

Environmental Impact Statements and Their Lessons for Social Capital Analysis

by Thomas Sander

It is instructive to look at the origins of environmental impact statements and their consequences, intended and unintended, before considering the adoption of social capital impact statements. [The Kamerman piece briefly provides some of the EIS history, but this piece updates the history.]

History

Environmental Impact Statements (EISs) were created by the National Environmental Policy Act (NEPA), passed by the U.S. Congress in 1969, and signed into law in 1970. Section 102 dictated when an EIS was required: All Federal agencies have to “include in every recommendation or report on legislative proposals and other major Federal actions significantly affecting the quality of the human environment” a detailed statement on the:

- Impact of the proposed action on the environment
- Adverse unavoidable environmental impacts if the proposal is undertaken
- Alternatives to the proposed action
- Extent to which the proposed action involves tradeoffs between short-term and long-term environmental gains or vice-versa, and the extent to which the proposed action forecloses future options; and
- Any irreversible and irretrievable commitments or loss of resources which would be involved by the proposed action if implemented (including labor, materials, natural and cultural resources lost, etc.).

Goal: the purpose of the EIS was not to determine policy, but to ensure that decision-makers had full information about policy alternatives or trade-offs before committing to policies. “Formulators of NEPA hoped to achieve...[their result]...through internal reform, by forcing agencies to incorporate environmental values into their thinking, and through external oversight, by informing the public and other agencies about projects under consideration and eliciting comments from them.” [Lester, 1995:245]

Practice

How EISs have come to be used has differed from the original conception. Lynton Caldwell, advisor in the enactment of NEPA, says that Sections 101 (stating the purpose of NEPA) and Section 102 specifying when an EIS was to be undertaken were linked in the mind of legislators. Thus, agencies were to use the EIS process to inform nascent decision-making and advise about the impact and possible alternatives before proceeding. “NEPA assumes that changing the rules governing the generation and distribution of knowledge will change the political and intellectual content of agency decision making” (Taylor 1984:8).

Unfortunately, Caldwell says that bureaucrats have separated the EIS process from the goals of NEPA and come to see the EIS not as the means to achieving these environmental purposes, but merely as a hurdle that all policies must surmount before becoming final. In reality, agencies rarely undertake an EIS at an early stage of policy development, before developing inexorably formed proposals. The courts have assisted agencies. In 1976, the

Supreme Court ruled that an EIS is not mandated prior to a reviewable *final* federal action (*Kleppe v. Sierra Club*), undermining the likelihood that EISs would be undertaken at an earlier stage of review. [Lester, 1995:246]

A “common assertion is that agencies...[using EISs to finalize pre-made policy, try]...to make their EISs a fortress against judicial criticism, pack the documents with technical data of uncertain policy relevance or write ‘telephone book’ statements bloated with too many issues and details undifferentiated in importance (Bardach and Pugliaiesi, 1977)” [Lester, 1995: 214] In addition, the walls of this “fortress” now need be weaker: since the late 1970s, the Supreme Court, reluctant to substitute their judgment for the agency’s, have made the EIS requirement largely procedural. The courts have settled for ensuring that a public record on these issues was created by the EIS and that the information in the EIS (about the project’s impact, alternatives, etc.) reached the decision makers regardless of whether the project was altered and regardless of how environmentally damaging the project was [See the 1978 Supreme Court ruling in *Vermont Yankee v. NRDC* and later cases of *Strycher Bay v. Karlen* (1980) and *Baltimore Gas & Electric v. NRDC* (1983); see also Rosebaum, 1974; Henderson and Pearson, 1978, Mandelker, 1981; Wenner, 1982.]. The general impact of these Supreme Court cases is that *lower* courts have been less eager to review NEPA EISs since they expected that any substantive inquiry into the policy itself would be overturned by higher courts.

Impact

Critics of the impact statement process believe that the cost of preparing EISs make this an economically inefficient policy. Nevertheless, detailed studies show that EISs do not require an overwhelming workload for federal agencies (CEQ, 1971-85). In addition, “[t]he process has not incited a large volume of litigation-delaying administrative determinations and obstruct[ed] federal projects (Liroff, 1981; Wenner, 1982; CEQ, 1985: 162-65)” [Lester, Environmental Politics and Policy 1995:213] Serge Taylor in Making Bureaucracies Think found that EISs have resulted in litigation in only about 10% of cases, and only some 10% of *those* litigated cases (1% of all EISs) caused serious delay in major projects. As to whether this cost is justified, Caldwell has commented that the EIS process is justified by the environmentally unwise projects that have been avoided, but no quantitative study of this appears to have been done.

The courts have stopped few projects through the EIS process, unless the EIS uncovers that the project violates another federal law. For example, in the proposed Westway highway project on the West side of Manhattan, courts continued to insist that the EIS had been done improperly, by not focusing on the impact of the project on the Hudson’s striped bass population. In reality, the EIS had never been done properly because a proper EIS would have revealed the likely harm to the bass population and prevented US Army Corps of Engineers from issuing a permit. A few other high visibility projects have also been derailed by the EIS process when it caused laws and regulations to be changed. The dispute over old-growth forests discussed in Bonnett and Zimmerman (1991) and *Northern Spotted Owl v. Hodel* (1988) blocked logging operations after the Sierra Club got the Fish & Wildlife Service to declare the northern spotted owl a threatened species.

Thus, at a formal level, courts have okayed most projects and agencies have not had to review projects for their environmental impact until late in the process. Nevertheless, some assert that at an *informal* level, the EIS process has filtered into agency decision-making. A 1979 book by Mazmanian and Nienaber (Can Organizations Change?) expressed optimism that the Army Corps of Engineers might be changing their process based on EISs. By 1984, Caldwell -- a perhaps biased researcher since he was involved in NEPA's passage -- concluded that at least for the Bureau of Land Management, the Corps of Engineers, and the US Forest Service, "multidisciplinary science is generally being integrated into the planning process of the major resource management agencies" with the result that the environment was better managed. [Caldwell, 1984: 87, 73] Taylor reached much the same conclusion. [Taylor, 1984: 150] Serge Taylor and Lynton Caldwell, also believe that close judicial scrutiny (despite a general court withdrawal from this area) has compelled agencies to make substantive policy changes based in EIS documents." [Lester, 1995:215] Fairfax (1978), among others, contended that EISs had lengthened the process without making any substantive impact.

If nothing else, the EIS has led to the involvement of new community groups in the process by providing a new means of access and new political strategies. "Shep Melnick counts NEPA among the major reasons for 'a new era in administrative law' characterized by the rapidly expanding participation of environmental and other nontraditional groups in administrative decision making. (Melnick, 1983)" [Lester, 1995:214]

EIS link to social capital

In thinking about the development of a possible social capital impact statement (SCIS), it is interesting to note that the EIS does ask for an evaluation of some "social capital" factors (although these are a small part of a much longer list). For example, among *recreational factors*, the EIS looks at: will the action have a significant effect on public parks or other areas of recognized scenic or recreational value? Among *socioeconomic concerns*, the EIS looks at six social capital-related factors:

- 1) Will the action affect neighborhood character and cohesion?
- 2) Will the action cause displacement and relocation of homes, families and businesses?
- 3) For airport and highway projects, will surface-traffic disruption affect access to community facilities, recreation areas, and places of residence and business?
- 4) Will the action affect the quality of life of the residents of the area?
- 5) Will the action increase traffic flow and congestion? *and*
- 6) Will the action divide or disrupt existing land uses?

These social capital factors, while clearly not explicitly tailored for an impact on social capital preservation, may be having some effect, at least in combination with other laws.

For example, proposed highway routes are increasingly forced to protect federal parklands. While the EIS alone is likely insufficient, it has been buttressed by the 1966 Federal Highway Act (Department of Transportation Act) which includes a provision that forbids the taking of federal park land for highways if a feasible and prudent alternative existed.

Courts after NEPA was passed have come to read this test as absolute since the Supreme Court ruled that that not building a road was always a prudent alternative.

In the highway context, the EIS, in conjunction with increased neighborhood activism have resulted in few if any highways being built through major neighborhoods unless:

- 1) The builders give in to all neighborhood groups and the cost rapidly skyrockets (an example is the Central Artery project);
- 2) Developers find an innovative solution with a neighborhood affected. For example, in Detroit, a final stretch of Interstate 696 could not be built for some 20 years. The proposal had threatened to cut off a Jewish population from their synagogue. A rabbi was brought in as a consultant and they ultimately agreed to tunnel 696 beneath three vast pedestrian plazas so the elderly, faithful could walk to and from religious services on the Sabbath. The plazas, while expensive, have proven to be very popular and helped to sustain community social capital. The road was finally completed in 1989.

A recent study shows the clout of plaintiffs to exact demands, revealing that plaintiffs won almost 50% of cases brought challenging siting decisions. [Wenner,1982: 5-7, 90-91.]

However, Poletown shows the limits of the EIS (as currently written and implemented). General Motors in 1979 threatened to move out of Detroit unless the Mayor found them a large “green field” site to relocate to. A search of possible sites led to only one that met all of GM’s demands and political dictates: Poletown. Siting the GM plant at Poletown required the destruction of a heavily Polish, economically poor, but social-capital-rich neighborhood. Detroit was able to get permission to delay the EIS; it was completed before the project was actually undertaken, but so far along (after financial commitments had been obtained) that it precluded any meaningful EIS review. Inhabitants of Poletown were forced to be relocated elsewhere (destroying their community and severing their social capital ties) and the GM facility was built there in 1980-81. [Jones, Bachelor and Wilson, 1986.]

What Questions would a SCIS raise?

One could imagine that at a minimum social capital impact analysis would help segment policies into three piles:

- 1) clearly *pro*-social capital;
- 2) clearly *anti*-social capital; and
- 3) policies having strong or plausible social capital arguments on both sides.

At a minimum, a social capital impact statement (SCIS)¹ and the questions asked by one should help to identify categories #1 and #2, and, it is hoped, to help make sense of how to weigh the positive and negative social capital forces in policy in category #3.

¹ Note: I use SCIS as a generic acronym for some type of social capital impact analysis; this acronym is not meant to presume that the SCIS is an analogous process or formal document like the EIS.

To some degree, the benefit of a SCIS might be merely that it surfaces concerns that would otherwise be ignored and thus helps to “flag” easy cases like the following. For example, an urban renewal “slum” clearance case that focuses solely on the physical condition of a community and ignores its social condition. Herbert Gans’ in The Urban Villagers and People, Plans, and Politicians discusses the razing of Boston West End “slum” and the social capital that was thereby lost (and Gans attempt to reason what the development process might have been like if it had taken account of social conditions). Secondly, the massive defunding of school extra-curricular activities would be another category of policies with clear negative social capital impact.

A clear case on the positive side would likely be a city policy to convert an abandoned lot used for trash dumping into a community park or public space.

What questions are needed to help sort out such cases? At Saguaro III, we discussed the Goldsmith Administration’s Front Porch Alliance Litmus Test, clearly one form such questions might take. Another possible example providing much more specific and directed questions, in the family impact context, is Theodora Ooms’ Family Impact Assessment Tool #4, which is attached to this summary. Clearly there are many other forms that such questions would take.

While it is probably not fruitful to attempt to measure social capital impact quantitatively (at least at this point anyway), helpful social capital analysis questions would ideally enable us to wrestle with policies in category #3 -- that involve strong social capital reasons for advocating and opposing a policy. An example might be given by a community’s attempt to deal with mandatory school busing; such a policy can be seen as potentially fostering bridging social capital among students or as destroying strong neighborhood relationships among children and their families. We wrestled with such hard cases at Saguaro III.

Questions from EIS for the policy development of a SCIS

Assuming that one decided to implement a SCIS, what lessons does the EIS history offer and what issues does it raise?

Informal v. Formal decision-making

- Should SCIS focus on informal decision-making or be a formal document and process: Informal decision-making may require a lower level of resources and be utilized more widely in the *development* of policy. But formal decision-making may be taken more seriously, and may allow for sanctions or lawsuits if social capital factors are not considered properly.
- How can SCIS be designed to minimize the chance that it is an *ex post facto* rubber stamp for policies that an administration has already committed itself to?

Role for Public participation? Who does the thinking?

- Whether the SCIS is formal or informal, where does the data come from and who does this report? Are there public hearings? Is the final document public? What does the process do to strengthen social capital? Who defines the terms that are in the SCIS?

In what cases is SCIS used?

Do we envision that SCIS would be used only in cases directly affecting a neighborhood's or community's social capital or in policies that indirectly affect this as well. For example, the Indianapolis government is considering a "user fee" assessed on all citizens (as well as churches and non-profits) to construct more up-to-date storm water management facilities. This policy does not directly change churches' social capital, but by taking away some of their resources may have indirect consequences on how many programs a church can run, on how many individuals can be reached. Do we envision that a SCIS would be required in such cases?

Is it a factor to be considered or an absolute block?

Let us posit that a social capital impact analysis review determines that a proposed policy is deemed to harm a community's stock of social harm (a little bit, somewhat, a lot?). Do we envision that this knowledge will be one of many factors considering in deciding whether to proceed with the policy? Do we envision that this will force an Administration to consider alternatives? Should a negative SCIS ruling be a bar to adopting a policy?

How do we maximize the chance that SCISs are widely used within administrations that have adopted them? And accepted more broadly beyond this specific administration?

Do we envision that a SCIS will be used broadly because it is mandated and legally enforceable or because it is clear that the head of a local government believes strongly in this tool? Does having the SCIS be more technical or more specific increase the wide usage of a SCIS? Do policy-makers need to be trained and, if so, by whom?

Determining the application of SCIS

How can we find the right balance in the language of the SCIS so that a SCIS is not infinitely malleable and easily manipulated to justify policies, but yet has broader applicability to the range of policies for which it might be applied (taxes, zoning decisions, government provision of social services, economic development and business incentives, education, etc.)? Is there enough *knowledge* of what increases or decreases social capital to make analysis meaningful? If we can not be sure about the effects, can we at least bracket our uncertainty? How do we weigh the perceived social capital benefit to one community against the perceived loss to another? How can we quantify social capital so we know what it is worth: if a government can save \$x from ending a program and this would cause social capital to go down by "y", is it justified?

Citations

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