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Environmental assessment as an institution of liberal democracy

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ABSTRACT

On 3 May 2019, the UN secretary general António Guterres, tweeted: "No democracy is complete without access to transparent and reliable information. On #WorldPressFreedomDay, we must all defend the rights of journalists, whose efforts help us build a better world for all." How can we see to it that Guterres someday soon also will promote environmental assessment - on #FreePlanningDay?

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The free press is a clear example of democratic institutions, with Guterres as one of its protagonists. It aims at transparent and fact-based public policy processes. Next to a free press, also environmental assessment (EA) may have the potential to give access to transparent and reliable information about our physical development (e.g. UNEP 2019). The UN Espoo Convention on trans-boundary environmental impact assessment (EIA) and its Kiev Protocol on Strategic Environmental Assessment (SEA) (UNECE 2019) takes EIA and SEA together as forms of environmental assessment, part of a larger set of tools for impact assessment. Might the current demand for transparent and fact-based public policy processes be further developed by positioning EA, along with a free press, as an institution of a 'complete' – or rather, 'liberal' – democracy?

The urgency of a call for democratic institutions may be just as clear for EA as it is for the free press. According to Freedom House (2019a) liberal democracies, protecting civil liberties and personal freedoms, are worldwide in retreat. These countries are increasingly changed into illiberal democracies which have free elections, but which do not protect the rights of individuals and minorities. In illiberal democracies, winners take all as the elected regime can control information flows by taking away the checks that balance their power. This makes it easier for them to manipulate the information that informs elections and policy processes. Bent Flyvbjerg compellingly demonstrates this natural tendency of hierarchical power with an example from Denmark, a renowned liberal democracy: 'He (i.e. a financier of his research with interest in a specific outcome; SN) congratulated me on my new research grant and told me in no uncertain terms that if I came up with results that

reflected badly on his government and ministry he would personally make sure my research funds dried up' (Flyvbjerg 2012, 2019). In Denmark this appeared a vain threat (which incidentally may illustrate why liberal democracies typically promote sustainable development; ref. Ward 2008). However, the rise of populism and polarisation in Western countries, often with attacks on the institutions of liberal democracy, are clear signs that liberal democracy is under threat there as well (Mounk 2018).

According to Dunleavy (2018), "Liberal democracies combine core 'macro-institutions' (like free elections and control by legislatures) with swarms of supportive 'micro-institutions'. Among micro-institutions are party systems, interest group transparency, (social) media system (including free press, SN), citizen vigilance, anti-corruption laws, devolved governance arrangements, human rights protection and civil liberties" (Dunleavy 2018). If EA would belong in this list as well (a case that is made further on), the question remains whether, like a free press, EA is also in retreat. According to UNEP (2018) in its global review of EA: 'crucial economic growth for the benefit of society is perceived to be unnecessary delayed. This has even triggered legislative changes to backtrack/weaken the processes in some countries'. As far as known, there is no systematic review of EA trends in economies with a weakening liberal democracy. There are nonetheless some signs that, also in liberal democracies, EA is under pressure. The Conversation, writing about environmental assessment in the USA and Canada: 'The ugly face of post-truth politics is now becoming deeply embedded in political discourses in the United States. Canada needs to avoid the same path' (Winfield et al. 2018). In The Netherlands, cabinet

tried to reduce EA checks-and-balances to a minimum and mostly succeeded, and something similar happened around social impact assessment in the Australian state of Queensland a few years ago. There are also signs to the contrary, however: Ballesteros (2018) observed amongst other things that in EU countries public participation and access to information in EIA are improved.

In retreat or not, EA is potentially an institution of liberal democracy. The Freedom House methodology includes three indicators for liberal democracy that may link to development decisions: 'Do citizens have the legal right and practical ability to obtain information about state operations?'; 'Does the government publish information online, and is this information accessible by default?'; 'Are civil society groups and citizens given a fair and meaningful opportunity to comment on and influence pending policies or legislation?' (Freedom House 2019b). These indicators correspond to refined checks-and-balances in the political system which the UN Espoo Convention on EA creates: it protects the rights of all citizens to be informed before a decision is made and to express views about government decisions that will affect them, and the right to be notified of the reasons why, considering views expressed, the government has taken a certain decision. In many national EA systems, quality of environmental information is warranted independently from the EA competent authority – as that authority represents the political majority that needs to be checked by the procedure in the first place. All these checks, if they work, enable political accountability in the electoral cycle: the electorate can take justifications for political decisions, made transparent by EA, into consideration in the next elections. If the facts to which these justifications refer can be less easily manipulated to serve specific government interests, from the point of view of civil rights the balance of power between government and affected citizens is improved.

Despite the UN's Espoo Convention, EA does not seem to be in Guterres's mind, or in the mind of any mainstream politician, as an institution of liberal democracy. For example, EA is not mentioned as an indicator of Sustainable Development Goal 16 (but neither is a free press): 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels' (UN 2019b). Advocates of liberal democratic values may be informed by political scientists, who indeed hardly recognize EA's potential. They primarily conceptualise the link between knowledge and planning with catchwords like 'argumentative turn' (Fischer and Forester 1993), 'serviceable truths' (Jasanoff 1990), and 'negotiated knowledge' (e.g. De Bruijn and Ten Heuvelhof 1999). Their common message is that, whilst the 'scientific' truth as such is not a relevant factor in political decision-making, political actors may agree about facts to underpin joint decisions. The power balance between them determines if they *need to agree*

before they can move forward. Their social skills, needed to build bridging social capital, determine if they *succeed in agreeing*. Only few political scientists mention EA as an institution that helps actors agree about facts by creating a power balance (but see e.g. Nooteboom 2007). On the other hand, there are clear documented signs of what can happen in the absence of any need to agree about facts, like the case of the Brexit referendum in the UK: political forces can freely manipulate emotions without regard for the truth, to increase their power in a Machiavellian way (Fischer 2016).

EA scientists may less influence current debates about our democracy than political scientists do, but whilst EA scientists see the democratic potential, technocratic views dominate their literature. It frames the democratic objective of EA as a 'pluralist view', achieving more citizen involvement in the decision-making process (e.g. Bartlett and Kurian 1999; returning in Rozema and Bond 2015; Therivel 2019; Cashmore et al. 2010). The political pluralist view contrasts with an a-political 'technocratic' view, defining measurable objectives of EA as substantive (a change of plan), normative (meeting standards and achieving policy objectives), and transactive (efficiency) (e.g., Therivel 2019). Ideal-typical technocrats assume that EA is aimed at optimal plan or project design with respect to a given set of coherent political objectives and legal standards; in this view technicians almost 'calculate' the optimal solution, and there is *little need* for political interventions during the planning and assessment process. Ideal-typical pluralists assume the opposite: in their view there is no such coherent set of objectives; rather, objectives originate from different social groups, objectives are therefore inconsistent, and they largely emerge only in the course of the planning and assessment process when these groups are involved. In the pluralist view, political intervention is therefore *essential* during the planning and assessment process, including not just elected politicians, but all political actors who may think that they have a stake. This makes EA more a political process and less a technical process.

As an institution of liberal democracy, EA procedures would be designed for pluralist objectives, meaning that its effectiveness would be measured by its contribution to the political agreement about facts relevant to development decisions, and to less polarised development politics in general. But such effectiveness measures are hardly used: in the EA practice and science, technocratic views overshadow the pluralist view. As Garb et al. (2007) write: 'A simplistic, technocratic interpretation of EIA (and SEA) is clearly falling short of its reality in practice' (.) 'to date, few EIA experts are willing to radically rethink the core nature of EIA as a soft tool that 'is political to its roots'. Cashmore et al. (2010) add: 'Theorising effectiveness evaluation for impact assessment (.) requires a strong

analytical focus on politics and power (.). This is an aspect of impact assessment (.) that is critically under-developed. (.) it is postulated that focusing on interpreting the meaning and implications of plural constructions of effectiveness represents a more productive strategy for advancing impact assessment'. In other words, EA effectiveness should not primarily be measured as a development that meets official environmental and social goals, but as more agreement between political and affected groups about facts that should drive development decisions.

If EA's democratic potential is not put before its technocratic potential, EA becomes vulnerable in two ways. First, the technocratic view allows for illiberal manipulation, as Cashmore et al. (2010) write: 'The adoption of a more critical, politically astute and reflective lens is thus a central challenge for future research. This development is essential if manipulation of these instruments by powerful stakeholders to maintain the status quo (Foucaultian "subjectivisation") is to be avoided.' Second, most policy makers will perceive technocratic EA as ineffective, as is actually observed throughout the world (UNEP 2018). EA cannot achieve most technocratic objectives. Where coherent legal standards and policy objectives are missing, politicians have the full right to make their own trade-offs. Rozema and Bond (2015) put it like this: 'EIA is likely to be perceived as ineffective by those stakeholders who share any of the discourses other than ecological modernization. This is caused by a restricted EIA mandate to deal with the underlying justification for development decisions in these cases, the inability of EIA to conserve (protected) landscape when trade-offs are made, and the assumed apolitical nature of EIA'. Rozema and Bond (2015) believe the remaining option is to apply the pluralist view only: 'In terms of the perceived effectiveness of EIA, thus brought down to the scale of project development, the extent to which discourses can be accommodated is crucial if more "inclusive democracy" is to be fostered through this impact assessment tool' (Rozema and Bond 2015). 'Accommodating discourses' here may be interpreted as EA should reflect on impacts from more perspectives and look for development solutions that satisfy more of these discourses, either by creative innovation, compromise or social learning (i.e. evolving discourses).

But such a radical shift toward the pluralist view has consequences. The jump from agreed facts to decisions will still be so big that some discourse-based and controversial value judgements remain unavoidable. This cripples the technocratic approach so much that Rozema and Bond (2015) even consider that EA needs to be 'reformulated as a governance tool' (not an environmental management tool). The scope of this shift can be illustrated with an example. A typical problematic situation is the conflict of perceptions shown in the implementation of the Sustainable Development Goals (SDGs) (UN 2019a) or similar comprehensive sets of

general development goals. EA may be used with the aim of implementing the SDGs into sectoral policy (i.e. a technocratic normative objective acc. to Therivel 2019). In an EA, a sectoral authority can systematically account for the way it takes each SDG into consideration. EA is then an incentive for more complex collaborative processes that increase the general SDG-related quality of government decisions. Yet, if the quality of the EA – and even the whole national EA system – is controlled by an authority responsible for just the environmental subset of SDGs, what is its credibility related to other subsets? It may be better if the procedure were overseen by an authority without interests in any specific SDGs: a ministry of sustainable development or of good governance. This aligns with Garb et al. (2007) who write: 'it may be more appropriate to instead measure the usefulness of the EIA process by its ability to increase the overall sustainability of the decision-making process'. In other words: to achieve the most sustainable outcome possible, an authority should not be responsible for specific (e.g. environmental) development outcomes, but only for the liberal democratic quality of the assessment process. Thus it will give any weaker interest (in particular minorities and those concerned with future generations) a voice by changing the power balance in their favour. Such a 'good development governance' authority may be mandated only to approve the fact-part of decision justifications, not the associated value-based part, exposing powerful political networks that try to justify their decision-making with 'negotiated nonsense'.

What if EA really were in retreat? Overseeing all arguments above, EA communities then may seek alliance with scientific and political discourses in defence of liberal democracy, like Mounk's (2018). EA can be framed as an institution of liberal democracy, radically shifting it away from technocratic approaches. The EA discourse in liberal democracies could also be linked to the sustainable (or inclusive) development discourse: the pluralist perspective, focusing on restoring balance in development. However, today, the EA community seems to neglect this aspect of EA. Environmental movements still tend to 'hijack' the sustainable development and EA discourse, limiting it to 'environmental sustainability', usually including pollution, health and degradation of nature and natural resources, but apart from social and economic sustainability. This makes it difficult to link EA's narrative to the more general liberal democracy discourse.

But worse, the EA community has no consolidated narrative about its liberal democratic working mechanism. According to UNEP (2019, p. 240): 'It is worth noting that while there is substantial agreement on the importance of environmental rule of law and the significant costs when it is weak, there is limited empirical data on which approaches are most effective and under what circumstances.' These approaches include different forms of EA. If EA is a micro-institution of liberal democracy, of higher order than the individual checks-and-

balances it creates between a government and its citizens when a country develops, but of lesser order than a macro-institution like a free press, these checks-and-balances can be seen as nano-institutions. For example, an EA Decree may be defined as a micro-institution, whilst mandatory publication of EA report and a right of appeal in case the procedure has not been properly applied can be two of its nano-institutions. The interplay between EA's different nano-institutions will determine its pluralist effectiveness: more agreement about facts, and less polarisation. Without a stronger narrative, EA is defenceless against illiberal forces, leaving room to dismiss it as a superfluous technocratic instrument, or manipulating it to the ends of an unchecked political hierarchy.

Those concerned with EA effectiveness and its sheer survival should consider to radically reposition EA. In illiberal countries where a pluralist discourse is indefensible, EA may still be of some use as a technocratic tool (Trojan horse perhaps, paving the way for liberal democracy), in which case the secretary-general of the United Nations may try to convince these countries otherwise on #FreePlanningDay.

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