

ETHICAL ASSUMPTIONS IN PUBLIC PARTICIPATION

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ABSTRACT

We hold various beliefs about our moral duties *qua* public participants seeking solutions to waste management. *Making these beliefs explicit* is long overdue. It is the first step we need to take in order to create morally acceptable solutions to nuclear waste management. The next step involves understanding the basic values that are used to justify these duties. This paper examines both the beliefs about moral duties that are germane to public participation and ethical values that are adopted as justification of those beliefs

INTRODUCTION

We are witnessing an increased interest in public participation in nuclear waste management in the last 10 years. Conferences like this one seek to include sections on public participation. Agency and board hearings insure that they set time aside for participation by the public. Information centers and field trips have sprung up in potential host states. The youngest members of the public now have educational programs designed for their K-12 science curriculum. Agency websites have become far more robust in the last three years, making reports and documents, calendars of meetings, pictures and graphics accessible. Even virtual tours and field trips are about to go on-line or on CD-ROM for those curious but less mobile members of the public.

Public participation plays an important role on the international scene as well. Countries that are still in the early stages of policy formation are serious about setting the appropriate role of public participation in waste management. Some foreign policies are built on public participation and consent as *sine qua non* for success. In Nevada, the proposed host state for high-level nuclear waste development, funding for public participation in nuclear waste management has increased in the host counties. Simultaneously, such funding has substantially decreased at the state level where charges have been made of the illicit use of funds for promotional rather than educational purposes.

The interest in public participation in nuclear waste management has so evolved that discussions focusing on the meta-question: "What is a public?" have surfaced (HLNWM98) with disclaimers of the existence of a public, or distinction making between the stakeholder and the public.

Granted, there are various motivations for such increased attention to public participation. We would not be surprised to find that some motives are morally praiseworthy and others

are not. But, what makes an action ethical (morally right or wrong) does not simply hang on the motives or intentions of the actor. We all know that one can have good (or bad) intentions but engage in wrong (or right) actions.

In this paper, I focus on the moral *duties* that inform this increased interest in public participation, rather than the *intentions* that motivate it. More specifically, I will focus on *beliefs* about one's moral duties. In doing so, I will be taking the high road, giving all parties to nuclear waste management the benefit of the doubt by assuming that *their interest* in public participation is informed by their *beliefs about moral obligations or duties*.

The danger in placing these beliefs about moral obligations in the foreground is that we may end up with a morass of conflicting and confusing moral claims and have gotten no further in our understanding of the moral fabric that underlies public participation. Hence, *we must also ask about the basic values or other assumptions we use to claim that one particular duty rather than another morally binds public participation*. Raising these assumptions to the surface is helpful because confusion is caused by the differing assumptions we adopt.

This has become amply apparent in observations of how federal agencies and stakeholders treat public participation. I have sat in countless federal and state agency meetings over the last 15 years in which time is afforded the public to speak their mind. But this time has often been scheduled at the end of a long day of hearings from experts or during the last sessions of a conference, when flights to return to agency headquarters have already been scheduled to depart. Little dialogue with stakeholders and other members of the public results. Invitations to respond in writing to agency-issued reports are often met with silence.

Confusion about expectations among public participants was brought home to me in clear terms at the International HLNWD Conference in Las Vegas, Nevada in 1998. A NRC spokesman describe to me the next morning his concerns over an attempt to hold an information session with Nevadans the prior evening. He convinced me in his description of the debacle that the analysis I provide here (which *does not presume* that everyone understands they have differing beliefs about their moral duties and therefore simple disagree over which duties take priority) can be quite valuable. Conflicts *qua* participation arise that may not be resolvable until certain beliefs and their underlying value-assumptions are made apparent. If the conflicts reflect deep moral differences, it may be that no amount of conflict resolution will help. On the other hand, moral compromise may be possible even where such conflicts exist. We will never know if we do not attend to the ethical values that "inform" or underlie the duties we believe we have.

MORAL DUTIES WHICH UNDERLIE PUBLIC PARTICIPATION

From the moral point of view, why would we, as agency or board members or industry managers, engender public participation? And, why would we, as members of the public,

want to engage in such participation? This is a particularly significant question for high-level nuclear waste management because the decision to characterize Yucca Mountain is not the result of public participation, in the sense that it is not the product of stakeholder consent. Nevada still refers to the latest versions of U.S. public policy on this type of waste management the "screw Nevada bill." Yet, consent to accept such waste does play a role since current policy allows the stakeholder a veto. But that veto must be relinquished if the host state is to receive payment or compensation for assuming the risks associated with the emplacement of the waste within its boundaries. The moral picture is further complicated by the fact that such veto does not bar the Nuclear Regulatory Commission from licensing a facility since such veto can be overridden by Congressional mandate to proceed with disposal. And, in the midst of all this, we have Native American tribes expressing interest in volunteering tribal lands for the siting of both high and low-level waste disposal sites. It is no wonder that the moral justification of the situations produced by policies and past events baffles parties in all quarters of the nuclear waste management phenomena.

Our moral reasons for public participation are rooted in what we take our moral duties to be. These duties, in turn, reflect certain differing beliefs we have about nuclear waste disposal. So, the precise nature of these duties differs among participants. As you read about some of these presumed duties below, you might think analogically to other situations in which participation is sought on differing moral grounds. Notable in most of our experience is participation in decision-making between physician and patient over management of health care concerns. Decades ago if you were a physician you might see your role quite different from that of today, perhaps a bit more paternalistic. Likewise, as patient you might want more autonomy in that relationship today than you had in the past. Your expectations in visits with physicians and the beliefs you have about what is morally appropriate depend on what you take the morally relevant duties to be. Of course, there are important differences between the medical model of patient participation and the environmental model of public participation. Nevertheless, those differences (not addressed here) should not bar us from learning a great deal from a situation that has radically changed over the last two decades.

The duties described below should be understood as points of a continuum. At one end, we find duties that emphasize information; toward the other end, duties that engender consent. Much like in health care management, some of the participants in waste management believe our ultimate obligation brings these ends together to form *the duty to obtain informed consent* in nuclear waste management. Other participants will claim this duty is either supererogatory or trumped by other pressing moral concerns.

- **The duty to disclose information** is considered basic to public participation, since participation in any genuine sense cannot occur without the exchange of relevant and necessary information. However, the standard of disclosure used may differ among participants. Those participants adopting the *professional practice standard* as morally legitimate hold that adequate disclosure is determined by the scientists, engineers, policy-makers, (i.e. professional in the field of nuclear waste management) and is based on their judgment of what is best for the public. This is

the standard that held sway for many years in medicine under the rubric "The doctor knows best." *The reasonable person standard* holds that the participant "should be provided with information that a reasonable person in the participant's circumstances would find relevant and could reasonably be expected to assimilate" (1, p. 89). This has tended to replace the profession-oriented standard in medicine as the health care community recognized that the goal of health was achieved more effectively because of the increased communication inherent in this standard. Another standard, the *subjective standard*, is based on the fact that specific informational needs differ according to individual situations. No model of the objective reasonable person will capture those specific needs, which may be stronger or weaker than the other two standards described above. Hence, while participants in public participation may believe that disclosing information is the *sine qua non* of effective public participation, the adoption of quite different standards of disclosure will underlie what one believes is the morally adequate exercise of this duty.

- **The duty to dispel ignorance** accompanies the duty to inform but is not identical to it. This is a stronger duty for a number of reasons. For example, in using the subjective standard, those acting on the duty to inform may find no desire in some participants to eliminate ignorance. But, if one is acting on the duty to dispel ignorance, persistence in the face of such desire is necessary. Additionally, some assessment that such ignorance has vanished will be required. Extended dialogue on the part of both parties helps to determine if this moral goal has been met. A belief in this duty appears to underlie much of the public participation that is sponsored by federal and state agencies or their subcontractors. This sense of duty is based in the belief that understanding the parameters of nuclear waste disposal, including the risks of exposure, is difficult. What gives additional impetus to this duty is accepting the distinction between real and perceived risks as epistemologically sound as well as the concomitant belief that the public's perception of risk is based on inaccurate information and fear. Public participation that seeks to assuage fears and dispel ignorance will take the form of educational programs that the public can access or attend. Ignorance is often taken to mean mistaken or confused knowledge rather than lack of information or understanding.
- **The duty to increase understanding** is very similar to the duty to dispel ignorance but it does not assume that the public is generally misinformed. It relies on a belief that the public is able to understand to some degree the complexities of nuclear waste disposal but that understanding can increase with more complete knowledge. Again, it is stronger than the duty to inform, requiring more extensive positive actions on the participating parties. Among the reasons for holding conferences such as this one is the duty to increase understanding among the many participants in nuclear waste management. Some of those participants are members of the public; most tend to be peers and colleagues. K-12 curriculum materials about nuclear matters, including waste, is based not only on the duty to dispel ignorance but also on a belief that the nuclear industry has a duty to increase the understanding of the *future public*.

Fulfilling one's duties to inform, to dispel ignorance, and to increase understanding does not necessarily guarantee the acceptance of that information. Participants may not believe what is provided or may persist in false beliefs. Or, participants may be unwilling to change contestable beliefs, since the truth-value of evidence offered against these beliefs is relative to a framework it presupposes (1, p. 104). This latter epistemological point is troublesome for many involved in public participation. Does it spell the end to successful endeavors in effective public participation? Just because one's framework for analyzing information about nuclear waste matters may differ should not prevent communication. To believe this would be to accept a highly contested philosophical belief in communicative incommensurability. Recognition of the contextualized (relativized is too strong) character of knowledge does not entail that public participants will simply "talk past each other," in some Kuhnian sense. However, these difficulties have led waste managers to increase efforts to *gain acceptance*. What moral duties underlie these efforts?

- **The duty to gain acceptance** is based on the belief that acceptance of waste by the public is a morally appropriate action and those things that bar such acceptance, such as ignorance, aggressive anti-nuclear lobby activities, or apathy must be rectified or reversed. Activities that carry out this duty may differ from those that carry out the three aforementioned duties and are justified on different moral grounds. For example, aggressive public relations programs, incentives to accept waste, compensation plans, support for local community projects, preference for federal monies for other projects are used in the exercise of such duty. Even intentional non-disclosure, often used in the medical context, might be considered morally legitimate under the exercise of this duty. Judgments can be made that certain information should be withheld from the public either for their own good or the general good of the nation or state or future generations. It is argued that the need to dispose of nuclear waste outweighs the morally desirable feature of an acceptance based on full or close-to-full disclosure. Such disclosure, it may be judged, will only confuse and further delay public acceptance. A certain degree of informational control, we normally call "manipulation" is considered morally legitimate under this duty.
- **The duty to insure consent** is related to the duty to gain acceptance. A distinction should be made between the authenticity of the public's agreement to accept waste which we call *acceptance* and whether that acceptance is based in the (member of the) public's autonomy or *consent*. Acceptance based in autonomy is consent. This distinction is important because some participants' consent can be mitigated by circumstances having to do with types of influences present in public participation. Three primary categories of influence noted by ethicists are *coercion*, *manipulation*, and *persuasion*. At one end of the continuum is coercion, which involves credible threats (subtle or otherwise) of ill consequences, to control the acceptance of the public. At the other end of the continuum is rational persuasion, justified in part by the duty to gain the acceptance mentioned above. Persuasion is based on offering reasons to the public participant, which are meant to convince the participant of

certain beliefs about nuclear waste management. The adequacy or the sufficiency of the reasons offered or the evidenced summoned to change beliefs and insure consent are not judged under this duty but under another one (see below) which brings information and consent together. Clearly, manipulation stands between coercion and persuasion. It involves getting the public to do what one believes desirable without either threats or reasoning. One form this takes is the exercise of information control. But when manipulation involves lying, or omitting vital information, or grossly minimizing some feature of nuclear waste management, it is questionable whether or not it legitimizes the duty to gain acceptance. If it does so, such manipulation must be justified under a principle other than autonomy (see below, next section). It does not legitimize the duty to gain consent. This duty is exercised when those influences that are used are *compatible* with the participants' autonomy.

- **The duty to obtain informed consent** brings both the duties related to informing the public together with the duties to gain consent in a powerful, morally legitimate manner. Public participation that is guided by a duty to insure informed consent accepts the demands of providing substantial, relevant, and complete information to the public so as to enable the public to make a decision about nuclear waste management programs relatively free from constraining circumstances. Fulfilling this obligation should not place unrealistic demands for information on the parties to public participation. But if public participants adopt this duty, then once information is supplied, if those participants decide on the basis of that information to refuse the risks of nuclear waste management, according to this duty, that decision must be honored.

This duty is believed by many to be the *only* duty that morally justifies public participation. As we can see from the above list of duties, this view would paint a rather simple moral picture. Thinking that the moral justification for public participation is reducible to one duty is to prefer one trumping moral *value*. What are the relevant moral values that further justify these duties?

MORAL VALUES FOUND IN PRINCIPLES THAT UNDERLIE DUTIES

To guard against the tendency at this point to throw one's hands in the air at the wide and sometimes conflicting arena of duties that can underlie public participation, we must take that additional step and examine the ethical values that justify those duties. In so doing we will come to a deeper understanding of the value-based commitments with which we enter such participation.

Today, ethicists will tend toward using either a principled or a virtue-based approach to this kind of further analysis. (As an aside, I might mention that there is little "throwing up of hands" among philosophers at this level. This gesture would amount to an affirmation of ethical relativism, a position exceptionally problematic for a number of reasons, not least of which is its self-refuting character). The principle-based approach is supported by the work of philosophers as various as Immanuel Kant and John Stuart Mill. The latter

approach, about which we hear a great deal in the media via the work of William Bennett (*The Book of Virtues*) is really based in the work of Aristotle. Any good practicing ethicist will draw from both traditions when possible, ultimately utilizing good practical moral judgment. So, while this analysis will tend to sound principle-based it is actually founded in the use of values or goods (articulated by principles) in a virtuous manner, i.e. to make wise prudential judgments.

Although there are more than four, the following principles are most often used to support or justify the duties we believe we have. These principles are based in the fundamental values of freedom, prevention of evil, provision of good, and fairness. They are expressed in the principle of autonomy, the principle of non-maleficence, the principle of beneficence and the principle of fairness. The table below defines these principles¹:

Table 1: Four Basic Moral Principles

Principle of Respect of Autonomy	Autonomous actions and choices should not be constrained by others
Principle of Non-Maleficence	One ought not inflict evil or harm; one also ought to prevent or remove evil or harm
Principle of Beneficence	One ought to do or promote good
Principle of Justice	Equals ought to be treated equally and unequals may be treated unequally

Because these principles are non-reducible, we do not respect a person's freedom of choice to accept a risk *because* we want to prevent that person harm, although to override one's autonomy is to visit harm upon the person in some sense. This way of thinking would reduce autonomy to non-maleficence. We want to maintain a distinction among these principles and not use some to justify others. There is a potential in certain moral situations for these principles to conflict with each other, e.g. respecting autonomy may not always provide benefit or prevents harm. We do not want to mask or hide these conflicts if we seek to resolve them on rational grounds.

Second, we do order these principles but we don't all do so in the same way. Some people (e.g. libertarians) will rank autonomy at the top because they value freedom so fundamentally that they cannot see much justification for it to be trumped by another value. Conversely, some individuals prize non-maleficence above all else, and therefore autonomy, whether someone else's or one's own, will generally take a back seat to the prevention of harm. Ranking values is a normal thing to do. To do so does not mean that the value at the top of one's hierarchy is absolute; it may be overridden, but only in special circumstances with clear justification. Such rankings derive themselves from other philosophical beliefs, life experiences, and one's basic moral intuitions. However one puts these values in relation to each other, ethics encourages consistency and complexity. Too simplistic approaches as well as highly opportunistic ones, which change value-rankings with the way the ethical wind is blowing, are problematic.

Some principles rather than others better justify some of the duties listed above. For example, the principles of non-maleficence and beneficence support agency and industry

concerns to gain acceptance, and to insure consent of waste management programs. On these grounds some intentional non-disclosure as well as some types of influences used are considered morally justified. Such justification does not derive itself from autonomy but from non-malificence and beneficence. When the public thinks that participation is morally grounded in autonomy and the sponsors of this participation believe it to be ground in non-malificence or beneficence, moral havoc breaks out.

Hence, when the Nuclear Regulatory Commission schedules public meetings to inform the public, or when the Department of Energy issues reports, and they are charged with moral wrongdoing for not doing any number of things, from failure to listen to failure to modify findings based on stakeholder participation, they are morally perplexed. So also is the public participant. This perplexity is based on the various participants expecting a different moral ranking of principles. Stakeholders do not expect the moral principle of autonomy to be superceded by that of non-malificence and beneficence. Industry and agencies often do, basing their ranking on policy-based tasks. Among these tasks, respecting autonomy seems irrelevant. With policies already in place (passed by Congress or articulated by agencies in further rule-making) the stakeholder/public is not viewed as having a larger role in revising such policy.

Table 2: Industry and Agency Rankings: Autonomy Trumped

Duty to gain acceptance	Principle of non-malificence/beneficence
Duty to insure consent	Principle of autonomy

Other duties listed above are justified primarily by the principle of autonomy. The moral duty to increase understanding or to achieve informed consent is supported by autonomy. So, when the stakeholder complains that agencies and industry act paternalistically by withholding information or by casting it in terms that are too simplistic, the resulting moral perplexity derives itself from thinking that non-malificence and beneficence should be superceded by autonomy.

Table 3: Stakeholder Rankings: Autonomy Trumping

Duty to increase understanding	Principle of autonomy
Duty to get informed consent	Principle of non-malificence/beneficence

Of course, the moral situation is not always this simple. Some duties can be justified by several principles at once. For example, the stakeholder might believe that the duty to disclose information and to dispel ignorance, i.e. the informational duties, are all based in autonomy. But this is most likely not the view held by industry and agencies charged with implementing nuclear waste policies. Disclosing information and dispelling ignorance is justified by the need to prevent harms resulting from false beliefs and provide benefit insofar as successful waste management may give a bright future to a clean energy source. To further morally complicate matters, in some cases it has been argued that “if a subject’s autonomy is limited by his or her ignorance, as in the case of a false belief (that one) has difficulty in surrendering, it may be legitimate and even

obligatory to promote autonomy by attempting to impose the information on the (participant) who finds its unwelcome. And, if this proves impossible, the principles of beneficence and nonmalificence may still justify overriding the (participant's) nonautonomous choices" (1, p. 104). Of course, this cuts both ways. Ignorance finds no privileged bed. It wanders the night seeking anyone willing to give it comfortable repose.

The Harder Questions

There are harder questions left. It is one thing to make explicit *beliefs* about the moral duties that inform public participation and the concomitant ethical assumptions that inform these beliefs. It is quite another thing to argue in reasoned fashion for the moral priority of some of these duties. This kind of discussion would take us into empirical matters having to do with the scientific suitability of waste management programs, the nature and extent of the risks of exposure to radionuclides, and the moral permissibility of waivers and proxy consent. Most importantly, to pursue this harder discussion assumes that while waste management policies may have well-defined parameters, these parameters may be revised by the phenomena of public participation. From the ethicist's viewpoint, this is only the tip of the moral iceberg. What lie beneath these issues are hugely important ones about notions of justice that support various versions of the principle of justice. All of this is for another time and place.

The kind of analysis presented above, although it does answer all these harder questions, is a necessary one. In letting all parties take the moral high road, we bracket our recognition of the political-economic interests at stake and allow ourselves to ask what possible justifications, if any, can be given to the various activities that constitute public participation. When those justifications conflict, we gain some measure of insight into the root of moral perplexity and, possibly, even moral outrage.

REFERENCES

1. TOM L. BEAUCHAMP AND JAMES F. CHILDRESS, *Principles of Biomedical Ethics*, Third Edition, Oxford: Oxford University Press, 1989.

ENDNOTES

ⁱ There are many good references in ethics that further explain these principles. An excellent source from *Medical Ethics* is cited in the References. This paper, in general, is indebted to the work of Tom L. Beauchamp and James F. Childress. Although they do not write about the ethics of nuclear waste, their treatment of informed consent, as well as their work as applied ethicists generally, provides an excellent resource from which to do analogical work. However, insofar as it is analogical, caution must be exercised in noting important differences.