, Melbourne, Water Trust Alliance Symposium in Canberra
- Building on past EJA/EDO work on environmental water, MDB, wetlands, rural drainage schemes, pollution.

'Water law'

- › Main legal bases of water management considered:
- › *Water Acts* (Vic, Cth): water resources management, property in water
- › *Environment Protection Act 1970*: pollution of water
- › *Catchment and Land Protection Act 1994*: catchment management.

'Water citizenship'

- › 'Water citizenship' as a narrative:
 - the capacity of communities to participate in and control decision-making regarding water resources
 - Democratic exercise of power over resources, action and institutions, which may range from consultation to forms of 'co-management'
 - Principles of fairness and justice into access to power and resources

'Place'

- › 'Place' as a theme and lens
- › Water governance very context-specific – water exists in discrete 'places', ie *socio-ecological systems* (landscapes, etc), notwithstanding markets, trading systems etc.
- › Landscapes are mediated by law:
 - Riparian doctrine;
 - State regulation (licensing, physical regulation, 'river improvement' etc)
 - Rise of water markets, planning, catchment management, environmental water,
 - Extensive regulatory architecture for water ecosystems

'Place'

- › But key tensions and contradictions in water law:
 - Utilitarian approaches are hegemonic ('water resources', property, etc) vs socio-ecological dimensions (eg water ecosystems as 'places')
 - Technocratic approach to governance (monopoly and/or 'steering' function of state bureaucracy) vs democratic aspirations ('consultation', public participation, 'co-management', plurality of interests)
- › There may be a 'law of the river' (or catchment etc) but how coherent, integrated, explicable and/or participatory is it? What is hegemonic in water governance and law?
- › Water landscapes are 'participatory': intrinsic to community identities, lived experiences (cultural, practical, commercial etc)
- › How can water governance be more participatory?

Constraints and limitations in governance

- › *Cultural and practical constraints*
- › Governance cultures and resistance to community participation, incl
 - Managerialism
 - Technocratic decision-making
- › Politicized decision-making
- › Complexity
- › Information
- › Access to and availability of resources for community organizations

Constraints and limitations on community involvement in governance

- › *Structural and institutional constraints*
- › Limits to public participation in governing bodies
- › Procedural limits:
 - ‘consultation’: what does it mean in practice?
 - Quasi-judicial (hearing) procedures: rare in formative processes, limits to standing in review processes and public interest enforcement
- › Absence of direct public interest community control of water resources
- › Poor recognition of Aboriginal water rights
- › Predominance (hegemony) of the narrative of water ‘resources’ as distinct from ‘place’

Opportunities, participatory strategies

Practical opportunities

- › Capacity building for community organizations
- › Coalitions and collaborations of community groups, public interest lawyers and technical experts (citizen science and citizen enforcement)
- › ‘Water trust’ models of governance

Opportunities, participatory strategies

Law reform opportunities

- › Procedural reform enhancing community participation:
 - Corporate governance to require all relevant interests to be ‘fairly represented’... and election to statutory bodies?
 - Requirements for standing environmental consultative committees attaching to statutory agencies;
 - The right to participate at formative stages of decision-making (assessment, inquiry, planning, etc), including a presumption of participation through public hearings;
 - Deliberative-democratic innovations – eg conferences, roundtables, citizen-expert panels
 - Citizen or community enforcement (open standing for enforcement)
 - The right to initiate action – eg assessments, inquiries, proposals for action

Procedural environmental rights

> Procedural reform

- The right to information
 - Accessibility of information held by agencies;
 - Existence or quality of information: eg lack of water metering data, water quality information, significant levels of uncertainty, systems of peer-review and scrutiny.
 - Hegemony of science and modelling?
- Cf Aarhus Convention duties:
 - Duty to make (environmental) information freely available;
 - Positive duty to collect and publicly disseminate environmental information
- Right to contribute to knowledge:
 - What role for knowledge outside of scientific knowledge?
 - Local experience and knowledge?
 - Indigenous knowledge systems?

Opportunities, participatory strategies

- › Recognition of Aboriginal rights and knowledge systems in water ecosystems
 - Political recognition of indigenous rights and interests: National Water Initiative
 - In Victorian law, recognition of rivers, wetlands, ecosystems as Aboriginal places (Country) very limited. In water law, non-existent.
 - *What principles and foundations for genuine recognition?*
 - Consistency with *UN Declaration on the Rights of Indigenous Peoples*
 - ‘Cultural flows’ (discrete forms of allocation and interests)
 - The important role of Aboriginal knowledge systems
 - Legal recognition of Aboriginal Nations’ rights and interests in water a potential vehicle for genuine power in decision-making: not merely ‘consultation’ but ‘co-management’ etc

Opportunities, participatory strategies

- › ‘Water trusts’: nongovernmental public interest water holders
 - Water trust model emerged in US parallel to land trusts: NGOs mobilising resources and using legal tools for conservation (esp on private land).
 - Forms of collaborative arrangements between public and private actors, over use of natural resources, for public interest purposes.
 - Private environmental water-holders? Private cultural water-holders?
 - Community participation through direct ownership or other legal control of water resources
 - Eg Murray Darling Wetlands Working Group:
<http://www.murraydarlingwetlands.com.au/what-we-do/projects/successful/environmental-watering/>
 - Nature Glenelg Trust: <http://natureglenelg.org.au/>

'Water trusts'

Enormous potential benefits, incl 'co-benefits' of collaboration, direct community participation and control, healthy communities etc.

Range of governance and legal challenges to water trust model.

- Transactional level:

How are water resources to be owned and/or controlled?

How are risks to be managed, eg flooding, impacts on land or works, responsibility for necessary infrastructure?

- Governance:

How to best manage dealings between NGOs and statutory authorities?

- Regulatory:

Rules re timing, volumes, water shepherding etc

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