Has widening participation in decision-making influenced water policy in the UK?

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Abstract

This paper addresses public participation in debates over service quality in the water sector in England and Wales. It is argued that just at the moment when the British Government claims to be interested in getting stakeholders to participate in policy debates there are important questions arising about the future of the UK water industry in relation to commercial restructuring and increasing competition. The paper looks at two strategies for fostering public participation. First, it analyzes the structures established in 1989 and reformed in 2002 to represent consumers within the regulatory framework. It is argued that, as the institutions of consumer regulation have evolved, they have adopted fairly traditional strategies for influencing the Government’s policy decisions that do not really accord to current theoretical models of stakeholder participation. Second, it analyzes the public consultation exercises run by the Water Services Regulator Ofwat (The Office of Water Services). The conclusions are based on a study of 35 recent consultation exercises carried out by Ofwat. The study analyzed 1250 responses to see which stakeholders were participating in consultation and then used questionnaires to identify how they perceived the consultation process. Most stakeholders were skeptical about the impact of consultation on Ofwat policy. Instead they regarded consultation as one strategy amongst the many which they used to try and steer policy in their own interest.

Keywords: Consultation; England & Wales; Ofwat; Public participation

1. The rising political interest in stakeholder participation

“The democratic impulse needs to be strengthened by finding new ways to enable citizens to share in decision-making that affects them. For too long a false antithesis has been claimed between ‘representative’ and ‘direct’ democracy. The truth is that in a mature society representatives will make better decisions if they take full account of popular opinion and encourage public debate on the big decisions affecting people’s lives.” Tony Blair (1998)
Public participation in policy-making is currently high on the political agenda in the UK. This is largely because the political leadership of the UK and associated intellectuals (Blair, 1996, 1998; Hutton, 1995; Giddens, 1998, 2000) has enthusiastically embraced the concept of “stakeholding”. This idea originally concerned the character of individual firms and had two axioms. First, a “stakeholder company” is one in which employees are directly involved in the corporate decision-making process and see themselves as part-owners of the firm because they have a stake in the company. Such structures of employee involvement have a long history in continental Europe and Japan where they are often labeled “corporatism” or “co-ordinative participation” (Spangenberg, 2001). Second, property embodies obligations to a community wider than just its owners. The decisions of a capitalist firm must reflect the interests not only of shareholders, but also employees, suppliers and the communities in which the firm operates. Advocates of such models argue that stakeholder firms are more efficient and competitive than the shareholder equivalents.

Subsequently, the notion of stakeholding has been expanded to include society more generally (Ackerman & Alstott, 1999; Hutton, 1999). Just as an employee’s sense of loyalty to their employer is developed through participation in company policy-making, so too citizens would develop a similar relationship to the state. This notion of citizenship entails the state providing equality of opportunity through education for all individuals and an enabling environment through economic stability for all firms. In return firms have a responsibility to accept wider social responsibilities and individual citizens have a responsibility to take up the opportunities offered to them. “Every individual has a political responsibility to try their best and make an effort, think about issues and participate in decision making” (Spangenberg, 2001, p. 6). Participation is seen as a learning ground for democracy and a means of building up the civic culture. The proposed shift to a stakeholding government involves a shift away from the absolute sovereignty of Parliament and towards a politics of power-sharing and negotiation with a wider range of participants. As a result, how to activate stakeholder participation in decision-making has become a relatively important question in British politics.

Substantial questions have arisen in the last few years about the originality and plausibility of these ideas as well as the sincerity of the politicians who espouse them. The idea of active citizens who come to understand democracy through participating in decision-making certainly dates back to the work of John Stuart Mill in the 19th century, so it is clear that these ideas are not entirely new. For some sceptics the language of stakeholding was an electoral device, which provided the New Labour Government (1997–) with nothing more than a rhetorical vehicle for distancing themselves from both the political “old left” and “new right”. Certainly the term seems to have been used less frequently since 2000 than it was before. Nevertheless it is too early and too easy to dismiss the discussion of stakeholder participation as mere party politics. Widespread anxiety about the loss of trust in Government and the electoral system has added respectability to all strategies that address public disillusionment. Furthermore, the dramatic increase in the number of consultation exercises which followed the General Election in 1997, and the experiments with new forms of participation (citizen’s juries, circles of influence, consultations on the internet) suggest that there is a genuine desire to translate aspects of stakeholder participation into practice in the UK. The more substantive question asks whether this widening of participation has any impact or whether it is only window-dressing. If stakeholder participation is just a ritual used by Governments to justify decisions that have already been taken by giving the appearance of sharing power, then it is unlikely to have any impact on the character of the policy produced.
2. The changing character of the water supply sector in England and Wales since 1997

The water supply sector in England and Wales is well known internationally because it is a rare example of a privatized water service with full divestment of the ownership of fixed infrastructure to individual companies. Since privatization in 1989 the water sector has not stood still and a number of trends are identifiable. These shifts have been driven by changes in the tenor of the economic regulation of the sector and by the desire to introduce further competition into the industry (DETR, 2000c; OFT, 2000; Ofwat 2000e).

Since 1997 economic regulation has increasingly favoured consumers (particularly vulnerable consumers) over shareholders and, as a result, relations between the Director of Ofwat and the water companies have become more antagonistic. In 1998 a one-off “Windfall Tax” on excess profits was imposed on the water companies. The 1998 Water Act also made it illegal for water companies to disconnect customers’ water supply, or to install pre-payment meters or “trickle valves”. In 1999 the quinquennial Ofwat Price Review set large one-off negative price limits for the year 2000–2001, which reduced domestic water bills by an average of 12.4% in real terms and kept prices broadly stable until 2005 (Ofwat, 2000a). The announcement of this price cut also had a dramatic effect on the share prices of the water companies, which fell around 50% (Bakker, 2001, p. 158). This is a clear shift from earlier Price Reviews (in 1989 and 1994), which were extremely generous to the water companies and allowed pre-tax profits to rise 147% between 1990 and 1997 (Lobina & Hall, 2001) and allowed domestic water bills to rise by over 20% (enabling a massive programme of capital investment in infrastructure). In May 2002 the Government outlined its latest ideas for the next Water Bill (DETR, 2000b; DEFRA, 2002) and this is making its way through Parliament in 2003. This might give Ofwat the power to fine water companies up to 10% of their turnover if those companies fail to meet their appointment conditions, performance standards or statutory obligations or if they pursue anti-competitive practices.

Explaining the source of this tightening of regulation is complicated. The leadership of Ofwat emphasize their independence from central Government; shifts in Ofwat’s policy, they maintain, reflect their own internal decisions. The change in the 2000 Price Review, it is implied, would have happened irrespective of the 1997 General Election result. However, the fact that these shifts coincide with a change of Government in the UK in 1997 is inevitably suggestive. The New Labour Government had no ideological investment in defending the existing privatization arrangements so that Ofwat must have known that there was more scope to be innovative. In some instances central Government intervention in regulation was direct: the 1998 ‘Windfall tax’ and the ban on disconnections, for example. In other ways the influence was indirect, by setting the general tone of debate the Government can steer the decisions of independent non-ministerial departments, like Ofwat. In some cases, however, there was clearly opposition from within Ofwat to the decisions made by the new Government. For example the representatives of the public within Ofwat were amongst the most vocal opponents of the ban on disconnection (ONCC, 1999a). They argued that without disconnection the water companies would pass on the costs of those consumers who were unwilling to pay for water to the “average consumer” who would, in effect, have to pay for water they did not consume. So, whilst it would be wrong to equate Ofwat with Government, clearly it is not entirely independent of Government, and it is hard therefore to judge whether it was Ofwat or the new Government who were the driving force behind the intensification of regulation.

Tightening regulation has prompted a variety of corporate responses from within the industry, though often these responses were the acceleration of trends that were already under way. One common move
by companies has been to place increased emphasis on the unregulated parts of their business. A second strategy has been to remain within the regulated sector but to seek increases in efficiency through mergers between water companies, or by forming multi-utilities companies. A third shift has been shown in the changing pattern of acquisitions in the sector, with the major European utilities companies (who were buying UK water companies in the mid-1990s) now selling those companies to finance houses. The utilities companies claim that profitability is now greater on the European continent and in the US, but the finance houses are attracted by stable cash flows.

From the perspective of those interested in public participation, however, the most interesting response has been in relation to the form of corporate structure adopted by the water companies. There has been much discussion about a shift away from the model of equity-financed profit-making companies who own the water supply infrastructure. Instead it is proposed that asset ownership and water production could be separated, with some form of not-for-profit company owning the assets and profit-making companies supplying the water. This was first proposed in Yorkshire, where the current operator planned to set up a mutual company owned by all the water-users which would own the assets and carry the debt, whilst the current operator would continue as a profit-orientated water supplier (Lobina & Hall, 2001). The economic regulator rejected this model because it was not in the interests of consumers (Ofwat, 2000b, 2000c). However a different form of not-for-profit arrangement was adopted in Wales (Scorer, 2001). The current owner of the assets in Wales is a non-profit making company (Dŵr Cymru) which raised its finance not from equities, but from bonds. Whilst the company is the owner of the assets it also has a formal relationship with the regional government, the National Assembly of Wales. This is a securitization rather than a mutualization, but it still marks the first actual step since privatization towards the formal involvement of the public in water supply ownership. Since that change some English water companies have also taken advantage of the financial benefits involved in switching from equity financing to debt financing. However, they have not moved away from the model of private profit-making companies in the same way. Ofwat are concerned about the move towards debt financing and have responded by suggesting that they will impose tougher price limits on highly leveraged water companies.

The discussion of restructuring is also a response to increased discussion over the introduction of direct competition to water supply. At the time of privatization it was recognized that the water companies had natural monopolies so competition between them was organized around the idea of a “yardstick”. This entailed a comparison between the performances of the different companies, which was adjudicated by the economic regulator – Ofwat. The prices that the regulator then allowed the companies to charge were based on the performance of the most efficient water company. The Director General of Ofwat claims that this (along with the discipline of having to go to the private sector to raise finance capital) has been successful at encouraging efficiency in the sector (Ofwat, 2000a). Nevertheless Ofwat suggests that, after allowing for differences in size and situation, there may still be a 40% difference in efficiency between the best and the worst water company in 2000–2001 (Ofwat, 2001). As a result both recent Conservative and Labour Governments have discussed the introduction of more direct forms of market competition (Hansard, 1997; DETR, 2000c). The current Government initially appeared to be keen to encourage competition in the water industry, believing it to be in the interest of the consumer and, therefore, in line with their social objectives (Darcy, 2000). However, in the latest consultation paper on competition (DEFRA, 2002) the Government proposes more limited extensions of competition (Ofwat, 2000f) rather than the introduction of common carriage. Competition will rather be fostered by allowing large users (those who use 50 megalitres of water or more per year) to choose
their supplier and by introducing tradable water abstraction licenses (DETR, 2000a). Ofwat feel that the threshold that defines a large user could be brought down to perhaps 10 megalitres of water per year.

The result of the two processes, of tightening economic regulation and considering how to open the water sector to competition, has been to raise a number of key normative questions for public debate. Is it right to shift the proceeds of water production from shareholders towards consumers? Is the Government right to use water prices to pursue a social policy of protecting vulnerable consumers? Should the water companies be allowed or encouraged to restructure by divesting ownership of the infrastructure? If these private companies are seeking to divest themselves of the ownership of networks, can the 1989 privatization be seen as a failed experiment? Should competition through common carriage be permitted? When broken down into their more technical constituent parts these questions sometimes cease to be great public concerns. Issues over company mergers, for example, rarely stimulate a strong public response. However, some questions also produce a surprisingly strong public reaction: for example, there is strong public hostility towards foreign ownership of UK water supply companies. So the claim here is that, just at the moment when the Government says that it is interested in getting stakeholders to participate in policy debates in general, there are important questions arising about the future of the UK water industry and about economic regulation. There is potential to involve the public in substantive service debates.

3. The history of participation in the making of UK water policy

There is a tradition of secrecy in UK government. For example, public access to Government documentation is delayed for thirty years (as detailed in the Public Records Acts of 1958 and 1967). In 1994 a voluntary code of practice was introduced that gave the public better access to recent Government information (not documents). In 2000 a Freedom of Information Act was passed, though it was much watered down from early drafts and its implementation has been delayed until 2005 (Campaign for Freedom of Information, 2001). In addition the British Government has invited citizens to get information about the Government through such measures as annual reports, open access information offices and Internet-based documentation. Of course, all these strategies permit citizens to view only what the Government chooses to allow them to see. This tradition of secrecy stands in distinct contrast to the US where legislation provides public access to current Government papers, which has had a direct bearing on public access to bodies concerned with setting water policy (Borton & Warner, 1971; Creighton et al., 1983). However, this lack of legislative access to information in the UK does not mean that bodies outside formal Government structures have been excluded from policy-making. Rather a “back-room” model of consultation has operated in the British Government throughout the 20th century.

Non-governmental involvement in policy making in the UK has often operated through informal networks. This is a two-way process of communication, with the Government extracting information in exchange for allowing certain pressure groups some influence over shaping policy. In return for being regularly consulted by Government pressure groups are expected to conform to certain patterns of behaviour. They are expected to be discreet about discussions in Whitehall, not to “go public” even when agreed and not to criticize Ministers (Coxall & Robins, 1998). Influential pressure groups prefer to participate in debates on a continuous, personal and low-key basis. “Policy ideas, especially in their formative stages, are not very widely shared other than among those with a direct need to know or who
can be relied upon to give compatible and confidential advice.” (Forman & Baldwin, 1999, p. 519). The pressure groups that are included in this process exhibit certain characteristics: they are democratic in their internal structures, they tend to make reasonable demands, they give reliable advice, their language is akin to that of the Government and they wield a degree of real economic leverage. Those that are excluded from the process have overall aims that are incompatible with the Government and occupy generally contentious positions. Whilst this general model of participation has operated throughout the 20th century, the pattern of pressure groups involved has changed, and the value that is placed on their advice has also changed.

Four or five periods can be identified, reflecting changes in participation (for an alternative American periodization see Cortner (1993)) The period from 1939–1945 was an era of emergent group participation. The Government needed the co-operation of a number of pre-existing groups (such as trades unions and health related associations) in order to maintain high levels of production in agriculture and industry and to develop emergency medical services. From 1945 to the early 1960s during the period of expanding group participation the early links forged during the war between Government and pressure groups developed further. The need for consultation not only stemmed from increasing public distrust in expertise but also reflected the fact that, during this period, Government took on new roles and responsibilities (welfare provision, Keynesian macro-economic management), which required a wider dialogue with participants. The 1960s and 1970s marked the high point of pressure group co-operation and are often seen as an era of neo-corporatist participation, symbolized by the establishment of “green papers” documents circulated for consultation at the outset of producing legislation. A small number of pressure groups (primarily the Trades Union Congress and the Confederation of British Industry) became very closely involved with policy-making on the condition that they subsequently ensured effective policy implementation from their members. This consultation was institutionalized in bodies like the 1962 National Economic Development Council (NEDC), which operated as a closed forum for such policy-making. The failure of this system to achieve economic growth and maintain price stability (against a backdrop of rising inflation and union militancy) enabled the following period to apparently change direction sharply. The era from 1979–1997 was a period of revanchist participation, in which successive Conservative Governments claimed to dismantle neo-corporatist institutions and return decision-making to central Parliament. Though they profoundly reduced the influence of the trades unions, they also actually introduced a whole series of new pressure groups into the consultation process (particular think tanks, representatives of financial interests and certain environmentalist groups). So, though the balance of power between Government and pressure groups shifted decisively towards Government there were also major changes in which pressure groups retained an influence. Thus, regardless of the overt hostility towards corporatism in the governments of the 1980s, the mode of back-room consultation in policy-making did not alter. There is a substantial debate about whether or not 1997 marks the beginning of a new era of stakeholder participation. If there is a new phase then it is characterized by the involvement of individuals in more accessible and innovative forms of consultation. In addition it aspires to involving consultees in decision-making as well as mere consultation.

The changing influence of non-governmental groups on British water policy reflects these periods. In 1945, prior to Labour taking power, a Water Act was passed, but it introduced only minimal changes. Subsequently, during the era when the Labour Government promoted nationalization (1945–1951), water was left largely untouched. Hassan (1995, pp 200–204; 1998), however, emphasizes the preemptive and organized role of lobbying by pressure groups representing municipal corporations (who
operated many urban water supplies), water engineers and the private water industry from the 1930s on. In all cases these lobbies advocated retaining devolved and local control and opposed nationalization. As lobbying generally became more important (during the era of expanding group participation) these pressure groups became more organized in order to achieve their aims. In this they were successful. Though water remained on the list of industries suitable for nationalization up to 1950, the scale of operations was not substantially changed until 1973.

In 1973, during the era of neo-corporatism, the structure of the English and Welsh water industry was substantially re-organized on a national basis. 200 local government water authorities, 29 river authorities and 1400 local authority sewage works were rationalised into just 10 regional water and sewage authorities (RWAs). Local government control was eliminated and different aspects of the water industry (water supply, sewage and river quality management) were integrated (Penning-Rowsell & Parker, 1983). This change was the product of a Conservative administration and was driven not by the belief in nationalization but by economies of scale, an antipathy to local government and the engineering logic of integrated river basin management. Given these driving forces two anomalies stand out. First, 31 private water supply companies survived the re-organization untouched. They supplied water to around 25% of the national population, but many of them were small companies serving small populations, so their continuity stands against the scale benefits that were to be achieved through agglomerating suppliers together. Despite lobbying from water engineers and local government associations, these private companies survived because of the influence that corporate pressure groups, like the CBI, could wield over Government policy. The second anomaly is that the new RWAs were not given authority over land drainage and flood control. The real power remained with the Regional Land Drainage Committees run by the Ministry of Agriculture, Fisheries and Food, which had very close ties with the farming lobby, represented by the National Farmers Union. Farmers didn’t want to lose control over decisions that affected what actions they could take within floodplains, and used their influence to ensure that power remained with MAFF rather than being transferred to the RWAs. In both cases particular pressure groups, with particularly effective contacts in Government, were able to use their influence to shape Government policy to suit their own agendas.

Sixteen years later, in 1989, the 10 RWAs were transformed into private companies, which owned and operated the water infrastructure (Kinnersley, 1989, 1998). This followed a period of dramatic job losses and low investment in the water infrastructure. The water privatization reflects the character of the era of revanchist participation in a number of ways. Though employment in the water sector had already peaked before 1989, privatization signalled another round of job losses. Yet, following the expulsion of the trades unions from any privileged position inside the policy-making process, these job losses passed largely unchallenged (O’Connell-Davidson, 1993; Fairbrother, 1994). Similarly the new influence of the representatives of finance capital on the policy are identifiable in terms of the weak regulatory regime that allowed the water companies to make high profits, and the generous terms on which the RWAs were sold into the private sector (the so-called “green dowry”). Furthermore, a new tension emerged in terms of public access to information. Whilst the new regulatory regime produced a mass of new data to which the public had access (asset management plans, pricing plans, efficiency comparisons) there was, simultaneously, a new barrier to information that emerged at privatization, namely the shield of commercial interest, behind which water companies were able to hide. For the purposes of a discussion of participation the most important result of privatization was the emergence of new institutions of consumer representation (the Ofwat Customer Service Committees (CSCs) and, soon afterwards, the Ofwat National Customer Committee (ONCC)).
The 10 CSCs were fully integrated into the Government’s mechanisms for service regulation of the private water industry. Every water and sewerage company and every water-only company was assigned to a specific CSC. Each one comprised a chair and between 10 and 20 members. The Chair of the CSC was appointed by the Director General (DG) of Ofwat, and paid a part-time salary. The other CSC members were unpaid volunteers who were appointed on the recommendation of the Chair. Members were recruited via adverts in the local press and approaches to a range of bodies and major employers. Each CSC also had a small team of salaried staff and Ofwat also provided the CSCs with legal, financial, technical, press and public relations support. Altogether this cost Ofwat £1.282 million in 1999–2000. Since CSC members were a self-selecting group they initially had a tendency to represent a particular fraction of society, which had the time, inclination and financial independence needed to become involved in such activities. However, subsequently, an active policy by the Ofwat management has enabled a diversity of experience and interests to be represented on CSCs. These institutions reflected the Government’s belief that individual members of the public needed a body through which they could challenge the experts in the water companies.

CSCs were mandated to represent the interests of all consumers and potential customers (domestic, business and agriculture) by providing a forum in which customers can hold the companies to account and scrutinize Government policy. In fact, they have tended to represent the interests of domestic consumers and small businesses, on the grounds that large businesses have the means to look after themselves. They have also provided an opportunity for public bodies (for example, the emergency fire service) to put pressure on the water companies. They hold regular general meetings (which are open to the public) and also divide into specialist sub-groups. The water companies send representatives to these meetings to answer the questions of the CSC. Most of the time of CSCs is given over to the investigation of complaints made by individual members of the public about the actions of particular water companies. They also draw up detailed responses to the consultation papers produced by Government departments and Ofwat.

The Ofwat National Customer Committee (ONCC) is made up of the chairs of the ten regional CSCs. It is not a statutory body, but was created after the rest of the system was established in order to provide a vehicle through which the CSCs can talk to one another and can talk to the DG of Ofwat with a single voice (Simmonds, 2001). The ONCC has also become a key vehicle through which “consumer opinion” is represented to press, Government and industry and has taken on a specific role representing the interests of UK consumers within the EU.

Despite this elaborate institutional structure for consumer representation, the shift in the practice of participating is less dramatic than it seems. This is because the CSCs have concluded that the means by which they can be most effective is to continue the model of back-room consultation. The CSCs have no statutory power to access information from water companies or to demand changes in the behaviour of water companies. In order to exert any influence over the companies CSCs have developed precisely the kind of personal, informal, amicable networks with the private industry that have always been the hallmark of participation in the UK (Simmonds, 2001). Equally the CSCs have developed a very close relationship with central Ofwat staff. This developed from the outset when CSC members have to be trained in order to understand the way in which OFWAT assesses factors such as company efficiency. This training process is key to making CSC members insiders of the regulatory establishment. This has enabled an informal exchange of information about water companies to occur. The CSCs produce monthly reports, minutes and policy papers, which are circulated within Ofwat. Reciprocally Ofwat staff pass information informally to CSCs, attend ONCC meetings and invite the ONCC chair to regular meetings.
meetings with the DG. This informal exchange of information is premised on the understanding that the CSCs will respect the commercial importance of some of the material and will treat it as confidential. CSCs have evolved to become acceptable participants. This is not to say that they have not been in conflict with the water companies, the rest of Ofwat or the Government, but that, at a fundamental level, they do not disagree with the central thrust of policy. By being insiders they believe that they have delivered real benefits for many customers, unlike the more contentious NGOs (for example, the National Campaign for Water Justice), who, though they achieve considerable press notoriety, have done little to shape policy because they are excluded from effective participation as they have no voice in the institutional structures established for public participation. The CSCs then represent continuity in the mode of participation, but have introduced a voice for a new participant, the customer.

This consumer representation infrastructure has been the subject of substantial change in recent years. In 2000 the Government published a draft Water Bill which proposed to remove consumer representation from its institutional base in Ofwat. Instead an independent Consumer Council for Water was to be created. This was driven by a Government belief in the principle of autonomy for consumer watchdogs, but was opposed by the individuals involved in the existing structures (ONCC, 1999b). In the absence of actual legislation, however, the management of the CSCs and ONCC opted to restructure themselves along the lines suggested in the draft bill. Since April 2002 the CSCs have ceased to exist and have been replaced by WaterVoice. The extent to which this reflects a shift to stakeholder participation is yet to be seen, and may well depend on the powers the new body is given in the new Water Bill. Customer representation through the CSCs/WaterVoice is the most important form of regular participation in policy-making. However, consultation exercises are also significant and they are open to a wider number of groups. The remainder of this paper analyzes Ofwat consultation papers.

4. Who participates in Ofwat consultations?

The circulation of consultation papers by Ofwat remains the dominant forum for non-governmental involvement in policy debates about issues related to the regulation of water services. Whilst other participation techniques, such as informal face-to-face meetings where different stakeholders can meet together with Ofwat staff have also taken place, written consultations are by far the most important formal vehicle for discussion. Over the last few years, when the water industry has faced a range of new and controversial dilemmas, Ofwat has made a concerted effort to widen the number and type of organizations who respond to these papers. In order to do this they have formulated a policy for good practice in consultations (Ofwat, 2000d). This includes a commitment to using simple non-technical language, summarizing specific questions, circulating information via new media such as the Internet and producing Ofwat response papers following consultation. Unless the respondents specifically request anonymity the information remains in the public domain and is collated by the Ofwat library service. These collected responses provide a useful research resource.

Since it was founded in 1989 Ofwat has always produced consultation papers, but since 1997 the number of consultations has risen sharply (Table 1). In part this reflects the fact that, because of changes in the sector, the regulator has more questions they need to ask stakeholders and in part it reflects the growing interest in involving stakeholders more closely in the policy-making process. The circulation of consultation papers via the Internet has reduced the cost and labour involved in running a consultation exercise and this has also enabled the number of exercises to increase. Many regular participants
(especially the smaller NGOs) commented that the number of consultations is now a significant burden on their time and resources and that, as a result, they choose to respond only to those that they view as particularly relevant.

The recent Ofwat consultation exercises have succeeded in reaching a wide range of different participants. There were 1250 responses to the 35 consultation exercises between 1997–2000. One exercise led to just 5 responses whilst another led to 122. The average number of responses to a consultation paper was 36. Of the 1250 responses the largest number of responses came from commercial firms, including the water companies. However, in numerical terms the private sector did not dominate the responses (Table 2). The consultation papers are initially circulated by Ofwat to a growing list of “relevant stakeholders”. This list has been built up by Ofwat over the years and reflects their own interest in getting responses from a range of different groups. However, the papers are also available on the web and some interested parties volunteer unsolicited responses. When they do, they are added to the list for initial circulation in later consultations.

Under these definitions “associations” are lobby groups that represent the material interests of their members (for example, Water UK is an association representing the interests of water companies), whereas “civil society” groups tend to have goals not directly oriented to their own material interests and tend to be more fluid in structure (for example, Surfers Against Sewage is an NGO campaigning on a range of issues relating to marine pollution). The distinction between associations and civil society is rather subjective, for example some domestic consumer organizations fit better under “associations” and some under “civil society”. Some 31 different associations and civil society organizations have been regularly involved in consultation.

The civil society category is of particular interest. It is not homogenous (Table 3) and several of the sub-divisions take strongly opposing positions on a number of policy issues, such as full-cost pricing, which is advocated by the environmental lobby and opposed by the consumer lobby. The individuals who involve themselves with the consultation process tend to respond in very large numbers to a very limited number of consultation exercises. Over half of the responses from individuals came from just two consultation exercises – one on the proposed mutualization in Yorkshire and another on future water

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Table 1. The number of consultation exercises run by Ofwat.

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<th>State</th>
<th>Market</th>
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<tr>
<td>247</td>
<td>525</td>
<td>325</td>
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Table 2. Responses to Ofwat consultations by sector.

| Concerned individuals | 53% |
| Environmental NGOs    | 20% |
| NGOs concerned with social issues such as poverty or disability | 12% |
| NGOs representing domestic consumers | 11% |
| NGOs which act as self-declared watchdogs, policing the UK utilities | 4% |

Table 3. The proportion of responses from different interests within the category “civil society”.
charges. In contrast, one or two environmental NGOs respond to nearly every consultation document. Very few of the individual responses came from shareholders, who seem to be very passive participants, at least within formal consultation mechanisms. Initially it appears odd that the small number of NGOs whose central concern is with UK utilities (such as Waterwatch and the National Campaign for Water Justice) do not often participate. However, since these groups often campaign against the continuing privatization of the water sector they epitomize the idea of outsiders whose demands do not articulate with the options presented in an Ofwat consultation exercise. From interviews these organizations feel themselves to have been excluded. However, given that they rarely choose to respond to consultation, Ofwat might argue that they have excluded themselves.

But a numerical breakdown of who is participating is too simple. First, none of the main categories is internally homogenous. For example, when the category “associations” is broken down it is clear that it represents a broad cross section of different interest groups, some of which duplicate interests in other categories (Table 4). Second, a well co-coordinated lobby might have only a single representative association which responds to each consultation, but if that organization is influential it can have as much impact as half a dozen less well regarded responses. So, for example, there are only two trades unions who ever respond, but they represent the views of a significant number of people, with a large degree of economic leverage. Within a quantitative analysis they appear trivial, but in fact their few contributions might be taken very seriously. Third, an analysis of the number of responses is also misleading because it accords the same weight to a one-sided letter from an individual complaining about the RWE takeover of Thames Water as it does to a 60 page statement from a water company advocating the relative merits of a particular way of working out the cost of producing water. In other words, these proportions do not reflect the content of the response.

A qualitative judgment is that, in volumetric terms, the great majority of consultation responses come from the water industry. This is not that surprising given that the water companies are Ofwat’s principal interlocutors. Nevertheless, there is a sense in which these industry responses do dominate the consultation because they are so central to the debates. Often it is clear from consultation responses that the discussion will be continued as a private dialogue between industry and regulator, rather then in the public domain of consultation. Furthermore, the personal and friendly relationships between individuals in the industry and in the regulator’s office are thinly veiled. As such, consultation responses from the water companies can often seem like a performer speaking to a putative public audience, rather than a serious engagement with the regulator.

One response to the problems presented by the numerical analysis is to think about the participants in terms of their “rights to participate” (Schmitter, 2000). Different actors have different rights, which might reflect their nationality, location or expertise. The owners of a water company (shareholders and bondholders) have different rights to local residents whose lives may be affected by the decisions made
by the same company. A single participant might hold a variety of rights, for example a trades union has the right to participate in an Ofwat consultation because they are British, because they are experts in how policy changes will impact on the workforce and because they have a certain acknowledged status as the representatives of employees.

Mapping the relationship between different rights and different participants reveals certain patterns. For example, some rights are stronger than others because they are concentrated in the hands of only a few actors. Only the water companies, investors and the financial services sector have the right to participate in consultation because they represent the interests of ownership, whereas almost every participant has the right to participate because they are British. Being British is, therefore, a weak right to hold relative to being an owner. Market participants have considerable power because they combine the rights of being owners with the rights associated with knowledge relating to the financial operations of the company – knowledge that they guard jealously. State participants (Government departments, local government, regulators) also draw particular authority from the right they derive as knowledge holders. Because state institutions are the forum for policy debate they have better access to a wide range of information than any other single category of participant – a relative monopoly of general knowledge. NGOs also claim a right to participate that is related to knowledge, but of a far more particular kind, for example they have information about the impact of a policy change on aquatic ecology, or the disabled, or the impoverished. As such, their participation has a tendency to be intermittent and of varying importance, because the knowledge they hold is of varying relevance. Consumers draw their rights from their location – they have a strong voice within a limited geographical area, but little right to speak on matters that do not have an impact on their particular locale. Whilst the right holder concept starts to enrich the analysis of who participates in consultation it is limited by the somewhat abstract and arbitrary list of essentialized “right” categories. In order to tackle the question of the relationship between power and participation more directly it is necessary to analyze the perceptions of the participants themselves.

5. How do participants perceive the consultation process?

Twenty-four regular participants in Ofwat consultations responded to a questionnaire which set out to identify why they participated in consultation and what effects they felt it had on policy. The majority of respondents had a long history of involvement in Government policy-making that predated the privatization of the water industry. Though most of them participated because they had been contacted directly by Ofwat and asked to respond, a significant minority had volunteered a response uninvited having found the consultation paper themselves. Without exception all the participants emphasized that consultation was only one strategy amongst many through which they tried to exert an influence over Government policy. As one trades union official commented: “there is no one method for influencing policy that suits all circumstances – its horses for courses.” Most responses suggested that “networking” through informal personal meetings with individuals in Government was the method which appeared to have the most direct effect on policy. Such meetings enabled a dialogue: this had benefits because ideas could be explained more effectively than during a written consultation. However, local campaigns, direct action, media campaigns and parliamentary lobbying were also mentioned as part of the suite of tactics employed by all groups.

Most participants say that consultation is worthwhile and that they believe that officials took their
responses seriously. Participants who answered the questionnaire claimed to be responsible for introducing a number of changes into water policy in the UK. Some of the examples they gave related to specific places, for example the designation of particular locations for legal protection from pollution. Some related to the balance of costs and responsibilities in certain specific circumstances, for example where a landlord is reselling water to tenants. More significant, however, were those campaigns that changed the fundamental practices of the major actors. For example, the campaign to make it illegal for water companies to disconnect consumers who fail to pay their bills, the campaign to make the installation of water meters voluntary and free of charge and the campaign to make “fostering sustainability” one of Ofwat’s statutory responsibilities. In these cases widening participation in consultation has clearly contributed to shifts in policy, though they are part of much wider lobbying campaigns. These examples provide a bulwark against the tides of doubt about the value of consultation.

Despite the general support for participation, most of the more detailed responses to the questionnaire reflect a strong undercurrent of skepticism. This assumes that the Government officials largely ignore the consultation responses.

“To the extent that consultation is genuine, it is not clear how seriously our views are taken.” (NGO representing vulnerable consumers)

“Seldom does Government acknowledge views submitted and rarely is feedback given as to whether or not your views have been accepted.” (trades union)

As a result of this doubt, many participants (over 50%) rationalized the investment of resources entailed in writing lengthy consultation responses by referring to the other benefits that accrue from such exercises. For example, many saw consultation as “an opportunity to take stock of your own position” or one “strategic part of the policy process”. A sizeable proportion (23%) was even more negative and declared that in its current form consultation is “a waste of time” and just “a performance to make the Government look good”.

This notion of “performance” was an important one for respondents who doubted the value of consultation. Sometimes the performance has an ulterior pragmatic purpose. For example, one water company portrayed consultation as a vehicle for trying to anticipate the future reaction of stakeholders:

“Ofwat’s consultations are notorious for not being genuine. Ofwat have made up their mind and are testing reaction rather than genuinely consulting with an open mind.” (water company)

However, for other stakeholders the performance is as much about collusion between the industry and regulator. The consultation exercise is a performance that serves to comfort consumers that the regulator is successfully fulfilling its role as a watchdog:

“Names listed as consultees are sufficiently impressive to give a false assurance that the financial regulation of the companies must be basically sound together with the misleading idea that the interests of the customer are being properly protected.” (consumer NGO)

“… A situation akin to what can only be defined as brainwashing exists where the Government makes the public believe that their views count when in reality the wording of the next piece of water legislation has already been decided by the minority of so called water advisors who… would never go against the Government’s and industry’s wishes.” (consumer NGO)
The consumer lobby is particularly skeptical about Ofwat consultation, which it views as having been hijacked by the water industry and the environmental lobby. But the environmental lobby is not satisfied either. Their complaint is more often that the method of paper-based consultation exercises is inadequate because it does not get many members of the public involved. These NGOs are demanding that Ofwat should be more pro-active in experimenting with more innovative forms of participation and should clarify how it chooses who can represent the public. In response, Ofwat argue that they have tried to hold more informal face-to-face stakeholder meetings as an alternative to paper consultation, and that they hope to expand these in the future, but that such strategies are very demanding on their limited resources. The danger for Ofwat is that they have committed themselves to public participation in policy-making and raised expectations, but since they basically depend on paper consultation the participation that they are offering falls short of delivering a sense of involvement that is integral to theories of stakeholder participation.

Many respondents hinted obliquely at a conflict between consumer interests and environmental interests. Responses from each camp claimed to represent a silent majority of public opinion. This division also emerged when several of the smaller NGOs representing different types of consumer claimed that a lack of resources represented a major barrier to their further participation in Ofwat’s consultation exercises. Unlike environmental groups, they claimed, they did not have a single focus and getting abreast of technical debates relating to the quality of water services required an investment of time, which meant they were not addressing a different campaign elsewhere. So, whilst there is a continued general willingness to use Ofwat’s consultation as a forum for influencing policy, there are also a number of reasons why actors doubt its value.

The questionnaire mapped the stakeholders’ perceptions of whether different lobby groups had a particular influence when it came to shaping Ofwat’s policies. By asking respondents to numerically estimate the influence of different participants on a scale from 1 (no influence) to 3 (considerable influence) across a range of different specific policy areas the questionnaire generated an aggregate index of perceived influence (Figure 1). Only state organizations expressed any confidence that they could influence Ofwat’s policy themselves, whilst trades unions, individuals and NGOs had a particularly low sense of their own capacity to shape policy. When it came to the stakeholders’ perceptions of other players there was almost universal agreement that the trades unions were the least influential and the Government departments the most influential in determining Ofwat’s decisions. However, there were also some interesting discrepancies. For example, market institutions saw themselves as no more influential than unions, consumer NGOs or environmental NGOs: however, all the other players regarded market participants as the second most powerful after Government bodies. The conflict between consumer NGOs and environmental NGOs is also picked up in the results, with each group rating the other as more influential. Perhaps the sense of powerlessness that runs across all the groups outside Government is a reflection of the mismatch between the expectations of the benefits of participating and the results of participating. This is combined with the belief that participating in consultation must work for someone (specifically, someone else) because if it didn’t no one would invest the effort required into it.

6. Conclusions

At the outset of this paper it was claimed that the UK water sector is at a moment of significant change and faces questions of great public concern. Despite the claims made by some of those who answered
the questionnaire on Ofwat consultation, it seems appropriate to conclude that, so far, none of the important questions currently facing the UK water sector (about restructuring and competition, for example) has been decided through a process in which public participation was a significant determining factor. Perhaps the nearest case would be the consultation on Kelda’s plans to mutualize. A strongly hostile, and apparently uncoordinated, public response to the plans may have been one influence on the Regulator’s decision not to permit the plans to proceed. However, the Regulator would probably have reached the conclusion that the proposals were bad value for the consumer, regardless of the letters sent to the consultation exercise by members of the public. Whilst it has proven possible for civil society to steer water policy (banning disconnection, ensuring that water metering is voluntary and requiring Ofwat to foster sustainability) such campaigns work through the established channels of a liberal democracy (media coverage and parliamentary lobbying) and not through the structures designed to incorporate a public voice into policy-making (either the CSCs or paper consultations). Ofwat has responded to the current political climate, which favours widening participation, and has experimented with more innovative ways of engaging with the public, but they claim that their capacity to undertake such experiments is limited by practical constraints. Across the range of groups that were interviewed (market, civil society and state sectors) there remains considerable skepticism about participation. The view of many of those we interviewed is that vested interests, inside and outside Government, have been reluctant to open decision-making over service regulation to new groups because such moves might threaten competitiveness and commercial confidentiality. Despite a rhetorical interest in stakeholding, many participants feel that the British Government continues to police policy debates very tightly and to retain decision-making powers when it suits them. The result is that in the current privatized
dispensation innovations in the water supply sector are more likely to be driven by financial incentives or tighter environmental regulations than by widening public participation in policy-making.

In the context of a national debate that tends to set consumer interests against environmental interests, widening public participation is going to be no guarantee of achieving objectives relating to ecological sustainability. Indeed it is precisely those people who seek to prevent any further intensification of environmental regulation who discursively deploy “public opinion”. Public participation in the UK water sector constantly teeters on the brink of being dismissed as a performance through which the Government justifies decisions it has already made. Participants want to believe that their contribution is significant, but many of them doubt it. In contrast, other participants argue that by handing decisions over to stakeholders the Government is effectively trying to evade political decisions about resource allocation by presenting them as technical decisions best made in a consultative forum. In this context some stakeholders refuse to participate in decision-making because they believe that Parliament ought to make the decision. On some occasions the Government is damned for its refusal to hand over decision-making power and, on others, damned for its willingness to do so. These debates are cut through with contradictions: stakeholders who say they don’t have access to real decision-making but participate anyway; stakeholders who say they don’t want access to real decision-making, but participate anyway. A genuine desire to make participation work in some parts of most institutions (including Ofwat and government) is undermined by a cynical deployment of a claim to be the privileged representative of public opinion by other parts of the same institutions. Perhaps the way forward is to move on from asking “does widening participation work?” to “how does participation work?” In other words, to think more critically about the role of the idea of participation in the policy discourse. In what ways is this idea deployed and in whose interests?

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References


