

Being Reasonable: How does rationality affect participatory environmental governance?

Caer Smyth¹

Abstract

The precarious state of our natural environment is an urgent issue that demands a close examination of our legal systems and the ways of thinking underpinning these systems. In this chapter I contend that the decisions produced in participatory environmental decision-making processes are shaped by rationalist assumptions, and that this can undermine arguments for the environment. This chapter will explore the rationalist assumptions that shape spaces for public participation in environmental decision-making, firstly by introducing some initial findings from ongoing empirical research taking place at a public inquiry into a major infrastructure project with significant environmental implications. From there, the chapter will consider how these initial findings might be accounted for by exploring key assumptions in Enlightenment rationality and in *Habermas's* theory of communicative rationality. This chapter will additionally explore how these assumptions inform participation in environmental decision-making, and how these assumptions are challenged by environmental justice theorists.

1. Introduction

Participatory governance is an established principle in environmental legislation; it is considered to be an effective approach to environmental governance, one that instills concern for the environment in our communities, engages the public in environmental decision-making, and better protects the planet's natural resources for future generations.² However, this understanding of participatory governance seems to suppose that public participatory procedures are inherently adept at considering arguments concerning environmental issues. What if this is not the case? What if the embedded assumptions that shape our understanding of nature and shape the way we argue are reproduced in our processes for public participation in decision-making? What then for the sustainable management of these natural resources?

This chapter outlines my ongoing research project, which explores the effect that embedded rationalist assumptions have on processes of participatory governance. Specifically, my research examines the possible ways in which rationalist assumptions might shape the consideration of environmental issues in a public local inquiry into a major infrastructure project in the UK.³ This chapter

¹ The author is a PhD candidate at Cardiff University School of Law and Politics (smythc@cardiff.ac.uk). The author is grateful to supervisors Ben Pontin (Cardiff University) and Karen Morrow (Swansea University) for their invaluable advice and support with this chapter.

² Lee, M. and C. Abbot (2003) 'The Usual Suspects? Public Participation under the Aarhus Convention' *Modern Law Review*, 66(1) p. 8.

³ This chapter focuses on the perspective of participants directly advocating for the environment at the inquiry; e.g. environmental objectors. The indirect benefits provided by public participation in environmental issues is a rich area for research; however it lies outside of the focus of this chapter.

firstly introduces the fieldwork⁴ element of the research, and some initial reflections are discussed. As this inquiry remains open, and as research into this site is ongoing, the site will remain anonymous. This chapter explores how emotion is expressed at the inquiry (2.2), how the physical space of the inquiry might inform the decision-making process (2.3), and how local and expert knowledge is treated (2.4). From there, this chapter explores theoretical concepts that might account for these initial findings. It outlines some key assumptions of Enlightenment rationalist philosophy (3.1.1), *Habermas's* theory of communicative rationality (3.1.2), relevant aspects of theories of participatory governance (3.2) and of environmental justice (3.3), and considers how insights in these fields illuminate some of the assumptions that shape processes of participatory governance, and shape environmental arguments (3.4). It is the intention of this chapter, and the rationale for taking a socio-legal approach in this research project, to take these sometimes abstract theoretical considerations and ground them, through ethnographic research methods, in the typical arguments, discussions and activities of a UK public inquiry. The preliminary findings presented in this chapter employing this methodology raise the question as to whether rationalist assumptions limit people's ability to advocate for the environment in these processes. Additional research is thus necessary to further interrogate this proposition.

2. Fieldwork

As highlighted above, this chapter will firstly lay out the empirical element of this research project, exploring three key issues prominent in the initial fieldwork; how emotion is expressed at the inquiry, how the physical space of the inquiry might inform the decision-making process, and how local and expert knowledge is treated. Before examining these themes however, the field-site and the methods chosen for empirical research will be introduced.

2.1. Introduction to Fieldwork

For this fieldwork element, I am using a mixture of methods; I am conducting participant observation, and I am also interviewing key participants at the inquiry, including members of staff at the inquiry, environmental objectors, expert witnesses for the developers and the objectors and legal counsel for developers and the objectors. I will additionally analyse inquiry documents that are centrally concerned with the environment. The field-site for this research is a public inquiry into a proposed large infrastructure project that affects residents, local businesses and the environment. It affects four SSSI⁵ areas, which are habitats for multiple rare species of flora and fauna. For the purposes of this chapter, this field-site will remain anonymous. There are many forms of participatory environmental decision-making process (public inquiries, residents' meetings, local hearings, consultation by environmental

⁴ This research takes a qualitative, ethnographic approach to empirical research. Consequently, this chapter refers to fieldwork, and not case study, the term for this method more typical in socio-legal research.

⁵ A site of special scientific interest (Wildlife and Countryside Act 1981, section 28). This is a common conservation designation and a building block of environmental legislation in the UK.

organizations to name a few); why have I chosen to research a public inquiry? Moreover, why have I chosen to research a UK public inquiry? Public inquiries in the UK are quite formal in their approach.⁶ I contend that the rationalist assumptions I am investigating in this research project are more clearly illuminated in this formal setting. Moreover, due to the high scale and cost of the proposed project at the heart of this inquiry, the unique features of the UK public inquiry are intensified. Its rules are particularly rigid; it is particularly adversarial.⁷

The public inquiry⁸ considered in this project was in session for 83 days. Its key actors included: the inspector and the assistant inspector, who will ultimately make recommendations to the relevant Minister in this case; the developer and their legal team; the objectors and their legal team (at this inquiry, the most prominent environmental objectors presented their objections to the proposal as a single unit); the expert witnesses for the developers and for the objectors, and the residents objecting to the scheme. The inquiry is formal in style; its physical setting resembles a courtroom.

It is worth highlighting that this is not wholly a group decision-making process, as it is the inspectors who ultimately make the decision. The inquiry is a tool for gathering information in which voice of the public⁹ is included. I attended the inquiry from April 2017 to March 2018, and have initially begun document analysis and interviewing. The findings explored in this chapter are initial reflections on the data collected in participant observation. The three themes to be explored in this chapter are as follows:

- Emotion as a counter to reason
- Set and stage direction at the inquiry, and
- The treatment of local and expert knowledge

These are themes that came across strongly in the fieldwork; I suggest that they might affect the effectiveness of environmental arguments in participatory decision-making processes.

⁶ Moore, V. (2010) *A Practical Approach to Planning Law* 11th Edition, OUP, p. 349.

⁷ McGillivray, D. and J. Holder (2007) 'Locality, environment and the law: the case of town and village greens', *International Journal of Law in Context*, 3(1), p. 10; Aitken, M. (2009) 'Wind power planning controversies and the construction of 'expert' and 'lay' knowledges', *Science as Culture*, 13(1), p. 58; Cowell, R. and M. Lennon (2014) 'The utilization of environmental knowledge in land-use planning: drawing lessons for an ecosystems services approach' *Environment and Planning C: Government and Policy*, 32, p. 266.

⁸ UK planning law requires the relevant authority to hold a public inquiry where applications require compulsory purchase orders be made and objections are raised in respect of them.

⁹ The type of 'public' included at this particular inquiry is an interesting topic, however one I do not have the space to address in any detail. Members of the public were welcome to sit in the public gallery, but they would have to sign the register. Those wishing to present evidence at the inquiry needed to inform the Inspector and/or the programme officer, and there was a deadline for submissions. As the inquiry continued, the Inspector began to ask if any members of the public in the public gallery wished to speak, or wanted him to ask a question of a particular witness.

2.2. Emotion as a counter to reason

The first theme to be considered is reason and emotion, or more specifically, the ways in which emotion is employed or avoided. Rational argument is typically understood in relation to emotion as an emotionally neutral and objective form of argument. It is interesting to consider in which circumstances, and by which actors, emotion is used and avoided. Two examples from the inquiry are described below, the first concerning a resident and the second concerning the lead advocate for the proposing side. These examples illustrate two distinct ways of managing emotion in decision-making processes.

The Resident

During the inquiry, a resident became emotional as she gave her testimony, as she considered the importance of the potentially affected natural environment to the community and particular for the children in the area. The atmosphere was a little awkward in the inquiry as this happened. The inspectors smiled at her and gave her time to collect herself. The counsel for the proposing side did not really examine this witness.

The impact of this kind of testimony is difficult to quantify. The inspectors didn't seem to take many notes during the testimony. This leads one to wonder about the impact of this testimony; and, if it had an impact, how would this be recorded or remembered? This example frames emotion as a disturbance, an obstacle to a person making their case, and to the inspectors hearing their case. This follows quite a typical, perhaps unsurprising presentation of emotion at a public inquiry. The second example offers an alternative interpretation of the role of emotion.

The Counsel

The legal team of the proposing side is led by a senior, experienced counsel. If one was to rank the actors in this inquiry in terms of their power and influence, this counsel would be close to the top. At points in their cross-examination, the counsel seemed almost angry. They used somewhat emotive language, for example,

Don't look to Mr B to answer for you...

Have you actually read...

You haven't done us this courtesy

You know that, don't you Mr B...

At points, the counsel seemed irritated; irritated by evasive answers, by what they seemed to imply was the lack of professionalism or preparedness of some of the objectors' witnesses. There was a sense that this approach made the objectors' witnesses panic, and encouraged a feeling of not having done one's homework. As this happened repeatedly, it would lead one to suppose that this was a deliberate approach. I would argue that the counsel had a freedom to use emotion in a way that was unavailable

to other actors whose legitimacy was not so assured. Their position as a rational actor was not under any doubt, and so they had a freedom to use emotion tactically. Other actors would be more likely to be seen as irrational, and therefore would not be able to use emotion in the same way.

2.3. Set and Stage Direction

The second theme to be discussed in this chapter can be grouped as physical set and unseen stage direction; this refers to influence of the physical space in which the actors operate, and the influence of the implicit and explicit codes to which actors in the inquiry adhere.

The Physical Set

The room in which the inquiry takes place is quite formal. It is set up like a courtroom, with the inspectors up on a dais facing the public gallery, and with the developers on the left of the inspectors and facing the witnesses. People attending the inquiry sign a register before entering the room. People are quiet and discreet; there is rarely any talking in the public section, and people tend not to move around while the inquiry is in session. Taken together, this creates a space that does not feel public. On my first day at the inquiry, I found it quite intimidating, and hard to enter. It is worth noting that while it is intimidating to some, it is everyday and comfortable to others. Every day I have attended the inquiry, the significant majority of people in the room are men in suits. The inspectors try to make the inquiry friendlier by chatting with the 'regulars' in the public gallery. However, the strictly limited times where they feel able to do this serves to underline the formal nature of the space. When I initially assessed the inquiry as a potential field-site, I thought that it would not be a good site for this research, as I could not really see much public participation. On later reflection, I realised that it was this seeming absence that made the inquiry a valuable research site.

The Unseen Stage Directions

The inquiry is shaped by rules that govern who talks to whom, and when, and what can be said. This includes explicit rules and also codes of behaviour, typical patterns of speech that are more nuanced, phrases that subtly assert the confidence and assuredness of the actor employing them. As with the physical set, these rules are known by some and are not known by others, again reproducing a hierarchy of position and power among the various participants. Observing any given day at the inquiry will provide multiple examples of these unseen stage directions. It occurred one day at the inquiry when the actors were stood around a table, examining a map; a county councillor asked a question at the table that should have been included in formal cross-examination and was told to by the inspector that she couldn't ask that question then. This is a minor event; however it unsettles the actor who is corrected, and can serve to reinforce inequalities in knowledge and comfort at the inquiry.

2.4. Local knowledge and Expertise

The final theme to be explored here is the treatment of local knowledge and expertise at the inquiry. It is interesting to consider the different kinds of knowledge gathered at the inquiry. The inquiry is an opportunity for public participation in decision-making processes. However, it is also a mechanism through which the two inspectors must listen to a huge amount of information, and make judgments on a number of complex issues. This second role tends to rely more on the testimony of expert witnesses; people with extensive professional experience who typically hold postgraduate qualifications. These two roles can be at odds with each other, and throughout the inquiry it seemed as though local knowledge was not treated as equivalent to expert knowledge. What follows stood out as an unusual moment at the inquiry and illustrates the different treatment of, and I would contend, value attached to, local and expert knowledge at the inquiry.

The Shift Change

A local councillor and four residents were being heard at the inquiry. Members of the inquiry were stood around a table; expert witnesses, councillor, residents, inspectors and the legal teams. The councillor and residents were discussing the tranquillity of the area and the potential adverse impact of the proposed infrastructure project. The proposing side's witnesses contended that the area highlighted by the residents was not particularly tranquil, and the inspectors noted that they had conducted a site visit to that area and agreed it was not particularly tranquil. This led to the following exchange between one of the residents and the inspector.

Resident (hesitantly): Can I ask what time you visited?

Inspector: Approximately 2.30pm

Resident: So, close to the shift change then.

Attention heightened around the table as it was evident that neither the inspectors nor the expert witnesses had taken this piece of local knowledge into consideration, that local factory workers finished and began their shifts at this time and so the roads would be busier.

This is an example of local, experience-based knowledge playing an important role in the inquiry. The sense of surprise among the actors suggests that this treatment of local knowledge as equivalent to expert knowledge was an exception and not the rule, revealing a tiered distinction between local and expert knowledge.

The treatment of emotion as a counter to reason, the physical setting and unseen codes of behaviour and the distinct treatment of local and expert knowledge, are some of the themes that were most prominent whilst undertaking participant observation at the public inquiry. What might the impacts of these themes be? Might these themes have particular impact on the effectiveness of arguments pertaining to the

environment at the inquiry? What might account for the prominence of these themes? The following section will turn to developments in rationalist philosophy and in theories surrounding participatory governance and environmental justice, and explores whether they provide any insights for this research.

3. Theoretical Framework

The points for analysis illuminated by the fieldwork and considered above touch on multiple schools of thought. However, it is the contention of this chapter that Enlightenment rationality and communicative rationality, participatory governance and environmental justice, are especially pertinent. These three fields of thought will be discussed in turn, keeping a focus on how they might add to our understanding of these themes. Firstly, rationalist philosophy will be considered; more specifically, this chapter will explore the central assumptions of Enlightenment rationality, and from there, it will consider *Habermas's* theory of communicative rationality, which is particularly relevant to processes of participatory governance. From there, critical concepts in theories of participatory governance and in environmental justice will be explored.

3.1. Rationalist Philosophy

3.1.1. Key tenets of Enlightenment rationality

A belief in the innate nature of reason is a defining characteristic in rationalist thought. For rationalist philosophers, the finite beings that make up the observable world are fragments, copies of the infinite.¹⁰ We catch a glimpse of these perfect concepts with the infinite part of our own being, our mind. The mind is integral to the pursuit of knowledge; knowledge, and the parts of humans that deal with knowledge, are “non-sensory, general and unchanging or eternal”.¹¹ Rationalist philosophers, notably Descartes, contend that ideas are innate or invented; they have an intellectual, innate source, or a sensory, adventitious source.¹² Descartes argues that our minds are perfectly designed to comprehend concepts that seemingly have no corporeal existence.¹³ The part of human beings attuned to these innate concepts is the human capacity for reason. Our capacity for reason is not applicable to all forms of knowledge. What we can understand with our capacity for reason, without any sensory involvement, are innate truths.¹⁴ This includes mathematical concepts, metaphysics and logic. These are considered ideas of pure intellect, as the senses play no role in their reasoning. For Descartes, sensory involvement in intellectual ideas is only possible as an inspiration,¹⁵ as when the use of an analogy enables a deeper insight into an intellectual concept. This understanding of ideas underlines Descartes' position that not only is there a distinction between intellectual/rational and sensory/empirical knowledge, but that

¹⁰ Nelson, A. (2005) in A. Nelson (ed.), *A Companion to Rationalism*, Blackwell, p. 6.

¹¹ *Ibid.*, p. 4.

¹² Newman, L. (2005) in A. Nelson (ed.), *A Companion to Rationalism*, Blackwell, p. 181.

¹³ *Ibid.*, p. 192.

¹⁴ *Ibid.*, p. 179.

¹⁵ *Ibid.*, p. 182.

rational knowledge is superior to empirical knowledge. Descartes contends that our senses are unreliable; “[were the mind] released from the prison of the body, it would find them [innate truths] within itself”.¹⁶ It is the mind, and not the body, that has the capacity to capture these innate, rational truths. Rationalists contend that sensory knowledge does not illuminate deeper truth; it ‘accidentally’ inspires the mind to perceive the primary qualities of the body being experienced.¹⁷

The next section considers the theory of communicative rationality developed by Jürgen *Habermas*. The relevance of communicative rationality to the processes of a public inquiry is perhaps more readily evident; however Enlightenment rationality also provides valuable insight, in particular with this notion of mind-body dualism. This foundational concept of rationalist philosophy positions the mind as not only separate to, but also superior to the body. It is through the logical deductions of the mind and not the sensory information of the body that humans can access reason. From this it follows that, according to rationalist assumptions, logic-based arguments would be superior to experience-based arguments. This chapter suggests that this prioritising of logic-based arguments over experience-based arguments in rationalist thought might in part account for the prioritising of expert knowledge over local knowledge evident at the inquiry.

3.1.2. *Habermas*'s theory of communicative rationality

Twentieth century thinkers linked to the rationalist school of thought tend to distance their work from the stricter elements of Enlightenment rationalist philosophy; this runs parallel with attempts to expand the narrow framing of rationality evident in Enlightenment philosophy.¹⁸ *Habermas* seeks to advance the rationalist project, not only by approaching rationality through the frame of intersubjectivity, but also by restoring to rationalist thought its emancipatory potential.¹⁹ In advocating for rationalism to be understood as a positive force, *Habermas* is aided by the linguistic turn in twentieth century philosophy. The world of the Enlightenment, peopled by individual subjects, is transformed into an intersubjective world.²⁰ This key development had a profound impact on *Habermas*'s thinking, evident particularly in his theory of communicative rationality.

Habermas argues that it is a naïve realism to think that we live in a world “immediately and identically accessible to all without intersubjective checking or collaborative interpretation”. Knowledge and moral beliefs are not arrived at in solitary contemplation; rather, *Habermas* proposes that social conventions are established through discussion,²¹ through people reflecting on and defending their beliefs. Further,

¹⁶ Cottingham, J., R. Stoothoff, D. Murdoch, and A. Kenny (1991:190) in Newman, L. (2005) in Nelson A. (ed.), *A Companion to Rationalism*, Blackwell, p. 181.

¹⁷ Newman, L. (2005) in Nelson, A. (ed.), *A Companion to Rationalism*, Blackwell, p. 183.

¹⁸ Outhwaite, W. (1996) *Habermas Reader*, Polity Press, p. 16.

¹⁹ Crossley, N. and J.M. Roberts (eds.) (2004), *After Habermas: New Perspectives on the Public Sphere*, Wiley, p. 7.

²⁰ *Ibid.*, xv.

²¹ Outhwaite, W. (1996) *Habermas Reader*, Polity Press, p. 13.

Habermas argues that norms must be defended by justifiable, reasonable argument.²² When we agree with one another, we recognise the validity-claims inherent in our respective positions, acknowledging the comprehensibility and/or ‘rightness’ of the corresponding argument.²³ *Habermas* argues that this is a rational process;

“...If the acceptability of speech act offers rests on the possibility of redeeming the validity claims they contain, then the acceptability of speech act offers is also tied to reason.”²⁴

When people communicate, they mutually understand one another, facilitating consensual, co-operative action.²⁵ Discourse underpins legal and moral norms, shaping not only the structure of political bodies, but also the culture within which these bodies develop and operate. This culture is influenced by the availability of public information, of education, the ability to debate issues that challenge social norms, and by the character of public debate.²⁶ The normative aspects of the theory of communicative rationality inform *Habermas*’s political philosophy. *Habermas* contends that innate reason is attainable through communication, and consequently, that discussion brings about better understanding, and through this, better political decisions. *Habermas* states that truth is found in rational discourse, when the *kommunikationsgemeinschaft*, the group of people talking together affected by the norm in question, tests the ‘validity claims’ of these norms, is persuaded of them with reasonable argument, and concludes that they are ‘right’.²⁷ This presupposes a form of ‘best-practice’ discourse, where “no force except that of the better argument is exercised”... “and that, as a result, all motives except that of the cooperative search for truth are excluded”.²⁸ The assumption that reasonable argument is the most decisive factor in group decision-making processes is fundamental to processes of participatory governance. Moreover, it is an assumption that is somewhat contradicted by the themes reflected at the inquiry, such as the importance of physical space and codes of behaviour. It is helpful to recognise that the ‘rational actors’ making ‘reasonable, justifiable arguments’ in this room are actors situated in specific bodies, in specific positions of power, in a specific space.

3.2. Participatory Governance

Having highlighted some central rationalist assumptions, this chapter will now explore theories informing participatory governance, taking particular note of areas where rationalist assumptions might influence these forms of governance. Participatory governance is embedded in environmental law,

²² Habermas, J. (1973, 1988) *The Legitimation Crisis*, Polity Press, p. 105.

²³ *Ibid.*, p. 119.

²⁴ Warnke, G. (1995) *Communicative Rationality and cultural values*, in S.K. White (ed.), *The Cambridge Companion to Habermas*, Cambridge University Press, p. 123.

²⁵ *Ibid.*, p. 120.

²⁶ Outhwaite, W. (1996) *Habermas Reader*, Polity Press, p. 13.

²⁷ Habermas, J. (1973, 1988) *The Legitimation Crisis*, Polity Press, p. 105.

²⁸ *Ibid.*, p. 108.

among other fields of law. It has been present from the start of international environmental governance with the Stockholm Conference in 1972, in the 1992 Rio Declaration and in the 1998 Aarhus Convention, and was inspired by, and subsequently empowered by, new kinds of international environmental actors i.e. international organizations, NGOs and individuals.²⁹ This emphasis on public participation in environmental law can partly be explained by the unique nature of the value-issues raised in environmental law. Environmental impacts are long-term and diffuse; they do not fit neatly into the short-term legal and political structure, thus raising questions of ethics and legitimacy in environmental decision-making.³⁰

Participatory governance is shaped by the assumption that increased public participation in governance will result in ‘better’ decision-making, decision-making that better reflects and accounts for the diverse needs of its constituent community and enhances the democratic legitimacy of the decision-making process. This view of public participation procedures is intrinsically informed by Sagoff’s concept of the dual role of the individual in society; that an individual can act as a self-interested consumer and as a citizen, “capable of embracing and advancing values which do not reflect their own selfish interests, but define the kind of society in which they wish to live”.³¹ Linking with the work of *Habermas*, theories of deliberation are foregrounded in participatory governance due to its focus on reasonable, purposeful decision-making.³² Public participation grounds governance by empowering citizens to bring their situated knowledge into the decision-making process.³³ Participatory governance bodies are considered to be solutions-focused; they are generally linked to specific actions, and are geared towards achieving a genuine consensus.³⁴ These positive attributes of participatory governance are particularly evident on environmental issues. Returning to *Sagoff’s* notion of the individual as consumer/citizen, environmental issues benefit from a forum where the long-term, complex challenges associated with environmental policy can be addressed.³⁵ It moves environmental governance on from individual preference-counting; while an individual might not always act in an environmentally

²⁹ Beyerlin, U. (2015) ‘Aligning international environmental governance with the ‘Aarhus’ principles and participatory human rights’ in A. Grear and L. Kotze, *Research Handbook on Human Rights and the Environment*, Elgar, p. 334.

³⁰ Steele, J. (2001) ‘Participation and Deliberation in Environmental Law: Exploring a problem-solving approach’ *Oxford Journal of Legal Studies*, 21(3), p. 423.

³¹ *Ibid.*, p. 424.

³² Crossley, N. (2004) and J.M. Roberts (eds.), *After Habermas: New Perspectives on the Public Sphere*, Wiley, p. 7.

³³ Steele, J. (2001) ‘Participation and Deliberation in Environmental Law: Exploring a problem-solving approach’ *Oxford Journal of Legal Studies*, 21(3), p. 437.

³⁴ Crossley, N. (2004) and J.M. Roberts (eds.), *After Habermas: New Perspectives on the Public Sphere*, Wiley, p. 17.

³⁵ Beyerlin, U. (2015) ‘Aligning international environmental governance with the ‘Aarhus’ principles and participatory human rights’ in A. Grear and L. Kotze, *Research Handbook on Human Rights and the Environment*, Elgar, p. 336.

sustainable manner, they might nevertheless view environmental protection as an essential aspect of the world in which they want to live.³⁶

However, participatory governance does not receive blanket praise. While increased public participation often results in an increase in citizens' rights,³⁷ some theorists argue that an emphasis on rational argument limits the inclusivity of these forums, privileging some voices and drawing the outsider perspective into the centre.³⁸ Others further contend that inequalities in education are reproduced in public participation procedures.³⁹ The conflict between 'rule by the people' and 'rule by experts' is intensified in processes of participatory governance,⁴⁰ particularly in processes of participatory governance in environmental regulation. UK environmental regulation has historically been closed to the public, a discussion limited to the regulators and the regulated body existing within the strict parameters of scientific expertise.⁴¹ Both the voices of the expert and the citizen appeal to different kinds of legitimacy in law-making; namely, is the law effective, or is it democratic? Effective regulation ought to reflect not only the relevant data but also public concerns on the issue under consideration. Public participation is useful when weighing different perspectives on risk, and when taking into account the diverse values upon which any particular issue might touch.⁴²

What do these concepts in participatory governance illustrate regarding the themes highlighted in the fieldwork? Some of these considerations reflect rationalist assumptions explored in preceding sections, and similarly are queried by fieldwork findings. Participatory governance, in its focus on reasonable, purposeful decision-making, echoes *Habermas* and his concept of 'reasonable, justifiable argument'. The elements of the public inquiry that would not be considered reasonable argument, such as physical space and codes of behaviour, and indeed the use of emotion at the inquiry, serve to question this assumption. Likewise, advocates of participatory governance would contend that decision-making is improved by citizens bringing their situated knowledge into the decision-making process. This assumption is at odds with the hierarchical distinction between logic and experience-based arguments presented by rationalist philosophy, and further at odds with the initial findings of this fieldwork.

3.3. Environmental justice

The final field of thought to be discussed in this chapter will be environmental justice, in particular those environmental justice theories that criticize the dominance of rationalism. Environmental justice

³⁶ Steele, J. (2001) 'Participation and Deliberation in Environmental Law: Exploring a problem-solving approach' *Oxford Journal of Legal Studies*, 21(3), p. 424.

³⁷ *Ibid.*, p. 416.

³⁸ *Ibid.*, p. 436.

³⁹ Squintani, L. (2017) 'The Aarhus Paradox: Time to Speak about Equal Opportunities in Environmental Governance', *Journal for European Environmental Planning and Law*, 14(1), p. 4.

⁴⁰ Fisher, E. (2016) 'Review Essay – The Enigma of Expertise – of S Owens (2015) *Knowledge, Policy and Expertise: The UKRC on Environmental Pollution 1970-2011*' *Journal of Environmental Law*, 28(3), p. 552.

⁴¹ Steele, J. (2001) 'Participation and Deliberation in Environmental Law: Exploring a problem-solving approach' *Oxford Journal of Legal Studies*, 21(3), p. 418.

⁴² *Ibid.*, p. 424.

came to prominence in the latter half of the twentieth century.⁴³ The environmental justice movement highlights the connections between social and environmental injustices and brings a more explicitly political perspective to the environmental movement. A divide developed between environmental justice activists and ‘mainstream’ environmental organizations, in terms of background, tactics and focus;⁴⁴ environmental justice actors remain suspicious of environmental sustainability discourses that omit any reference to social issues.⁴⁵ Critics of the sustainability discourse contend that it perpetuates the inherent inequalities of the neo-liberal system by failing to challenge these structural issues.⁴⁶ The notion of progress has long faced opposition from social and environmental justice actors, who argue that the rationalist idea of progress, “whose simple, abstract rules of equivalence and replaceability do not fit the real, infinitely complex world of flesh and blood, root and web on which they are so ruthlessly imposed”, is implicated in the precarious state of the environment.⁴⁷

The distinction between mind and body, foundational to rationalist thought, is reflected in other rationalist dualisms, most relevantly, in the nature/culture dualism. It is important to note that this dualism, while thoroughly embedded in Western thought, is absent from conceptions of nature found in many indigenous communities.⁴⁸ Non-Western concepts of nature are distinct from Western concepts of nature; these perspectives are typically marginalized in international environmental law contexts, as is highlighted below. *Buen Vivir*, a worldview popular in Latin America, is particularly relevant here. It positions itself as an alternative to the rationalist paradigm. Translated as Good Living, *Buen Vivir* promotes the achievement of a good quality of life, which is only possible when living in harmony in a community, nature being part of that community.⁴⁹ *Buen Vivir*,

“Prioritises harmony, co-operation and humility over possessive individualism, Eurocentric rationality, turbo-charged capitalist consumption, and technological fetishism that leads to hubristic illusions over domination over nature.”⁵⁰

The above description foregrounds *Buen Vivir* as a counter-narrative to dominant discourses around nature, culture and progress. *Buen Vivir* is treated with ambivalence in international environmental law. It is followed by some of the communities most affected by environmental degradation and is enshrined

⁴³ Bullard, R.D. *et al.* (2008) ‘Toxic Wastes and Race at Twenty: Why Race Still Matters After All of these Years’ 38(1), *Environmental Law*, p. 371.

⁴⁴ Agyeman, J. *et al.* (2016) ‘Trends and Directions in Environmental Justice’, *Annual Review of Environmental Resources*, 41(1), p. 328.

⁴⁵ *Ibid.*, p. 326.

⁴⁶ Shaw, C. (2016) ‘The role of rights, risks and responsibilities in the CJ debate’, *International Journal of Climate Change strategies and management*, 8(4), p. 508.

⁴⁷ Plumwood, V. (2002) *Environmental Culture: the ecological crisis of reason*, Routledge, p. 14.

⁴⁸ Gudynas, E. (2011) ‘Buen Vivir: Today’s Tomorrow’, *Development*, 54(4), p. 442.

⁴⁹ *Ibid.*, p. 441.

⁵⁰ Adelman, S. (2015) ‘Epistemologies of Mastery’, in A. Gear and L. Kotze (eds.), *Research Handbook on Human Rights and the Environment*, Edward Elgar, p. 19.

in the constitutions of Bolivia and Ecuador;⁵¹ it is also included in *The Future We Want*, the outcome document of the Rio+20 talks.⁵² However, this recognition of alternative conceptions of the human-nature relationship is given while re-affirming signatories' commitment to economic development, demonstrated here; "we note that some countries recognise the rights of nature in the context of the promotion of sustainable development".⁵³ In negotiations, *Buen Vivir* is not always treated with respect; this was evident in the 2013 UN Climate Change Conference where Bolivia's appeal to defend the rights of nature was treated as irrational.⁵⁴ The uncertain position of *Buen Vivir* might also be a result of its overtly critical stance. Advocates of *Buen Vivir* criticize capitalism for its "logic of competition, progress and limitless growth".⁵⁵

Ecofeminism, like *Buen Vivir*, questions rationalist assumptions. Ecofeminist scholars highlight the parallels between women and nature in the rationalist paradigm, including the notion that 'being woman' and 'being nature' are inherently irrational and consequently lack value.⁵⁶ These inequalities lie, according to some ecofeminist scholars, in the "transcendent dualism" embedded in Western philosophy.⁵⁷ Ecofeminism demands a deeper investigation of the relationship between humans and nature and of the impacts of these entrenched dualisms.⁵⁸ Ecofeminist scholars frame the environmental crisis as a crisis of reason, generated by, as Grosz terms it,

"The historical privileging of the purely conceptual... over the corporeal; ... a consequence of the inability of western knowledges to conceive their own processes of (material) production, processes that simultaneously rely on and disavow the role of the body."⁵⁹

Rationalist thought positions the material world as inferior to world of ideas.⁶⁰ Part of this process is the polarization of humans and nature, establishing reason as the defining characteristic of humans, and framing nature as inferior to human life; it is not unique, but rather is passive and tradeable.⁶¹ Not only are mind/body, human/nature, reason/emotion and culture/nature distinct from one another, they are defined by their opposite pair and one is better than the other; this leaves no room for complexity or overlap. These dualisms can be seen as expressions of a 'patriarchal logic' informing the structures

⁵¹ Gudynas, E. (2011) 'Buen Vivir: Today's tomorrow', *Development*, 54(4), p. 441.

⁵² 'The Future We Want', UNGA Res 66/288 (27 July 2012), II, B, 39.

⁵³ *Ibid.*

⁵⁴ Kortetmaki, T. (2016) 'Reframing CJ: a 3D view on just climate negotiations', *Ethics, Politics & the Environment*, 19(3), p. 328.

⁵⁵ Adelman, S. (2015) 'Tropical Forest and Climate Change: a critique of green governmentality', *International Journal of Law in Context*, 11(2), p. 204.

⁵⁶ Plumwood, V. (1986) 'Ecofeminism: an overview and discussion of positions and arguments' *Australasian Journal of Philosophy*, 64(1), p. 120.

⁵⁷ *Ibid.*, p. 121.

⁵⁸ *Ibid.*, p. 133.

⁵⁹ Grosz, E. (1993) 'Bodies and Knowledges: Feminism and the Crisis of Reason', in L. Alcoff and E. Potter (eds.), *Feminist Epistemologies*, Routledge, p. 187.

⁶⁰ *Ibid.*

⁶¹ Plumwood, V. (2002) *Environmental Culture: the ecological crisis of reason*, Routledge, p. 4.

through which Western society oppresses nature and women.⁶² Ecofeminist scholarship has encountered considerable criticism. Certain theorists criticize elements within ecofeminism for employing a form of biological essentialism in their celebration of woman's innate relationship with nature.⁶³ *Hunt* responds to this criticism, arguing that while recognising the 'special relationship' between women and nature might be challenging for Western feminists, it is congruent with an understanding of nature in non-Western cultures where women's reproductive roles transcend the family and are reflected in other parts of the community, including nature.⁶⁴

Strands of environmental justice are therefore critical of rationalist philosophy. They highlight the existence of embedded rationalist assumptions and contend that they have a particularly damaging impact on nature, by privileging economic progress, according to advocates of *Buen Vivir*, and by maintaining the nature-culture dualism, according to eco-feminist theorists. This research endeavours to add to this analysis of the impact of rationalist assumptions in the processes of environmental law, by exploring the possible impacts of these assumptions on the everyday activities of a public inquiry.

3.4. How does this affect participatory environmental decision-making?

This chapter has outlined some of the central assumptions asserted in Enlightenment and communicative rationality, and in theories of participatory governance. It has also explored critiques of rationalist thought developed by environmental justice theorists, namely ecofeminists and advocates of *Buen Vivir*. Throughout, it has considered how these fields of thought might enhance the analysis of the initial fieldwork findings; the treatment of emotion and reason, the importance of physical space and codes of behaviour, and the treatment of local and expert knowledge at the inquiry. Briefly, this section highlights the key insights that these fields of thought bring to this research. This also serves as a summary of the principal points covered thus far.

Firstly, considering rationality and its role in decision-making, this chapter identifies that rationalist philosophy assumes the existence of an objective truth. Rationalist philosophy maintains that the mind is the superior part of the human and that good decisions are made from the mind alone. Stemming from this contention, and of particular relevance to processes of participatory governance, is the assumption that logic-based arguments are privileged over experience-based arguments. This chapter suggests that this prioritising of logic-based arguments over experience-based arguments in rationalist thought might in part account for the prioritising of expert knowledge over local knowledge evident at the inquiry. Further, it is evident that *Habermas's* theory of communicative rationality makes some normative assumptions of participatory decision-making. *Habermas* argues that reason is

⁶² Phillips, M. (2016) 'Embodied care and Planet Earth: Ecofeminism, maternalism and postmaternalism' *Australian Feminist Studies*, 31(90), p. 471.

⁶³ Griffin, S. (2001) 'Ecofeminism revisited: Rejecting Essentialism and Re-Placing Species in a Materialist Feminist Environmentalism', *Feminist Formations*, 23(2), p. 31.

⁶⁴ Hunt, K.P. (2014) "'It's more than planting trees, it's planting ideas": ecofeminist praxis in the Green Belt Movement' *Southern Communication Journal*, 79(3), p. 243.

attainable through reasonable, justifiable argument, and therefore that debate between rational actors leads to better understanding, and with it, better political decisions. An examination of theories around participatory governance reveals similar normative assumptions. This assumption that reasonable argument is the most decisive factor in group decision-making processes is questioned in initial fieldwork findings. The actors in the public inquiry operate at different levels of power and of comfort with the procedure; these disparities are reflected in the physical setting of the inquiry and in the codes governing behaviour at the inquiry. The presence of these disparities suggests that the participants at the inquiry are not actors engaged in reasoned discussion on an equal level, unencumbered by any other consideration. Moreover, the presence, and indeed the strategic use, of emotion at the inquiry further points to the existence of factors beyond reasonable justifiable argument that influence debate at the inquiry. When participatory decision-making processes debate issues of environmental justice, the picture becomes more complex. Environmental justice theorists, such as eco-feminist theorists and advocates of *Buen Vivir*, are critical of rationalist assumptions that subordinate considerations of the environment, by promoting a rationalist idea of progress, and by reproducing a hierarchical and polarising distinction between nature and culture. Arguments countering the rationalist idea of progress, or arguments highlighting the destructive capacity of rationalist dualisms, can be made through public decision-making processes, and so the rationalist assumptions shaping these processes can then also be contested through these processes.

4. Conclusion

By investigating one specific participatory environmental decision-making process, a public inquiry into a major infrastructure project in the UK, and by considering this field-site from the perspective of embedded rationalist assumptions in participatory environmental decision-making processes, this research highlights several areas for further exploration. The treatment of emotion, physical space and expertise at the inquiry indicate some of the ways in which rationalist assumptions shape public participation in environmental decision-making. The data gathered at the public inquiry suggests that rationalist assumptions influenced the everyday activities and arguments of the inquiry. It further suggests that these impacts typically remain hidden from view, and that they might have a disproportionate impact on the treatment of the environment in these processes. Accordingly, the question is raised as to whether rationalist assumptions shape the actions and arguments of the participants of the inquiry in ways that potentially impede arguments affecting the environment, and arguments seeking to protect the environment.

Rationalist philosophy presupposes the existence of an objective truth that can be found through argument and deliberation. It further reinforces a tendency towards logic-based argument over experience-based argument, a tendency that could conceivably undermine the capacity of participatory governance to bring specific knowledge into decision-making. It is therefore suggested that rationalist assumptions might have a particularly detrimental impact on the effectiveness of environmental

arguments in these decision-making processes. Ecofeminists and *Buen Vivir* theorists contend that rationalist assumptions, in particular the rationalist tendency towards dualisms, underpin human disregard for the environment; these tendencies are played out repeatedly in participatory decision-making processes. It is worth reiterating that this chapter does not contend that rationalist assumptions are wholly negative or positive. Rather it underlines the importance in conducting further analysis to develop our understanding of rationalist assumptions and their roles in participatory environmental governance.