

Eva M. Heims and Martin Lodge
**Customer engagement in UK water
regulation: towards a collaborative
regulatory state?**

**Article (Accepted version)
(Refereed)**

Original citation:

Heims, Eva M. and Lodge, Martin (2018) Customer engagement in UK water regulation: towards a collaborative regulatory state? *International Journal of Care and Caring*, 46 (1). pp. 81-100.

ISSN 2397-8821

DOI: [10.1332/030557317X15046029080815](https://doi.org/10.1332/030557317X15046029080815)

© 2018 Policy Press

This version available at: <http://eprints.lse.ac.uk/87258/>

Available in LSE Research Online: March 2018

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

Customer engagement in UK water regulation: towards a collaborative regulatory state?

Eva Heims and Martin Lodge

Abstract

Little is known about how processes of ‘expert’ control interact with or move towards collaborative models of regulation. This paper focuses on a critical example of such an apparent shift: customer engagement in price-setting in water regulation in Scotland and England/Wales. By drawing on original interview and documentary analysis, the paper demonstrates a neglected rationale for and usage of ‘collaborative regulation’: regulators introduced customer engagement to incentivise regulated firms into further efficiencies. This points towards an increasing hybridisation of the contemporary regulatory state, in which collaborative regulatory processes are used to advance ‘econocratic’ objectives of expert regulators.

Introduction

The age of the regulatory state in the late 20th century was said to be characterised by a combination of privatised provision of public services, contractualised and codified agreements, and oversight by quasi-autonomous regulatory agencies (Laughlin and Scott, 1997). These arrangements were supposed to establish a ‘logic of discipline’ (Roberts, 2010) in order to remove short-term interests from regulatory decision-making (otherwise known as the need to establish ‘credible commitment’), procedural instruments were to hinder regulatory capture, while potential problems associated with populism and participation were designed away through means of ‘deck-stacking’ (Majone, 1994). For regulators, this implied the application of technical (economic and legal) expertise within their spheres of discretionary decision-making. This decision-making was to be insulated from other forms of knowledge and from short-term pressures.

The arrangements of this ‘technocratic regulatory state’, in turn, gave rise to questions about the legitimacy and accountability of the regulatory state’s institutions (Majone, 1999; Scott, 2000; Black, 2008; Lodge and Stirton, 2010), which prompted the emergence of regulatory arrangements that emphasise collaboration and participation to enhance learning and adaptability. These ‘decentred’ regulatory arrangements also address two further (related) concerns with the ‘technocratic regulatory state’, namely uncertainty over regulation and its effects and complexity in view of diverse stakeholders (Ansell, 2012; Dorf and Sabel, 1998; Sabel and Zeitlin, 2008; Lobel, 2004). This ‘collaborative’ image of the regulatory state stresses the value that local knowledge can bring to regulatory decision-making, for example, through peer review (e.g., Dorf and Sabel, 1998) or citizen participation (*cf.* Fung, 2015). Expectations regarding regulators’ expertise, in turn, turn towards capacities in organising and supporting direct collaboration with affected stakeholders, including citizens and customers..

Despite the prominence of these two images of the regulatory state, there has been very little interaction between the literatures associated with them. Little is known about specific processes in which the expert-driven logic of regulation of the ‘technocratic regulatory state’ have become complemented, if not replaced, by collaborative logics of control. This paper explores how collaborative approaches interact with core features associated with the ‘technocratic regulatory state’ by exploring customer engagement in economic regulation as practised in UK water regulation. Utilities regulation in the UK has conventionally been dominated by so-called price cap regulation:

Expert regulators' economic analyses determine the maximum level of price(s) (usually covering a bundle of goods and services) that utility companies can charge customers. In view of this centrality of expert-dominated regulation, it is surprising that customer engagement has been gaining increasing traction across regulated sectors, involving water, airports, and energy (CAA, 2005; Littlechild, 2008, 2014 UKWIR, 2015). These engagement processes go beyond the traditional channels of customer representation and consultation and require regulated companies to engage directly with customers' views, affecting, for example, the price companies will be able to charge. Such processes might be seen as a variant to 'negotiated settlements' where key regulatory decisions are directly negotiated between customer bodies and regulated firms rather than by expert regulators. Customer engagement processes also differ from other more market-oriented forms of accountability, such as customer complaints and information, as well as traditional 'customer representation' by consultation of organised consumer associations. Instead, customer engagement involves the direct account-holding and bargaining by designated individuals of regulated companies within frameworks set by regulatory agencies.

This paper's focus on water in UK economic regulation represents a critical case in two ways. One is the trend-setting quality of UK utilities regulation from an international perspective (see Alexander, 2014; Gassner and Pushak, 2014; Mirrlees-Black, 2014). Water regulation in the UK represents one utility sector where the movement towards customer engagement has been particularly pronounced. The other is the 'natural experiment' of dealing with different experiences across UK jurisdictions, in particular in Scotland, on the one hand, and England and Wales on the other. Establishing common patterns across Scotland and England/Wales that suggest emergence of collaborative decision-making help us to establish the conditions under which collaborative processes are adopted in, and interact with, expert-driven regulatory arrangements.

In the following, this paper first sets out the analytical framework of the two different images of the contemporary regulatory state and possible interactions between expert-driven and collaborative regulatory arrangements. The second part offers a brief chronology of the customer engagement processes in the two regions of the UK. The paper then assesses and explains the extent to which the logic of the technocratic and the collaborative regulatory state interact in UK water regulation.

Customer Engagement in the Regulatory State

The introduction of customer engagement in regulatory processes in Scotland and England and Wales raises the question of how and why the logic of the 'technocratic' and the 'collaborative' regulatory state interact with each other in UK utilities regulation. As noted above, the dominant view of the 'technocratic' regulatory state in the late 20th and early 21st century is state-centric: it emphasizes the importance of limited discretion and expertise in order to ensure 'discipline' (Majone, 1994, Roberts, 2010). Legitimacy is ensured through 'outputs' and 'outcomes' - with some limited involvement for consumer representation to support complaint processes in particular. In the context of utilities regulation in the UK, this means that regulatory frameworks are based on economic expertise to ensure competitive markets, fair prices for consumers, sufficient investment in network structures, and fair profits to providers. Through the widely applied RPI-X formula regulators determine the cap up to

which companies can charge their customers for certain bundle of services and goods.¹ This approach was intended to incentivise companies to seek efficiency gains as any additional efficiency gains beyond the prescribed level (the 'X') was to remain with the regulated company. The technocratic model of the regulatory state is hence based on the notion that the complex circle of efficiency, profits, non-monopolistic pricing, security of supply, and social goals can only be squared by economic analysis that is insulated from short-term (political) pressures, not least to provide the predictability that financial markets (i.e. the people who invest in network industries) require. Where such predictability is not forthcoming, private investors will require higher costs of capital which, in turn, increase the cost of regulated services. In this world of the technocratic regulatory state, regulators and their principals maintain the primacy of expert-based calculations in order to signal continued credible commitment to the overarching objective of efficiency.

This image of the regulatory state is usually criticised for only providing a partial insight into the highly-dispersed nature of regulatory activities (Scott, 2004; Black, 2001). The emergence of participatory and collaborative decision-making in public policy-making more generally is said to have been encouraged by uncertainty about effectiveness of regulatory activities and technological change, and power dispersion due to complexity, as well as legitimacy concerns about expert-driven governance.

Engagement of and participation by citizens, consumers or customers is therefore said to address the shortcomings of hierarchical, expert-driven control associated with the 'technocratic regulatory state'. However, as with all doctrines, engagement appeals to different audiences for different reasons (see also Dean 2016). Ideas involving engagement range from those that emphasise consumer rights and representation, stakeholder engagement with government and regulators (through consultative processes or the existence of particular committees), to fora encouraging citizen participation and deliberation, such as in the siting of large industrial facilities or the licensing of new technologies (*cf.* Fung, 2015). Debates about introducing stakeholder understandings into the theory and practice of utility regulation have also been a recurring feature in the (legal) literature (Prosser, 2005, 1999).

Interest in participation and engagement has therefore become a central theme in a range of literatures. Prominent strains in the literature focus on 'new governance', democratic experimentalism, collaborative governance and/or responsive regulation (for example, Ansell and Gash, 2008; Ansell, 2012; Braithwaite, 2006; Dorf and Sabel, 1998; Lobel, 2004, 2012; Sabel and Zeitlin, 2008; Sabel and Zeitlin, 2011).

One strain in this literature emphasises the need to cope with complexity. In view of dispersed authority across state and heterogeneous non-state-actors, regulatory agencies are unable to impose their authority - they need to mediate and negotiate (*cf.* Ansell and Gash, 2008). A second strain stresses the importance of uncertainty - changing technologies and concerns about the effectiveness of regulatory interventions lead to increasing use of alternative sources of knowledge, thereby encouraging a move by regulators to seek engagement with other actors (e.g. Sabel and Zeitlin, 2008). Similarly, 'creative syncretism' has been used to define how policy entrepreneurs make creative use of

¹ The retail price index (RPI) is used to adjust for inflation, the 'X' is the regulatory 'cap' on prices charged for services and goods by regulated companies in order to incentivise efficiency gains and reduce monopoly pricing.

different resources to engage with institutional complementarities (Berk 2009). A third strain stresses the supposed limitations of 'hierarchy'; accordingly, third party engagement facilitates information-gathering, collaborative relationships supports compliance and participation enhances the quality and acceptance of regulatory standards (Braithwaite, 2006; Levi-Faur, 2005; Levi-Faur and Jordana, 2004; Scott, 2004).

Similarly, the literature on 'bottom-up' implementation has emphasised the benefits of processes in which involved parties develop problem-solving approaches in conjunction with local actors. The early 1970s also saw the rise of 'alternative law-making processes' in which citizens supported, if not developed local planning processes. Such developments enjoyed particular prominence in local governance processes (Bressers et al, 2011; Chapman and Lowndes, 2014; Dickinson and Sullivan, 2014; Elgin, 2015). The notion of 'alternative rule-making' ('reg neg') that emerged in the context of the US 1990 Alternative Rulemaking Act drew on a wider interest in alternative dispute systems. One of the key attractions of negotiated settlements or rule-making was the potential reduction in transaction costs, the enhanced legitimacy of decisions, and the reduced likelihood of court challenges (Susskind and McMahon, 1985). Empirical studies, however, cast doubt on the supposed advantages of 'reg neg' (Coglianese, 1997). Others suggested that 'reg neg' mostly supported consensual rather than optimal outcomes (Rose-Ackerman 1994).

Finally, a separate literature on North American utility regulation has focused on negotiated settlements (Doucet and Littlechild, 2009; Littlechild, 2008, 2009a). These arrangements may lack any formal set-up between negotiated partners other than the agreement the involved parties come to at the end (see Doucet and Littlechild, 2009; Littlechild, 2009b). It is this strain in particular that influenced the debates in UK utility regulation, largely due to the entrepreneurship of Stephen Littlechild. However, this strain did not interact with any of the other identified lines of argumentation.

While these different literatures have documented and mapped participation and engagement in policy-making and regulation, less attention has been paid to exploring specific processes that mark a shift from the 'old', 'technocratic' way of regulating to 'new' 'collaborative' forms, or, at least, a 'hybridisation' of regulatory arrangements. One (often implicit) argument suggests that participatory or collaborative approaches (for whatever rationale) are leading to more effective policy outcomes (Fung, 2015). Others suggest that the attractiveness of particular policy templates is largely a response to disappointment effects; policy is largely reactive to the (unintended) effects of earlier approaches, for example, due to cumulative goal non-obtainment or extensive creative compliance (Hood, 1994).

Other explanations highlight the presence of particular 'policy entrepreneurs' that seek to impose their favourite pet-idea on the government agenda (Kingdon 1995, Berk 2006), or the strategic use of collaboration to 'depoliticise' demands that have witnessed considerable politicization or gridlock. For example, Moran (2003) has argued that the (British) regulatory state had witnessed hyper-politicisation rather than depoliticisation. Moving to more collaborative arrangements might therefore be seen as a strategy by regulators to remove themselves from their political flack catching role. In general, therefore, an interest in change in the regulatory state also has implications for our understanding of regulatory agencies. In an increasingly collaborative regulatory state, questions about the 'independence' of regulators have to be recast as demands change from challenging regulated firms towards orchestrating stakeholders, and mediating conflicts.

Similarly, there has been no particular interest in the type of competency challenges that would affect regulatory agencies if there was a shift from ‘technocratic’ to ‘collaborative’ regulatory state. In the former, regulatory agencies are dominated by ‘econocrat’ expert thinking - concerns about competition and market power require econometric and modelling capacities to establish credible foundations for establishing price caps on bundles of services - such as calculating the ‘X’ under the RPI-X price-cap. Under a collaborative model, in contrast, regulatory agencies can be assumed to become largely supporters of bargaining processes, setting out the ground rules, spanning boundaries across different organisations to support negotiated outcomes, and offering benchmarking information to the parties engaged. Such a shift, therefore, would constitute considerable changes for economic regulators as the centrality of economic expertise is being challenged.

As noted, the lack of mutual engagement of the literatures on the regulatory state and the absence of any systematic literature on why there might be a rise of 'engagement' processes in the context of a 'technocratic' regulatory state is surprising in view of the currency of 'engagement' in international practitioner circles. This paper seeks to advance our understanding of the role of engagement processes in ‘technocratic’ regulation. Customer engagement in price-setting in two jurisdictions of the UK provides a critical case in this regard: At least on paper, its participatory format has all the hallmarks of the collaborative regulatory state, while taking place in a sector that has been seen as epitome of the technocratic regulatory state. The practice of customer engagement in water regulation in two jurisdictions of the UK allows us to assess how and why expert-driven regulatory arrangements become complemented by collaborative arrangements in a field that has been dominated by the hierarchical governance of expert regulators.

To identify changes in the regulatory state, Table 1 illustrates the ‘ideal’ characteristics of technocratic and collaborative images of the regulatory state. It draws on Peter Hall’s orders of policy change (Hall, 1993) to define different types of changes that would characterise a break with the logic of the technocratic regulatory state, as well as hybridisation between the two logics, on three different orders of change. The table demonstrates that in a wholesale transformation process at the paradigm level we would expect to see a move away from the technocratic regulatory state’s key objective of efficiency towards an emphasis of participation as an objective in itself. At the policy framework level, we would expect a shift away from the centrality of expert-regulators in the regulatory process towards regulator-mediated participation processes, and at the policy setting level we would expect ‘econocratic’ methodologies to be replaced by flexibility in regulatory approaches. Hybridisation of these logics implies a direct interaction between these two logics, as indicated in the table. Equally, transformations at each order of change have implications for the type of professional expertise that regulators are supposed to provide. At the policy framework level, for example, we expect a move from economic analyses and legal procedural appropriateness to an emphasis on mediation and boundary-spanning by regulators. Hybridisation, in turn, would be associated with regulators needing to perform the dual role of economic analysis and boundary-spanning.

Table 1: Orders of Policy and images of the regulatory state

Order	Image of the 'Technocratic' Regulatory State	Type of change required to qualify as conversion from 'technocratic' regulatory state	Hybrids of 'Technocratic' and 'Collaborative' Images	Image of the Collaborative Regulatory State
Paradigm	Efficiency as key consideration and justification	Move away from efficiency towards other policy values (e.g. security of supply/fairness)	Simultaneous emphasis on efficiency and participation as mutually reinforcing key values (e.g. achieving efficiency through participation)	Emphasis on engagement and participation as objective in itself–no explicit endorsement of any key administrative value
Policy framework	Regulatory agency jurisdiction and direction, emphasis on 'non-majoritarian' character of decision-making, enforcement standards and information-gathering approaches	Sidelining or realigning of agencies' roles and jurisdiction, change in decision-making approaches regarding standards, information-gathering and enforcement.	Pivotal role of regulators in regulatory processes, but increased use of participation, learning and benchmarking to serve expertise-based views of regulators	Prioritisation of benchmarking, adaptation and 'learning' across experiences over expertise-based decision-making of regulators
Policy setting	Setting of RPI-X after price review	Change in methodologies used to evaluate business plans	Use of collaboration, learning or participation to determine change in methodology	Flexibility of policy approaches to reflect diversity

In the following, this paper explores customer engagement processes in Scotland, which involved one public company, and England and Wales, with its 16 different regional monopolies and varied ('private' and 'public interest') ownership structures. In the English and Welsh cases, ownership did not seem to matter for the nature of the engagement process. The evidence base rests on documentary analysis as well as 24 interview transcripts and a series of 19 interviews with 25 key participants (both conducted according to the Chatham House rule, i.e. non-attributability). The former were conducted by a consultant - Stephen Littlechild - at different stages of the Scottish process (the findings are presented in Littlechild, 2014). Access to this material was granted with the consent of the interviewees. The latter were conducted by the authors at the conclusion of the Scottish and English & Welsh experiences. Overall, these interviews provide insights from key participants at different stages of the Scottish process as well as ex post perspectives from both Scottish and English/Welsh participants, taking their different institutional interests into account.

Customer engagement, the Customer Forum and Customer Challenge Groups

Customer engagement has become a central theme in economic regulation in the UK, moving debate beyond traditional concerns with formal consultation processes. Starting in the UK with engagement processes launched by the Civil Aviation Authority (CAA) involving Gatwick airport, it was in the water regulation that customer engagement processes became particularly prominent, operating however in somewhat different ways in Scotland in contrast to England/Wales. This section sets out the chronology of the two processes, which involved the periodic regulatory framework setting (i.e. the setting of the price cap) for water companies in the two jurisdictions. As noted, these so-called ‘price reviews’ represent arguably the most central processes that define the relationship between regulator and regulated industry as it traditionally involves extensive exchanges between the different parties over business plans, potential efficiency gains and projections of the future. It is here where the ‘technocratic’ expert model of the regulatory state was to be of particular value: regulators were not tied to electoral business cycles or consumer pressure would ensure that private investment would be ‘protected’ while placing controls (as a market surrogate) on regulated firms.

Turning to Scotland first, the Customer Forum was created through a tripartite agreement including the economic regulator (WICS), the consumer representation body responsible for this sector (at that time, Consumer Focus Scotland), and the publicly-owned incumbent, Scottish Water. The Customer Forum was to represent customers’ preferences during the 2014 price review (see Cooperation Agreement, Article 2.1). WICS nominated two water industry representatives and one representative with a wider industry interest to the Forum. Consumer Focus Scotland nominated five members with a ‘strong customer-focused reputation’ (as stated in the initial Agreement (Schedule 1, 1.1.2)). The chairman of the Forum, Peter Peacock, had a background in Scottish local government, and had been member of the Scottish Parliament and minister in the Scottish government. His engagement was to prove critical for guiding the process.

The Customer Forum’s involvement in the regulatory process expanded considerably after its creation. During the process, the Customer Forum evolved into a *de facto* negotiating partner of Scottish Water in agreeing its business plan during the price review. The WICS Chief Executive confirmed this formerly in a letter to the Chair of the Customer Forum on 15 October 2012 by inviting him to ‘to seek to agree by April 2014 a Business Plan for delivery by Scottish Water in 2015-20 [Note: subsequently changed to 2021]. Such a Business Plan should be fully consistent with Ministerial Objectives and with the views and ranges that the Commission will set out in notes and papers over the period to early 2014’ (WICS, 2014, p. 70f). From October 2012 onwards, WICS supplied the Customer Forum members with 22 ‘notes’ (of around 2-4 pages) that included technical background information and advice to the Forum on proposals by Scottish Water. WICS expected the agreement between the Customer Forum and Scottish Water to be fully in line with these notes unless there were ‘demonstrable reasons’ for not doing so. While the process involved regular sessions between the Customer Forum members and Scottish Water, it was also supported by frequent bilateral and trilateral discussions between the Chief Executive of WICS, the Chief Executive of Scottish Water, and the Chair of the Customer Forum.

Participants of the Scottish processes agreed that the Customer Forum played a highly effective role in challenging Scottish Water and in influencing the final business plan (Littlechild, 2014; Customer Forum, 2015). The language of the business plan was said to have become far more accessible to lay

audiences, Scottish Water switched its use of the Retail Price Index (RPI) to the Consumer Price Index (CPI), and the agreed price cap of CPI-1.8 over the period 2015-2021 went beyond all expectations (including those of Scottish Water). Most crucially, the price cap was tougher than WICS had regarded as feasible at the outset of the process. Despite some concerns about statutory responsibilities within the water regulator, WICS accepted the entirety of the negotiated business plan in its Draft Determination. In Scotland, then, customer engagement had a very tangible and significant effect on the outcome of the regulatory process.

The water sector in England and Wales, in contrast, witnessed a different kind of customer engagement process. First and foremost, customer engagement processes were not granted the same remit as the Customer Forum in Scotland. The economic regulator, Ofwat, created a customer advice panel for considering questions relating to its overall price review methodology, while also requiring each water company to set up a 'customer challenge group' ('CCG') for the Price Review 2014. These groups were situated at the company level, and were tasked to verify whether companies' business plans were adequately informed by high quality customer research (Ofwat, 2011, 2012).

Ofwat provided direction to companies at the beginning of the process, especially in relation to the composition and remit of CCGs (one aspect being to encourage firms to recruit challenge group chairpersons from outside the existing customer representation group universe). Once groups had been set up, Ofwat did not provide detailed guidance to the different challenge groups. One reason for this was that the groups were to be 'owned' by their company rather than the regulator. Another justification was that individual engagement processes were not to be stifled by direction being given by the regulator: Ofwat argued that companies tended to be too attentive to the regulator to the detriment of their customers. Moreover, detailed company-specific guidance comparable to WICS Notes would have required a large resource commitment on the part of Ofwat in the context of 18 water companies in England and Wales. Finally, the differences in remit (to Scotland) were justified by highlighting the mostly private ownership structure in England and Wales (based on interview material).

In contrast to Scotland, Ofwat mandated that CCGs should include members from the other regulators (the Environment Agency and the Drinking Water Inspectorate).² More generally, membership patterns varied across CCGs. Nevertheless, they usually consisted of a mix of private-business owners and their representatives, local authorities and charities. Many CCGs also included paid consultants at various points throughout the process (see CCWater 2014; UKWIR, 2015). Some water companies put their CCGs on a highly formalised footing, others allowed their CCG processes to develop in a less structured way. There were also differences in the agendas that different CCGs pursued (some straying into the territory reserved for Ofwat) and in the recruitment of chairpersons. Initially, it had been Ofwat's (implicit) intention to sideline existing customer representatives (i.e. CCWater) by emphasising the importance of 'independent' chairs (i.e. independent from the firm, politics, regulators *and* customer advocacy groups) (interviews). Nevertheless, some companies chose to appoint their chair from CCWater, others recruited non-affiliated chairpersons for their group.

² In Scotland, other regulatory bodies were consulted as a matter of courtesy to address their concerns about potential implications of the Customer Forum on their jurisdictional remit.

Ofwat's approach – and the variations in which water companies organised their CCGs – meant that individual CCGs focused on different issues in their reports on companies' business plans. Many CCGs perceived themselves to have had crucial impacts on their company's business plan (including the lowering of prices through further efficiencies). However, Ofwat disputed the strength of the evidence of satisfactory customer engagement in nine of 18 of the initial risk-based reviews of business plans and CCG reports (see, for example, Ofwat, 2014b, p. 13f). Ofwat subsequently requested that Business Plans had to show more clearly how they had been informed by customers' views. This request frustrated CCGs and water companies as it suggested that they had spent time and effort 'for nothing' during the CCG process. Ofwat, on the other hand, concluded that not all CCGs had the necessary independence (from firms) and expert capacity to challenge companies sufficiently (interviews). Although actors claimed that the process had succeeded in forcing companies to consider their customer responsiveness, no one suggested that it had been a resounding success. Overall, then, customer engagement in England and Wales had a varied effect on the regulatory outcome across water companies. Overall, it was less effective than the Scottish process in significantly altering the regulatory output.

In sum, across both jurisdictions, the move towards customer engagement with the regulated firm was more than a mere symbolic gesture: considerable effort was expended and the experience signified a major departure from earlier experiences in both jurisdictions. Customer engagement in UK water regulation represented a considerable departure from previous price reviews, even though there were marked differences across the two cases in terms of institutional arrangements, *de facto* delegation to the customer body, as well as the impact the groups had on the outcome (see Table 2). Nevertheless, in both cases, customer engagement processes were seen as significant and indicative of a future, albeit undetermined way of regulating.

Table 2: Variations in customer engagement in the UK

	Scotland	England/Wales
Formal status	Tripartite agreement	CCGs established within companies
Role of regulator	Formal responsibility, high degree of bespoke support to Customer Forum throughout process	Formal ex post control - general guidance, but no bespoke advice to individual processes
Scope of engagement	Negotiation of business plan of public monopoly	Limited scope for assessment of business plan of mixed regional monopolies

Towards a Collaborative Regulatory State?

Is there evidence, then, of the collaborative regulatory state or of hybridisation in a sector that epitomises the technocratic regulatory state? Putting customer groups at the heart of the price review process challenges the image of the technocratic regulatory state: Setting the price cap in utilities regulation in the UK has traditionally been based on regulators' econometric analyses and assessments of historical expenditure patterns. Even attempts at regulatory innovation, such as 'menu regulation', did not reduce the 'technocratic' role of the regulator in establishing 'baselines'. With the introduction of customer groups, local knowledge and preferences of customers about the level of water charges were added to the price review process, potentially displacing the primacy of econometric analyses as well as the credible commitment to efficiency gains that comes along with it. At the same time, however, the expertise of regulators remained essential, thus challenging the image of the collaborative regulatory state and demonstrating how collaborative arrangements and 'econocratic' regulation mutually reinforce each other.

At first sight, the Customer Forum and the Customer Challenge Group processes bear all the hallmarks of the collaborative regulatory state. Water regulators engaged with non-state stakeholders (namely, customer groups) in collective decision-making processes to varying degrees. At the heart of this model lies the direct engagement between regulated company and non-state stakeholders, which is supported, and ultimately sanctioned or approved, by water regulators. Much in line with the models of collaborative governance, the regulators have seemingly turned into orchestrators of regulation, rather than representing the 'main act'. Processes were consensus-orientated and deliberative in both jurisdictions. The Customer Forum and the Customer Challenge Groups engaged in extensive discussions with 'their' water companies that resembled a conversation between two partners. Water companies responded to challenges by the customer bodies by either adjusting their business plan or by trying to persuade the customer group by virtue of argumentation.

The introduction of the Customer Forum and the CCGs established consumer representation type processes that directly engaged with regulated firms, used different methodologies than previous price reviews and altered the role of regulators. In Scotland, the direct negotiations meant that the regulator, WICS, no longer directly (at least formally) engaged with the water company. Furthermore, the Scottish Customer Form did not make use of the RPI-X methodologies to determine the kind of water charges that could be imposed on Scottish Water. Instead, the focus was on 'what the customer wants', thereby questioning Scottish Water's business approach rather than engaging in methodological battles over calculations and assumptions.

Moreover, the direct engagement process also challenged one central aspect of the technocratic regulatory state, namely its emphasis on codification. The Scottish experience was characterised by very close and informal relationships between the chair of the Customer Forum, the chief executive of WICS and the chief executive of Scottish Water (somewhat akin to the tradition of 'club government' that used to characterise British regulation, see Moran, 2003). The 'drift' towards more extensive powers was facilitated by means of a letter rather than any changes in statutory basis.

However, the continued existence of formal provisions presented the water utility with safeguards against too far-reaching discretionary activities by the Customer Forum. Similarly, the CCG process enabled the formulation of business plans that were primarily based on customers' preferences, and hence local knowledge of the people directly affected by the price cap, rather than the regulator's thinking. Equally, whether this was the case was verified by CCGs in the first instance, rather than the economic regulator. Companies had to consider how to respond effectively to customers' preferences .

CCGs were to hold businesses to account with regards to their customer responsiveness. As a result, justifiability of any measure in front of CCGs became a benchmark for companies' positions. The emphasis in justification on part of the company also highlights the deliberative nature of the processes in both jurisdictions. In this sense, therefore, one can speak of a growing emphasis on collaboration.

Despite this shift towards the collaborative regulatory state at the policy framework level (as defined in Table 1), no comparable shift took place at the paradigm level which would imply a shift in underlying values of the regulatory state. Even though the features of the negotiated process in Scotland came close to those that characterize negotiated settlements (as defined in the literature), negotiations continued to be shaped by the traditional concerns that characterise the technocratic regulatory state: the Customer Forum may have changed Scottish Water's and the regulator's ways of communicating, but these changes took place within the broad context of regulatory concern with efficiency. Indeed, the Customer Forum process was designed to ensure 'credible commitment'. The initial agreement, informal commitments, the close inter-personal connections among key participants, and the so-called 'tramlines' that featured in the concluding agreement were all geared towards granting Scottish Water (and its 'owner', the Scottish government) a degree of reassurance.³ Ofwat, in turn, signalled credible commitment by limiting the scope of discretion of the customer groups from the outset, and by maintaining its strong ex-post control function.

Crucially, regulators in both jurisdictions retained their centrality in the regulatory process, albeit in an altered role. In Scotland, the various notes issued by WICS to assist the Customer Forum were based on the conclusions the regulator had come to on the basis of technical modelling (for example, see WICS, 2012, p. 2). The notes provided the Customer Forum with bespoke and focused advice and contextual information. Thus, WICS did not only explain technically complex regulatory issues to the 'lay' Customer Forum, but also provided very clear directions to the Forum as to which demands it 'may wish to' place on Scottish Water (for example, WICS, 2013b). Therefore, WICS maintained a central role in this process. While it is difficult to measure the exact influence of the WICS guidance notes, they provided an explicit 'corridor' within which negotiations could take place since WICS had clearly stated that it expected the agreement between Customer Forum and Scottish Water to reflect them.

While Ofwat did not provide bespoke guidance to CCGs, it played a central role in the final determination of the price review process. Ofwat did not accept 9 out of 18 of the CCGs' initial interpretations of their companies' business plans in its risk-based reviews. This variation across CCGs can in part be attributed to whether the Chair of a given CCG was regarded by Ofwat as sufficiently independent from the water company and CCWater and to the extent to which the water company had formalised its CCG process (CCWater, 2014). Overall, the diagnosed lack of necessary expert capacity and independence from their companies motivated Ofwat to intervene with customer engagement issues in its reviews. The extent of ex-post criticism highlights the continuing centrality of regulatory agencies and their thinking in existing customer engagement processes in the English and Welsh case.

³ The 'tramlines' were agreed performance indicators. Should indicators move beyond particular parameters, then there was the possibility to revise the agreed commitments. The monitoring of these performance indicators was to be conducted by the (successor to the) Customer Forum.

In sum, neither of the two processes altered the fundamental regulatory framework in any formal sense - procedural innovations occurred within the set statutory provisions. Nor did either of the two processes fundamentally reduce the role of the regulator: both regulatory bodies continued to play central roles, WICS played a central orchestrating role throughout, Ofwat especially at the ex post stage. Individual policy settings did change, such as the move from RPI to CPI in Scotland, and companies were said to have become more responsive to customer rather than regulatory requirements. The processes therefore *altered* the role of regulatory bodies by drawing in customer representatives directly into the regulatory process (rather than limiting them to complaints handling and policy advocacy, for example through the submission of responses to consultations). As such, at least at the policy setting level there was a shift towards governing arrangements associated with the collaborative regulatory state. However, ultimately the introduction of customer groups into the price review process did not diminish the importance of expert regulators in the regulatory process, and at the paradigm level the novel price review process did not alter the underlying assumptions of the technocratic regulatory state.

Overall, then, we observe a hybridisation based on expert-driven and collaborative arrangements, whereby collaborative processes are used by key institutions of the 'technocratic regulatory state' (expert regulators) to achieve one its key aims (efficiency). Customer engagement processes did alter the role of regulatory agencies towards a growing emphasis on collaboration, requiring them to become more of a facilitator. The two experiences suggest that collaboration occurs in the complexified context of regulation, in which the regulatory *process* has become more collaborative, while the regulatory objectives of the technocratic regulatory state (efficiency and credible commitment) remain unaltered.

Collaboration in the Name of Efficiency

What then explains the observed patterns of hybridisation of regulatory arrangements in UK water regulation? Regulators introduced customer engagement as a result of disappointment with the previous price review model's ability to incentivize companies into further cost reductions, a concern that also motivated policy entrepreneurship in this field. Engagement was aimed at achieving better results within the broad parameters of the technocratic regulatory state. This explains the move to collaborative *processes* without a shift in regulatory objectives. Indeed, effective customer engagement requires support from expert regulators, which explains why regulators remained so pivotal in the price review process despite the wide-ranging changes brought about by customer engagement. Expert-based and collaborative approaches can hence mutually reinforce each other in their objectives and effectiveness.

The emergence of customer engagement, not just in water, can be seen as a result of widespread *disappointment* with existing technologies of economic regulation, most of all the price-review process and the manner in which the use of the RPI-X methodology had developed, which resulted in (what parties perceived as) tediously complex and long price review processes. Such disappointment effects are well-known drivers of regulatory change, where repeated attempts to trial particular problem-solving approaches in light of considerable side-effects, leads to growing disillusionment – whether it is because of continued non-obtainment of initial objectives, the cumulation of side-effects and/or the widespread occurrence of gaming and other forms of non-compliance (cf. Hood and Peters, 2004). A sense of exhaustion with existing approaches was shared across both jurisdictions (and reflected a broader consensus in the UK economic regulation community). Interviewees (in both jurisdictions) argued that the price-review process had become extremely complex and lengthy,

leading regulator and regulated to be pre-occupied with gaming each other. It was hence not so much complexity of the ‘regulated world’ but of the regulatory process itself which prompted the shift towards customer engagement.

In the Scottish case, disappointment with the regulator-led price cap regulatory framework became embedded by large disagreements about the ‘right’ price cap between Scottish Water, WICS and the consumer body in the 2004 price review, partially resulting from the (perceived) gaming on the part of Scottish Water during the same round of price reviews, and the resulting confrontational nature of the process (see Hobson, 2005). The difficulties during the 2004 price review culminated in the departure of the then Chairman of Scottish Water due to disagreements with the Scottish Executive over the speed of delivery of water quality and environmental standards. Moreover, Scottish Water was said to have experienced significant performance improvement following its creation in 2002 (by merging three water authorities). Given the view that Scottish Water’s efficiency and performance had increased significantly as a result of previous price review processes, the ‘old model’ was increasingly regarded as incapable of sufficiently challenging Scottish Water, especially after the 2009 price review. It was argued that the RPI-X formula, and benchmarking with English companies, had achieved considerable efficiency gains, but that this approach had reached a dead-end (Sutherland, 2011).

Disappointment was also of central significance in the case of England and Wales. The perception of dissatisfaction with the performance of water companies was driven by the regulatory view that the methodology used in price reviews was not stretching companies and that companies were not sufficiently attempting to innovate and to ‘aim higher’ in their performance than regulatory standards demanded of them (for example, see Ofwat, 2013, p. 3ff). A review of Ofwat’s practices (the ‘Gray Review’) pointed to the need for businesses to take ownership of their decisions. Ofwat was charged with the responsibility of encouraging this company behaviour (for example, Defra, 2011, p. 27). Ofwat saw customer engagement as a means to challenge companies in order to address regulatory requirements and to become more responsive to customers’ views in their business plans. This was also seen as a means of encouraging innovation at the level of the regulated firm. Other changes to the price-review methodology were designed to allow for more flexibility in companies’ business plans and regulatory decision-making in order to avoid the type of regulatory box-ticking referred to above (Ofwat, 2013). Furthermore, the rise of customer engagement was also a response to frustration with existing customer representation arrangements, especially as Ofwat saw CCWater as being too close to firms and lacking interest in sustained engagement with regulatory decision-making.

Customer engagement in both jurisdictions was therefore not championed due to a widespread desire to enhance input legitimacy and accountability or to incorporate local knowledge, but in order to shake up regulatory routines and to enhance the effectiveness of regulation (an aim that is often at the heart of participatory approaches, see Fung, 2015). Especially in Scotland the idea for the Customer Forum emerged from *policy entrepreneurship* by the economist Stephen Littlechild who had outlined the idea in his scholarship (for example, Doucet and Littlechild, 2006, 2009; Littlechild, 2008, 2009a, 2009b, 2009c). He argued that, for example, a negotiated settlement would also have the potential to trigger a more serious effort by the company to meet regulatory demands as these would effectively be the result of ownership of the agreement. Littlechild’s advocacy and papers introduced the (then)

Chairman of WICS (Sir Ian Byatt) to ideas about negotiated settlements.⁴ Importantly, though, while entrepreneurship mattered directly in Scotland, this was less the case in England and Wales. Here the initial idea of engagement was taken up, but ultimately adjusted to reflect the (then) interests of Ofwat.

The motivation of regulators in addressing persistent problems with price reviews never fundamentally challenged the assumptions of the ‘all-knowing’ regulators and the ‘logic of discipline’. That regulators were able to introduce new customer engagement processes whilst safeguarding their own authority in the regulatory process also needs to be understood against the backdrop of significant *bureaucratic autonomy* and *bureaucratic turf protection* on part of the regulators (*cf.* Carpenter, 2001) - in that sense, customer engagement qualifies the depoliticisation explanation, noted earlier. Accordingly, regulators and regulated would have opted for engagement processes to protect themselves from ongoing criticism by adding new fora to the decision-making process that offered additional sources of legitimisation. WICS, especially its chief executive, already enjoyed considerable autonomy given a record of successful regulation of the publicly owned Scottish Water and used this autonomy to introduce customer engagement. This degree of granted autonomy was under challenge only once, namely when the membership of the WICS board changed and incoming Commissioners displayed scepticism about the degree of delegation of regulatory competencies to the Customer Forum (interviews). Furthermore, WICS benefitted from the circumscribed and consensus-driven political environment of Scotland. In England and Wales, in contrast, the Gray Review highlighted that Ofwat, rather than firms, had not taken customers’ priorities seriously enough (Defra, 2011): this criticism encouraged Ofwat to develop its customer engagement approach as a legitimisation strategy. At the same time, Ofwat carefully delineated the role of CCGs to protect its sphere of influence, such as issues involving the cost of capital. Both regulators were hence careful to make best use of their ‘wriggle room’ to adopt strategies that could legitimise their regulatory approach internally and externally.

Moreover, a *functional necessity for regulators’ expertise* highlights why regulators remained so pivotal even though customer groups adopted a significant role in the price review process. The comparative analysis suggests that customer engagement in Scotland was more ‘successful’ not despite, but because of the supportive role played by the regulator. Customer groups regarded the regulators’ expert guidance as vital for succeeding in their role. While customer representatives were able to introduce knowledge about what customers wanted; for example, by highlighting to companies how painful very small water price rises could be for vulnerable customers (a key influence CCGs and the Customer Forum alike had in altering the thinking of ‘their’ water companies), they all lacked a detailed understanding of the water sector and water companies’ business models, let alone a means to assess which demands could reasonably be placed on companies by using comparative knowledge across water companies. WICS supplied this kind of ‘benchmarking’ expertise to the Customer Forum in its ‘Guidance Notes’. WICS hence provided a very clear corridor for action for the Customer Forum, based on its own expert analysis of Scottish Water’s business model. In contrast, the absence of focused guidance was a crucial factor in the relative lack of ‘success’ of the CCGs since CCGs reportedly found it difficult to challenge their companies in the absence of focused expert guidance from Ofwat (CCWater, 2014; Ofwat, 2014; Ofwat, 2015, p. 21; UKWIR, 2015; interviews). This lack of bespoke advice was compounded by an infrequent information exchange across customer challenge groups, even though membership in some cases overlapped. Overall, the evaluation of business plans

⁴ Interviewees thought this happened in 2008 or 2009.

without technical expertise or expert guidance was perceived as problematic by all participants. Ofwat stepped in after CCGs had delivered their reports not just to safeguard its role in the regulatory process, but because of a perceived functional necessity to do so. These patterns suggest that expert-based and collaboration-based regulatory processes interacted with each other in mutually beneficial ways, while a lack of this interaction led to a loss of effectiveness of engagement processes (as was the case of England and Wales).

Overall, then, one key finding is the central role of regulators among these examples of ‘collaborative regulation’. They initiated the shift to customer engagement in order to respond to the perceived disappointment with existing decision-making processes. Customer engagement processes were introduced to improve regulatory goals that were embedded within the parameters of the technocratic regulatory state. Collaboration hence seems to have a much wider range of uses than is often assumed in the literature. While elsewhere it has been documented that collaboration fosters desirable regulatory outcomes (Ulibarri, 2015), this case shows that collaboration can change behaviour of the regulated industry in ways specifically desired by regulators. The continued functional necessity for water sector specific expertise to challenge water companies demonstrates that the efficiency-orientated goals of ‘econocratic’ regulation and the process-orientated goals of collaboration can mutually support each other. Customer engagement processes that are buttressed by the expertise of the regulator can enhance the quality of collaboration processes and the influence that customer bodies have on the regulatory outcome. High-quality work of customer bodies, in turn, can provide effective challenges to the regulated industry, thereby helping regulators to achieve their objectives.

Conclusion

This paper has pointed to a hybridisation dynamic in which regulators take on the dual role of economic analysis and boundary-spanning. The observed patterns point to growing complexification of regulatory processes which have general significance for the study and practice of economic regulation: While regulators continued to be key actors and efficiency remained the key regulatory goal, regulators chose customer engagement as a strategy to deal with what they perceived to be the limits of their own hierarchical control over regulated companies. The limits of this control, however, were not so much rooted in strategic uncertainty, heterogeneous interests of key stakeholders or the inherent limitations of hierarchical control (factors often associated with the emergence of experimentalism and collaborative arrangements). Instead, the complexity of the regulatory process itself had essentially become victim of its own success. Engagement processes may therefore emerge in fields in which regulated firms have ceased to respond to regulatory challenges and in which highly autonomous regulators have the autonomy to choose ‘engagement’ to advance their regulatory goals. Far from being autonomy-depleted in an uncertain and complex regulatory environment, strategically motivated regulators can shape the arrangements of the contemporary regulatory state to a significant extent. The empirical findings suggest that regulators can be successful in creating such zones of autonomy for strategic action.

It is unlikely that this hybridisation will simply fizzle out. Hybridisation means complexification which, in turn, brings its own side-effects. The emergence of customer engagement can hardly be seen as a ‘cost cutting’ exercise, and requires regulators to mediation and ‘boundary spanning’ skills. Customer engagement also places high demands on regulators to demonstrate their independence from all parties concerned, including customer groups. Given that customer groups are in need of informational and expert support from regulators to challenge firms effectively, this could prove

challenging. Furthermore, customer engagement, while supposedly adding legitimisation to regulatory decision-making, raises further long-standing concerns as to potential biases that might emerge due to differences in representation among groups. In other words, far from removing tensions in the regulatory state, hybridisation points to continued, if not enhanced tensions and side-effects.

References

- Alexander, I. 2014. 'Developing countries experience and outlook: Getting the framework right', *Utilities Policy*, 31, 184-87.
- Ansell, C. 2012. 'Collaborative Governance', in Levi-Faur, D. (ed.), *Oxford Handbook of Governance*, pp. 498-511.
- Ansell, C. and Gash, A. 2008. 'Collaborative governance in theory and practice', *Journal of Public Administration Theory and Practice*, 18, 543-571.
- Ayres, I. and Braithwaite, J. 1992. *Responsive Regulation: Transcending the Deregulatory Debate*. Oxford: Oxford University Press.
- Berk, G. 2009. *Louis D. Brandeis and the Making of Regulated Competition 1900-1932*. Cambridge: Cambridge University Press.
- Black, J. 2008. 'Constructing and contesting legitimacy and accountability in polycentric regulatory regimes' *Regulation & Governance*, 2: 137-64.
- Black, J. 2007. 'Tensions in the regulatory state' *Public Law*, 58-73.
- Black, J. 2005. 'What is Regulatory Innovation' and 'Frameworks for Understanding Regulatory Innovation', in Black, J., Lodge, M., and Thatcher, M. (eds), *Regulatory Innovation. A Comparative Analysis*. North Hampton, MA: Edward Elgar, pp. 1-44.
- Black, J. 2001. 'Decentring regulation' *Current Legal Problems*, 54(1): 103-46.
- Braithwaite, A. 2006. 'Responsive Regulation and Developing Economies', *World Development*, 34, 5, 884-898.
- Bressers, H. DeBruijn, H and O'Toole, L. 2011. 'Negotiation-based Policy Instruments and Performance' *Journal of Public Policy*, 31(2): 187-208.
- CAA. 2005. *Airport Regulation: the process of constructive engagement*. London: CAA.
- Carpenter, D. 2001. *The Forging of Bureaucratic Autonomy: Networks, Reputations and Policy Innovation in Executive Agencies, 1862-1928*, Princeton: Princeton University Press.
- Chapman, R. and Lowndes, V. 2014. 'Searching for Authenticity?' *Public Administration*, 92(2): 274-90.
- CCWater. 2014. *Customer Challenge Group process: Review of lessons learned*. Birmingham: CCWater.
- Coglianese, C. 1997. 'Assessing Consensus: The Promise and Performance of Negotiated Rule-Making', *Duke Law Journal*, 46, 6, 1255-1349.

Customer Forum. 2015. 'Legacy report: Lessons learned from customer involvement in the 2015-2021 Strategic Review of Charges', retrievable from http://www.watercommission.co.uk/UserFiles/Documents/Legacy_report.pdf.

Dean, R.J. 2016. 'Beyond radicalism and resignation: the competing logics for public participation in policy decisions', *Policy & Politics*. <http://dx.doi.org/10.1332/030557316X14531466517034>.

Defra. 2011. *Review of Ofwat and consumer representation in the water sector*. London: Defra.

Dickinson, H and Sullivan, H. 2014. 'Toward a general theory of collaborative performance' *Public Administration*, 92(1): 161-77.

Dorf, M.C., and Sabel, C.F. 1998. 'A Constitution of Democratic Experimentalism', *Columbia Law Review*, 98, 2, 267-473.

Doucet, J. and Littlechild, S. C. 2006. 'Negotiated settlements: the development of economic and legal thinking', *Utilities Policy*, 14, 4, 266-77.

Doucet, J. and Littlechild, S. C. 2009. 'Negotiated settlements and the national energy board in Canada', *Energy Policy*, 37, 11, 4633-44.

Elgin, D. 2015. 'Cooperative interactions among friends and foes operating within collaborative governance arrangements' *Public Administration*, 93(3): 769-87.

Gassner, K. and Pusak, N. 2014. '30 years of British utility regulation: Developing country experience and outlook', *Utilities Policy*, 31, 44-51.

Gilardi, F. 2002. 'Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis', *Journal of European Public Policy*, 9, 6, 873-93.

Fremeth, A.R., Holburn, G.L.F. and Spiller, P.T. 2014. 'The impact of consumer advocates on regulatory policy in the electric utility sector', *Public Choice*, 161, 1, 157-181.

Fung, A. 2015. 'Putting the Public Back into Governance: The Challenges of Citizen Participation and Its Future', *Public Administration Review*, doi 10.1111/puar.12361.

Hall, P. 1993. 'Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain', *Comparative Politics*, 25, 3, 275-96.

Helm, D. and Tindall, T. 2009. 'The evolution of infrastructure and utility ownership and its implications' *Oxford Review of Economic Policy*, 32(3): 411-34.

Hobson, S. 2005. 'Scottish Water reels at £1bn slash in funds', *Utility Week*, 9 December 2005.

Hood, C. 1994. *Explaining Economic Policy Reversals*. Buckingham: Open University Press.

Hood, C. and Peters, B.G. 2004. 'The Middle-Aging of New Public Management: Into the Age of Paradox?' *Journal of Public Administration Research and Theory*, 14(3): 267-82.

Jordana, J, Levi-Faur, D and Fernandez i Marin, X. 2011. 'The global diffusion of regulatory agencies' *Comparative Political Studies*, 44(1): 1343-69.

Kingdon, J.W. 1984. *Agendas, Alternatives, and Public Policy*. Boston: Little, Brown.

Majone, G. 1994. 'The rise of the regulatory state in Europe', *West European Politics*, 17, 3, 77-101.

Loughlin, M. and Scott, C. 1997. 'The Regulatory State', in P. Dunleavy, A. Gamble, R. Heffernan and G. Peele (eds), *Developments in British Politics 5*. New York: St. Martin's Press.

Levi-Faur, D. 2005. 'The Global Diffusion of Regulatory Capitalism', *The Annals of the American Academy of Political and Social Science*, 598, 1, 12-32.

Littlechild, S.C. 2008. "Some alternative approaches to utility regulation." *Economic Affairs*, 28(3): 32-37.

Littlechild, S.C. 2009a. "Regulation, over-regulation and some alternative approaches." *European Review of Energy Markets*, 9: 153-159

- Littlechild, S. 2009b. "Stipulated settlements, the consumer advocate and utility regulation in Florida." *Journal of Regulatory Economics*, 35(1): 96-109
- Littlechild, S.C. 2009c. "RPI-X regulation: Ofgem's RPI-X@20 review and the scope for more customer involvement." *Network: The Australian Competition and Consumer Commission for the Utility Regulators Forum*, 34: 1-10.
- Littlechild, S.C. 2014. 'The Customer Forum: customer engagement in the Scottish water sector', *Utilities Policy*, 31, 206-18.
- Lobel, O. 2004. 'The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought', *Minnesota Law Review*, 89, 2, 342-470.
- Lobel, O. 2012. 'New Governance as Regulatory Governance', in Levi-Faur, D. (ed.), *Oxford Handbook of Governance*, pp. 65-82.
- Lodge, M. 2008. 'Regulation, the Regulatory State and European Politics', *West European Politics*, 31, 1-2, 280-301.
- Lodge, M. and Stern, J. 2014. 'British Utility Regulation: consolidation, existential angst, or fiasco?' *Utilities Policy*, 31: 146-51.
- Lodge, M. and Stirton, L. 2010. 'Accountability in the regulatory state' in R. Baldwin, M. Cave and M. Lodge (eds) *Oxford Handbook of Regulation*, Oxford, Oxford University Press.
- Lodge, M. and Stirton, L. 2006. 'Withering in the heat? The regulatory state and reform in Jamaica and Trinidad & Tobago' *Governance*, 19(3): 465-95
- Majone, G. 1999. 'The regulatory state and its legitimacy problem' *West European Politics*, 22(1): 1-24.
- Majone, G. 1997. 'From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance', *Journal of Public Policy*, 17, 2, 139-67.
- Mirrlees-Black, J. 2014. 'Reflections on RPI-X regulation in OECD countries', *Utilities Policy*, 31, 197-202.
- Moran, M. 2003. *The British Regulatory State: High Modernism and Hyper-Innovation*. Oxford: Oxford University Press.
- Ockenden, K. 2014. Utility Week expert view: Karma Ockenden, *Utility Week*, 4 April 2014.
- Ofwat. 2011. *Involving customers in price setting – Ofwat's customer engagement policy statement*. Birmingham: Ofwat.
- Ofwat. 2012. *Involving customers in price setting – Ofwat's customer engagement policy statement: further information*. Birmingham: Ofwat.
- Ofwat. 2014. Notes of the Customer Advisory Panel Meeting, 9 May 14. Retrieved in September 2015 from http://www.ofwat.gov.uk/future/monopolies/fpl/customer/min_wrk140509cap.pdf.
- Ofwat. 2014b. *2014 price review risk-based review – recommendation to Ofwat's Board on Northumbrian Water's business plan categorization*. Birmingham: Ofwat.
- Ofwat. 2015. *Reflections on the price review - learning from PR14*. Birmingham: Ofwat.
- Roberts, A. 2010. *The Logic of Discipline*. Oxford: Oxford University Press.
- Rose-Ackerman, S. 1994. 'Consensus versus Incentives: A Skeptical Look at Regulatory Negotiation', *Duke Law Journal*, 43, 6, 1206-1220.
- Sabel, C.F. and Zeitlin, J. 2008. 'Learning from difference: The new architecture of experimentalist governance in the EU', *European Law Journal* 14, 271-327.
- Sabel, C.F. and Zeitlin, J. 2012. 'Experimentalist Governance', in Levi-Faur, D. (ed.), *Oxford Handbook of Governance*, pp. 169-184.
- Scott, C. 2000. 'Accountability in the regulatory state' *Journal of Law and Society*, 27(1): 38-60.

- Scott, C. 2004. 'Regulation on the Age of Governance: The Rise of the Post-Regulatory State', in Jordana, J. and Levi-Faur, D., *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, Cheltenham: Edward Elgar, 145-174.
- Susskind, L. and McMahon, G. 1985. 'The Theory and Practice of Negotiated Rulemaking', *Yale Journal on Regulation*, 3, 133, 133-165.
- Sutherland, A. 2011. 'I3 and the need for change', *WICS Blog entry* posted by Alan Sutherland on 9 February 2011. Retrieved in September 2015 from <http://www.watercommission.co.uk/Blogs/bloglist/Alan-Sutherlande28099s-blog.aspx?page=21>.
- WICS. 2012. *Our initial expectations: Note 8 for the Customer Forum - Initial prospects for prices*. Stirling: WICS.
- WICS. 2013. *Strategic Review of Charges 2015-21: Innovation and choice*. Stirling: WICS.
- WICS. 2013b. *Note 22 for the Customer Forum Scottish Water's draft business plan: Growth*. Stirling: WICS.
- WICS. 2014. *The Strategic Review of Charges 2015-21 Draft Determination*. Stirling: WICS.
- UKWIR. 2015. *The Future Role of Customer and Stakeholder Engagement in the Water Industry*. London: UKWIR.
- Ulibarri, N. 2015. Tracing Process to Performance of Collaborative Governance: A Comparative Case Study of Federal Hydropower Licensing, *Policy Studies Journal*, 43, 2, 283-308.