Metagovernance of participatory water reform in NSW

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Abstract

This paper examines the metagovernance associated the NSW water reform process which started in 1998 and took almost a decade to implement. The process was promoted as a partnership between government and the community and used representative stakeholder forums to develop regional water sharing plans. However whether governments truly engage in participation or use it simply as a part of symbolic policy is a key question in the literature on participatory governance.

This research found government took a top down approach to the process in that it strongly influenced decisions at a various scales. This led to considerable stakeholder frustration and anger as it made participation seem tokenistic. When agency oversight and influence are combined in this way it leads to high transaction costs because it encourages participants to try to take advantage of other policy windows. This, in turn, significantly increases the resources required by the agency to manage the process. It is concluded have clear goals and as well as a coherent participatory process are important issues in metagovernance of participatory processes.
Introduction

Environmental policy has loomed as a major challenge for governments in recent decades, especially given the high levels of complexity and conflict surrounding the issues involved. Processes where the community can discuss issues and develop solutions are seen by many authors as the best way to address complexity and conflict (e.g. Habermas, 1981; Dryzek, 1997). Such participatory governance suggests the public can theoretically interact with the institutions and processes of government to influence decisions and actions.

Whether participation is an end (transformative) or a means to end (instrumental) is a key question in literature (Arnstein, 1969). That is, in order for participatory processes to fulfil their promise; they must actually lead to a change in behaviour of not just the community but also government. Using a traditional top down or managerial governance style while promising pluralist or participatory governance may lead to conflict, competition, and unsatisfactory outcomes (Bell & Park, 2006; Meuleman, 2003). A critical question for any research focused on participatory governance therefore is whether the institutional arrangements provide for inclusive decision-making.

Theoretically participatory governance would suggest governments should delegate decisions down to the lowest possible level (Chikozho, 2002). In support of this is also an ethical argument that by being inclusive of community opinion, governments have an obligation to accept decisions (Long & Arnold, 1995). Moreover in this particular research, there was also prima facie evidence centred on the rhetoric used by government to promote the N.S.W. water reform to believe it would be a participatory process. In sum there are several good reasons to initially hypothesise
that the metagovernance arrangements use in the N.S.W. water reform process would be transformative.

However another key theoretical premise in the literature on participation is that, in empowering local communities, the participants will behave rationally (Herbert-Cheshire & Higgins 2004; Wallington & Lawrence, 2008). Rationality in this sense is any form of thinking that strives to be relatively clear, systematic, and explicitly concerned with how things are or how things ought to be based on evidence provided (Habermas, 1981; Dryzek, 1997). If government is to be minimal and empower the community, it is also relying on the community to act for the public good. Should the community not behave rationally that the state might be justified in returning to its traditional managerial role (Alford & Friedland, 1985).

This paper examines the metagovernance issues associated the NSW water reform process that started in 2000 and took almost a decade to implement. The question it explores is the nexus between top down and bottom approaches. Specifically did the institutional arrangements capture the benefits of mixing hierarchical and participatory governance, whilst minimising the potential negative consequences.

**Context and Methods**

In 2000, the NSW Government enacted the Water Management Act (2000) as part of its obligations under the National Water Reform process. It provided for the establishment of water management committees to develop water sharing plans. These water sharing plans were to allocate water for the environment and establish rules for sharing water between competing users (NSW Department of Land and Water Conservation, 2002). There could be several such committees operating with the one catchment depending on the water resources present, however, there were three
general types covering: regulated rivers, groundwater, and unregulated rivers. These were part of a nested hierarchy or perhaps more accurately a network of policy forums where participation and advice was sought (see Figure 1). Each Committee/Board consisted of a number of participants who represented different stakeholder groups.

I interviewed 42 participants involved in the various committees as well as 14 chairs, facilitators and central office staff involved in the process. These interviews were supplemented by interviews with staff of the peak lobby groups including: NSW Farmers Association, NSW Irrigators Council, and the NSW Nature Conservation Council. Data were collected through in-depth, in-person semi-structured interviews (Kvale 1996). Interviews were transferred and tape recorded verbatim and this data formed the empirical foundations of the research. Data analysis was based on the development of an organising system to identify predominant themes (Boyatzis 1998). The software package Nvivo was used as it allows each unit to have more than one code and can create hierarchical coding systems.

Figure 1 around here

Results

The results were coded into a number of issues within three key themes. These themes were agency leadership, direct agency influence, and the reaction by these committees.

Agency oversight
The issues that were identified as part of agency oversight were unclear goals, changing views of the product, lack of certainty about implementation, and having to create policy on the run.

Unclear goals. Participants expressed frustration that the goals were not clearly defined at the start and/or changed during the process. Indeed the Minister changed the committees from broad water management committees to focus only on water sharing part way through the process. “We all thought that we were actually going to have some real input... but the government was not being explicit or transparent about the goals and agendas” Indeed one of the managers in central office said. “We tend to launch into change without a great deal of thought about the goal or long term social implications- we think in short time frames”.

Unclear view of product. Central Office advice to the committees changed. “It's hard to know whether you're being conned, but we did all the developing, got an end product, and then they said oh we want it in this form - a page of objectives. Later they said oh no we want the whole technical thing”. Indeed a regional manager coordinating the entire process said “I think it was a process of seeing what different areas had done, picking out the bits they liked, and then saying they wanted everyone else to do it that way. What a joke. Wait until we see it all - then we’ll make the rules”.

Unclear about implementation. Key frustrations were a lack of knowledge about the resources available to implement these plans. One participant said “The thing that clouded the issue was the structural adjustment...they are saying the two things must be hand in hand- before we sign off on it we must know what structural adjustment is
in place”. The lack of clarity about implementation made it difficult to decide on priorities or to plan how to implement change.

Policy on the run. The institution was going through a process of developing a number of overarching state-wide policies that affected these water sharing plans. For example almost two years into the process (August 2001) the NSW Cabinet made a decision to exclude history of use as a factor in adjusting licensed entitlements down to sustainable yield levels in groundwater systems. Other examples include making it policy that all water licences including sleepers and dozers must be valued, providing the support package to participants nine months after the committees were formed, and finalising the overarching Statewide Water Outcomes Management Plan (SWOMP) after 35 of the 39 plans had been drafted. A lobbyists with one of the stakeholder groups said “the legal process was quite extraordinary in that you had committees making decisions that were supposed to be based on certain principles which weren’t even drafted. The principles were eventually gazetted a week before the plans, yet the water sharing plan were supposed to have been developed based on those principles. Do you see anything wrong with that process?”.

Agency Influence
The issues that were identified as part of agency influence were participating in decisions, facilitation, head office dictating terms, inter-agency coalitions, pressuring the chair, and controlling time.

Participating in decisions. Stakeholders said the departmental representatives on these Committees had considerable influence: “They definitely did because they were the
so-called experts…they have the information…they have the infrastructure, the funds, the resources to do all this – we don’t. We don’t have any resources, so we had to basically go along, listen to what they had to say, question their figures or how they got to their conclusions, and accept whether they’d made a reasonable guess or a reasonable conclusion to the data that they had”.

Facilitation. Government staff also facilitated the process. They therefore guided the committee, made certain types of information available, and helped set the agenda.

“Well they actually set the guidelines and we were redirected if we wanted to go in a different direction, we were told oh, that’s not what we’re meant to be doing, we should go this way and that of course was done through the DLWC. I mean they were in control”.

Centralised decision making. The main metagovernance issue for participants was that Head Office seemed to exert strong influence on the plans. This included:

1. Head Office reducing the options for Committees. For example, the groundwater committee wanted to take an adaptive approach to sustainable use and while all participants supported the approach, Head Office still imposed entitlement reductions.

2. Head office changed documents. For example it changed the unregulated plan after it was submitted for approval. One participant on this committee said “They changed the bloody thing- it was fascinating. We are there for years and they put all this red ink through it all it was a bloody mockery”. Indeed these changes were partially the reason why participants in this forum wrote dissenting reports.
3. Finally Head Office usurped Committee processes. In the Regulated Rivers Committee the key environmental and irrigator representative where flown to Sydney, met with the Directors of the Environmental Departments and the Department of Land and Water Conservation, and together a ‘middle ground approach’ was developed and then put to the wider committee.

*Inter-agency coalitions.* Various government departments participated on these committees. They sometimes formed coalitions that pushed a united point of view. Agency staff said they often talked prior to meeting to avoid the embarrassment of staff from different departments giving differential policy advice or views. One facilitator said “It is different from the agency’s perspective. There is a lot more knowledge about what is going on. In that situation you feel a bit of twisted loyalty because from your perspective you want to give everybody full information and tell them what is going on. But then you have to think about who pays my wage. It's not the committee”.

*Time.* Head Office dictated timetables to these committees. Yet conversely Head Office delayed responding to items when these groups needed decisions. One facilitator said “Okay I realise the power is in the people at Sydney…I guess it was the way the process dragged on through various stages, the lack of response from head office, and then changes” Another said “It just absolute bullshit… and its been going on like this for three years. Rush, rush, rush… then we sit around and wait”. A staff member in Head Office explained “The Department was prone to mushroom treat the committees”.
Stakeholder reaction

Poor agency oversight combined with a tendency to strongly influence decisions caused immense frustration and anger. “I was frustrated from the information and process and correspondence. At the end of the day, the department made the decisions and no amount of jumping up and down would work”. The groundwater committee reacted more angrily than any other committee. This group had developed a management plan, gone through a public exhibition phase, held a full round of public meetings and received about 30 submission. The plan then sat with the Minister’s office for five months before they were told to re-do their plan.

Changing policy and procedure during the process meant group dynamics also changed. It eroded any momentum and trust between participants and often led to conflict. “The water was muddied by the sudden decision by the government to be open to compensation at that time”. Moreover the changes often meant less flexibility or alternatives available, so participants had less room to move and bargain. This meant their positions became more polarised.

There was also widespread comment that the participation was a facade. “The Government can come back later and say but we did have community consultation: we put the board together, we had meetings. That’s all very well having a board and having meetings, but they don’t listen and put in their own thing anyway”. Some participants, particularly those representing agricultural interests, speculated that the participation was a facade because other stakeholder groups where controlling government: “Desk jockeys and they where egged on by the NSW conservation and environment council. They are right off the planet. They antagonise farmers and round and around and round and round it goes”.
Under such conditions participants attempted to second guess policy positions or tried to influence policy positions in other forums. For example: “You try and second guess. Well shouldn't you be? It’s interesting really you hear that head office changes things and so you've got to try and second guess them as much as you can”. Others participants simply attempted to move outside the process and influence the arenas where these other decisions were being made. In the Regulated River Committee, one irrigator bragged he had the power to talk immediately to the Director-General and said “There is no use sitting inside the tent when everyone is on the outside pissing in”.

**Discussion**

Few would go so far as to suggest that successful governance can be mediated without some institutional help. However for participatory processes to fulfil their promise, they must actually lead to a change in behaviour of not just the community but also government. In this study, the N.S.W. Department of Land and Water Conservation had several roles including regulator, planner, negotiator, participant, facilitator, and mediator. Prior (2003) states from a conflict resolution perspective that governments often find themselves playing these multiple roles and suggests that it creates a conflict of interest and limits the capacity of government to act as an independent mediator. Broader sociological theories about metagovernance and the role of the state, divide governance styles into hierarchical, market and network types of governance which view the public as subjects, partners, or customers respectively. Combinations of the three governance styles may lead to conflicts, competition, and unsatisfactory outcomes (Bell & Park, 2006; Meuleman, 2003). The question is, if it is possible to design strategies that harness the benefits of these different approaches, whilst minimising the negative consequences.
A common justification for strong agency influence in metagovernance processes (i.e. a more hierarchical or managerialist approach) is that centralised coordination, command, and control are needed to ensure consistent and fair decision-making. These regional arenas may be too prone to vested interests to be effective, so the state should take control on behalf of public interest to ensure people behave responsibly. It is also suggested strong agency control can assist it dealing with uncertainty (Bell & Park, 2006). However in a review of 54 case studies, Beierle and Konisky (2000) found that successful participation can occur with little empowerment if there is an emphasis is on consensus, good two-way communication, and an obvious government commitment. In this research, strong agency metagovernance was combined with poor communication and lack of agency oversight. This created a perception of secrecy or exclusivity in decision making that led to anger, frustration, and lack of acceptance. It also led to increased conflict between participants because it narrowed options and bargaining possibilities.

Much of the literature actually suggests agency inertia is the reason why government exerts a strong influence on participatory processes. Lindblom (1959) argued in ‘the science of muddling’ through that agencies tend to make margin dependent choices, work within a restricted range of policy alternatives, and continually adjust the objectives of policies. The result being elites become entrenched while others are marginalised. Although this theory of muddling through has been criticised, many authors still point to entrenched conservatism. For example Alford and Friedland (1985) outline a range of empirical research showing agencies are resistant to change and social control.
Apart from being conservative in nature, the circumstances the N.S.W. Department of Land and Water Conservation found itself in during the process may also contributed. These circumstances can be placing to three groups. First there is evidence to suggest the department lacked the resources for implementing metagovernance at this scale. One of the reasons for creating the 18 catchment boards was that the previous 48 catchment management committees were a strain on the department’s resources (N.S.W. Department of Land and Water Conservation, 2002). Yet soon after, 30 water committees were established to focus on developing water sharing plans. This meant that there were over 70 committees operating in N.S.W., with the water reform process involving in excess of 400 people.

Second the department seemed to lack the expertise. Stakeholder analysis is concerned with analysis of how to control critical resources, the formation of coalitions, and the strategies and venues that stakeholder use to achieve their objectives. It can help policymakers conceptualise the dynamics of the policy subsystem. However such analysis are rarely fully utilised in Australia (Harrington et al., 2007) and indeed, departmental staff said the institution tended to rush into things.

Third the department was also subject to changing advice. During the times these committees were operating COAG was still formulating some of the key principles for the nationwide process. For example up until 2004, COAG only outlined key principles such as certainty to the states. Yet COAG was pressuring the states to do two distinct reforms simultaneously and quickly: get to sustainable yield and develop a system of water rights. Such reform masked the benefit of each and created considerable tension in the process (Bell & Park, 2006). In sum, there is strong evidence to suggest that the government took a hierarchical or managerial approach to
participation simply because of the nature of the environment and the institutional capacity to respond to that environment rather than as a result of communities not behaving rationally.

The impact of the way the Department behaved has been found in other similar studies to be detrimental to the outcome. For example, Blahna and Yonts Shephard (1989) found the barriers to successful public involvement are: i) a lack of agency guidance on how to conduct the process; ii) a desire to avoid controversy; iii) the complex and technical information used; and iv) internal power struggles. In this research, when guidance was ad hoc, changed, or not prompt, it inhibited the process. La Chappelle et al. (2003) interviewed planners involved in similar processes across the United States and found that inadequate goal definition was a key issue affecting participatory processes. Nearly every planner interviewed in that study also said that procedural obligations, lack of time, institutional design, and how documents needed to be legally bullet-proof to avoid appeals were issues. All these issues were also identified as critical issues in this research.

Representative arenas that bring key stakeholders together might seem useful governance process, but they should not be used without forethought as to what is to be achieved and whether other participatory processes could be more effective. Problems arose because there was a failure to distinguish the nature and purpose of involving stakeholder groups, the reason for which they should be included, and the best means for incorporating their views. This study therefore provides empirical evidence for those authors (e.g. Smithers & Wilson, 2005) who urge careful consideration about implementation of regional governance processes. Participation processes need not only a genuine commitment by government, but also, when
multiple policy forums are present, thought and discipline about the role of each forum.

In terms of the broader sociological perspective about the role of the state in this process, it seemed the metagovernance arrangements where structured so that government sought, by and large, to benefit from stakeholder involvement and negotiation without any loss of power. It is a view that sees networks of advocacy groups as structures to be managed and manipulated (Teisman & Klijn, 2004). The most obvious outcome is that it meant the government and community held confused expectations about the nature of community participation, and this left stakeholders feeling ignored and frustrated. Worse still the plans presented to the government had to be largely overridden. In June 2004, all but one of the water sharing plan across the state where Minister’s plan rather than committee plans (Millar 2004). This is indicative of a process that was unable to capture the benefits of mixing hierarchical and participatory governance. Having clear goals and as well as a coherent participatory process are important issues in metagovernance of participatory processes.
References


Figure 1: The metagovernance arrangements for water reform in NSW