

The Citizen in Regulation

**A report for
The Local Better Regulation Office**



THE CITIZEN IN REGULATION

A Report on the Evidence Base for The Local Better Regulation Office

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Acknowledgement

This report has benefited from the expertise and guidance offered to the author by John Brady of Anglia Ruskin University, Laura Robinson and colleagues at the LBRO and Rupert Roker at Consumer Focus. Anne Cavalier of Anglia Ruskin University provided assistance with preparing the report for publication.

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Executive Summary

Citizen participation

- This chapter reviewed the existing literature on the perceived benefits of citizen participation in public services and explored where evidence indicates that citizen involvement may be applied in the context of local regulation to improve regulatory outcomes.
- It was found that direct citizen participation is valued as a democratic end in itself, as well as a means of improving public services. It is coming increasingly to the fore, as the popularity of other forms of participation diminishes (voting and membership of political parties, for example) but willingness to engage may, to some extent, be determined by external conditions, such as the economic climate.
- Policymakers and practitioners need to grasp the opportunity to bring citizens into the decision-making process, when conditions are conducive. Due attention should be paid to what the public values and, as far as possible, to embracing those values, but exactly how public officials respond to citizen participation is under-researched. What research has been undertaken reveals a concern by officials that they may currently lack the necessary skills for facilitating participation as part of their daily practice.
- Recent models of participation tend to focus on collaborative and deliberative rather than adversarial politics. Deliberative participation - bringing citizens together to discuss, share and modify issues and opinions - has emerged as one of the most important engagement strategies in recent years and is consistent with the idea of the Big Society.
- While desirable, 'representativeness' is elusive, and with increased diversity is unlikely to become any easier to achieve. Lack of representativeness should not however discourage policymakers and practitioners from seeking ways to involve citizens and improve accountability but as some individuals have greater capacity to engage than others, public officials will need to ensure that new ways of producing services such as regulation do not exacerbate existing inequalities.
- A caveat. The evidence for improved outcomes arising from the use of citizen participation is patchy but what systematic reviews are available suggest decision-making, service quality, and sense of community are all enhanced.
- The evidence base for citizen participation with local regulators is thin. More work is needed to understand how local regulators perceive their local communities and how local communities perceive local regulators – within the context of the responsibilities of local authorities as a whole - as a basis for leveraging the potential gains from bringing the citizen into regulation, where they live - at the very local level.

Co-production

- This chapter reviewed the existing evidence base in relation to concept of co-production; the process of involving the users of goods and services in their design, management, manufacture and/or delivery.
- Co-production is both a means of maintaining or improving provision and, like citizen participation, an end in itself. The concept combines both the collaborative provision of goods and services and community development. Co-production therefore addresses individuals both as consumers of goods and services and citizens embedded in their local communities.
- Co-production can improve efficiency as providers tend to become more sensitive to user needs when co-producing with them, but citizens should not be treated as experts. Their role is as citizens, to express their aspirations, values and concerns and to act as a co-productive partner where appropriate. To do otherwise can diminish the value placed on professional knowledge, which in turn may lead to sub-optimal outcomes for citizens.
- Regulation is a difficult concept to grasp and so in co-producing regulation, it is important to focus on the positive benefits and what the public values (safer streets rather than the detail of rules and regulations on alcohol sales, for example). In a true co-production model regulation can be defined not solely as constraining action - a means of minimising the risk to harm to citizens - but also enabling - optimising the quantity and quality of goods and services to the public.

Co-regulation

- This chapter reviewed the existing evidence base in relation to co-regulation, a process which, at its most basic level, entails sharing regulatory responsibilities between the state and regulatees.
- It combines aspects of both statutory regulation (regulators are authorised by legislation) and self-regulation (regulatees determine the detail of how to comply with the principles laid down in the legislation or by the regulator.). However, unlike voluntary self-regulation, by trade bodies for example, co-regulation operates within a legislative framework which empowers the regulator to take action in cases of non-compliance.
- In both co-regulation and voluntary self-regulation the citizen has a potential role to play a role as a co-productive partner, for example by monitoring compliance with standards (the Food Standards Agency's Food Hygiene Ratings Scheme, for

example) and by using, providing and disseminating information on the quality of goods and services (the 'Trip Advisor' model, for example)

- The co-production of regulation by regulators, regulatees and citizens may enhance regulatory regime legitimacy – by demonstrating citizens are incorporated into the decision-making process, and can lower compliance costs – by demonstrating to regulatees that they too are central to the process. However, it relies on high levels of trust being generated and maintained between the various participants. There is a risk of reputational loss for the regulator if trust diminishes, for example due to fear of regulatory capture.
- Given the need to manage the process of bringing in the citizen to regulation, perhaps co-manager is a better term than co-producer. It may more accurately describe the real role of the regulator in such a regime.

1. Introduction

The UK government's Big Society initiative, combined with decreased funding for the public sector, have served to focus attention on how, as a matter of both policy and necessity, the citizen can be better incorporated into the process of providing public services. Policy has of course for some time been to encourage choice in the provision of public services and indeed to bring the citizen into the design of services (e.g. the personalisation agenda in the provision of social care) and so engage more fully with markets, a process accelerated by the current government. The form such 'co-production' of public services takes can vary from what might be termed minimalist (consultation on needs, for example) through to a more participative role for the citizen where the state enables the citizen to purchase services in the market. In this way citizens engage not only with the demand side but also with supply. This blurring of the boundaries in the production and supply of services has implications for consumer protection, and so also for regulators.

Alongside co-production, and not entirely unconnected, there has also been interest for some time in the concept of co-regulation. Co-regulation typically is placed mid-way on the continuum between command and control regulation, and self-regulation, and is exemplified by the movement from rule-based to principle-based regulation; providers self-regulate aspects of the production and delivery of regulated products and services, albeit by delegated authority from a regulator. However, in contrast to some forms of co-production, co-regulation rarely brings in the consumer as an active participant – beyond membership of traditional consultative bodies and through ad hoc consultation. Regulation is often considered a technical matter between regulator and regulatee, too complex for consumers to engage with, or perhaps too complex to incorporate into the regulatory mix. It is this complexity, and how to unravel it, that drives this project to examine the relevant evidence. Policymakers and practitioners need to understand the extent to which the citizen can be brought into the process of regulation, especially at local level, and how such participation can be brought about.

Of course, citizen participation can be problematic. National government can be perceived as remote, while local government may lack the resources to engage meaningfully – but the Big Society does necessitate such engagement. Involvement, co-production and co-regulation will need to be addressed in a far more extensive and indeed inclusive way if the aspirations of consumers (Consumer Focus 2010), legislators (Great Britain Parliament House of Commons Regulatory Reform Committee 2009) and others calling for more active engagement with citizens are to be met. Fortunately there is a well-developed literature on

citizen participation which can serve as a basis for considering how to bring the citizen into regulation in a meaningful way. In addition, the notion of bringing the consumer into the process of producing their own goods and services has been explored, most notably in continental Europe and the US and while work on co-regulation has been focused almost exclusively on the relationship between regulator and regulatee such analyses do provide clues on how citizens might become involved.

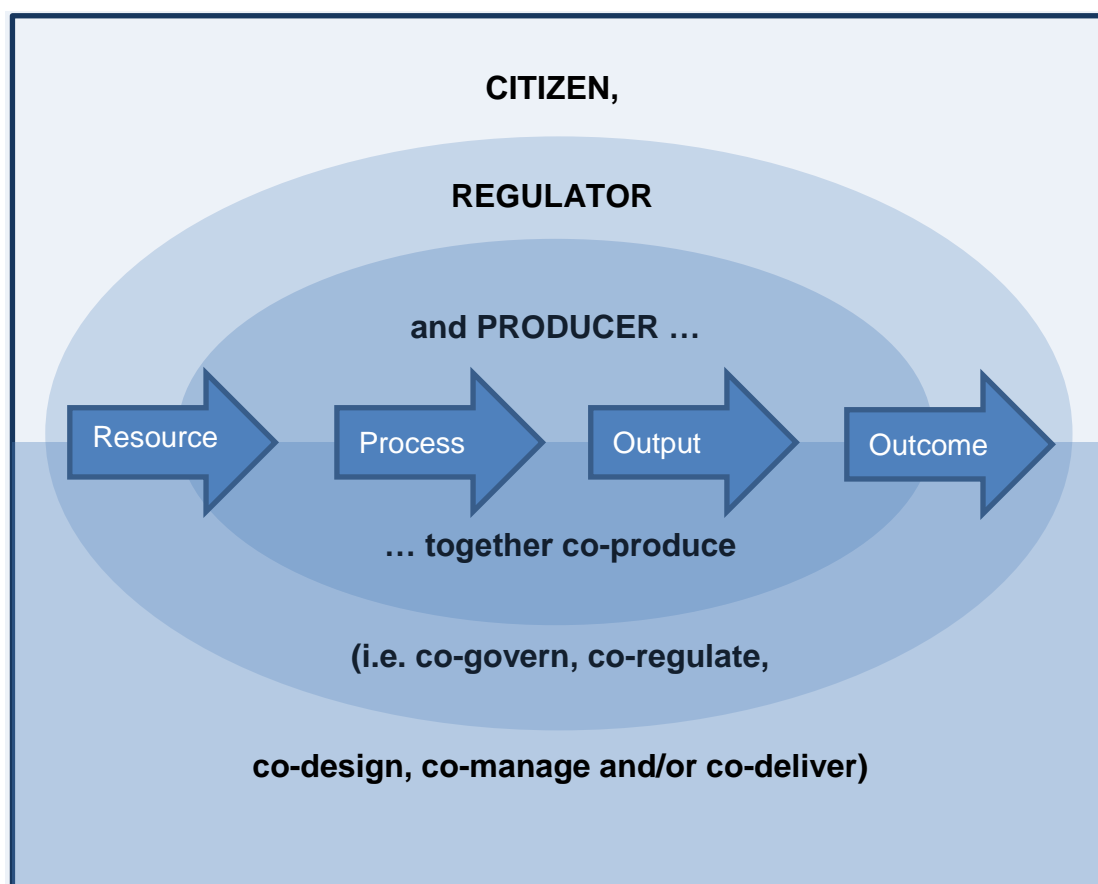
2. Our approach

The objective of this project is to contribute to learning on how to bring the citizen into regulation by surveying the evidence base on citizen participation, co-production and co-regulation, highlighting analyses and ideas from the various literatures that may be used to encourage greater participation at local level. What seems to work? What doesn't seem to work? What can be transferred to the context of citizen participation in regulation? Where might more research be needed? To retain focus on the objectives of projects such as this it is useful to describe the framework statement linking the various components, placing them in their policy context:

In the Big Society, regulators and citizens can be conceived as partners with businesses in the co-production of goods and services to the public. Regulation is part of the process of production so these three key stakeholder groups should also become co-producers of regulation.

As modern sectoral regulation in the UK has evolved, starting with the monopoly privatisations of the 1980s, through market-making in the 1990s, to consumer protection in the 2000s, one might have expected the role of the citizen in regulation to have been explored already in some depth - but this has not been so. Perhaps this is in part because engagement with government is such a broad topic but it may also reflect uncertainties around the role of regulation. Yes it is to protect the public by minimising risk of harm, but exactly how? What is an acceptable level of risk? Who determines that? How can the public, as citizens, be brought into the process of regulating? It is helpful not only to describe the framework but also to visualise it, to produce a model that links the citizen to both the task and the objective of regulation, where regulation is conceived as one part of the process of production.

Figure 1. Co-producing: The Citizen in Regulation



(Paul Sanderson)

Figure 1 represents in effect an alternative nested inclusive approach to the tri-partite way of conceiving regulation as the result of interactions between (i) regulator and regulatee, (ii) regulatee and consumer, and (iii) consumer and regulator. If regulation is considered integral to the process of production, and thus outcomes for citizens, the citizen engages with the regulator not as simply a principal holding the regulator to account as agent for the effectiveness of rule-setting and enforcement, but also as a partner (with producers and other stakeholders) in the process of producing the goods or services under regulation. In a true co-production model regulation can be defined not solely as constraining action - a means of minimising the risk to harm to citizen - but also enabling - optimising the quantity and quality of goods and services to the public.

(Please note that as far as possible, consistent with the title of this report, and within the constraints of the terminology used in the evidence cited herein, we refer by default to citizens – legal residents with both rights and obligations, not least to participate in society. The same individuals are also of course consumers – users of goods and services, and that

term is also used where appropriate. There has been much debate over what might be termed the 'consumerisation' of the citizen but we do not propose to re-engage with such debates here.)

3. Method

The evidence for this report is drawn from the academic literature and selected relevant grey literature. The initial literature review strategy was to move from broad overview of citizen participation through a mid-range review of co-production to a systematic review of the citizen in the context of co-regulation to provide an initial assessment of the extent and impacts (where evaluated in the literature) of citizen participation. In the end very little literature was found to exist on the citizen in the context of co-regulation so the general co-regulation literature was reviewed in a search for transferrable concepts and ideas, guided by the citizen co-production of regulation model (figure 1.).

Within each literature the process employed was:

- (i) trawl on concept key words using university library gateways, plus UK and national/local governments' websites, to gain overview
- (ii) draft notes on key general themes in each literature for later use in report
- (iii) determine the key themes as they emerged from each literature review to feed into the final discussion on how they might be applied in the context of the LBRO.

Key sources for articles -Business Source Complete, Ingenta Connect, SOSIG, Wiley, ZETOC

Key search terms – citizen engagement, citizen influence, citizen involvement, citizen participation, citizen in regulation, citizen in co-regulation, collaborative governance, community involvement, consumer involvement, consumer in regulation, consumers and regulation, co-delivery, co-governance, co-production, co-regulation

Typical journals browsed - Journal of Democracy, Policy Studies, Public Administration, Public Administration Review, Public Management Review, Urban Studies,

Typical organisation websites searched – Demos, Involve, IDS, LBRO, New Economics Foundation, Respublica, TimeBanks, various UK national/local Government etc.

4. Citizen participation in public services

The term public participation can broadly be defined as all activities by which members of the public (whether defined as citizens, users or consumers) contribute to shaping the decisions taken by public organizations (Albert & Passmore 2008: p.4).

Citizen participation in public services has been claimed to give better governance, better decision-making, better representation of the community and greater community and citizen empowerment (Ackerman 2004; Anderson et al. 2006; Communities and Local Government 2008; Cornwall & Coelho 2007; Fischer 2010; Ranson 2008). Given these claimed benefits what aspects of public participation can be applied to local regulatory services to improve regulatory outcomes?

There is a large literature on participation with a profusion of terms used (Rowe & Frewer 2005) reflecting public, academic and political concerns. As the 'participation' debate has gathered strength so it has moved across academic disciplines and related professional areas. Knowledge has moved across international boundaries, as for example in the case of participatory budgeting in Porto Alegre (Fischer 2010:10). Consequently, although presenting difficulties to a reviewer of the literature the diversity of terminology indicates the underlying intellectual vigour and depth of the debate. This chapter sets the scene for the evidence base on public participation and provides a context for the following chapters on co-production and co-regulation.

The perceived paradox of western democracy is that as rights, services and franchise have expanded so citizens have withdrawn from participation and involvement with the state. In other words, as the state grows it becomes more remote. Commentators on this perceived decline of engagement with the democratic state (Putnam 1995) point to a variety of reasons but central to this discussion is the argument that it is a failure of accountability that has led to, what is called, the 'democratic deficit'. Such a deficit is evidenced by low turnouts for UK general elections and increasing apathy, particularly in respect of the extent to which political parties truly represent the views and aspirations of citizens (Hansard Society 2009; Power Inquiry 2006). A recent survey found 64% of people think that the political system could be improved 'a great deal', while 73% of people feel they have 'no influence at all' over decision-making in their local area; this increases to 85% who feel they have no influence over national decision-making (Hansard Society 2009:4).

Ackerman (2004), in an extensive review of literature, argues that the growth of interest in how citizens can participate is a direct response to a perceived lack of accountability in democratic systems. Accountability mechanisms include elections and oversight agencies but additionally 'societal actors can directly oblige government actors to answer for their actions and sanction them for wrongdoing' (Ackerman 2004:449). Public services are frequently criticised for not meeting public expectations (Brooks 2007). Democratic voting systems and membership of political parties do not provide the sort of consistent and responsive form of accountability for public services that the public demand. This leads to a sense of there being a 'democratic deficit' – traditional forms of participation are perceived to be dominated by 'professionals' - experts who struggle to understand and relate to the citizenry. One way to counter this deficit, it is argued, is increased participation by the public in the process of producing public services (Aspden & Birch 2005; Brooks 2007; Donovan et al. 2001; Fotaki 2010; Hood 2008; Leadbeater 2006; National Consumer Council 2004; Simmons et al. 2007; Walshe et al. 2004). Hence the emphasis in this report on the concept of co-production.

The extent of public participation

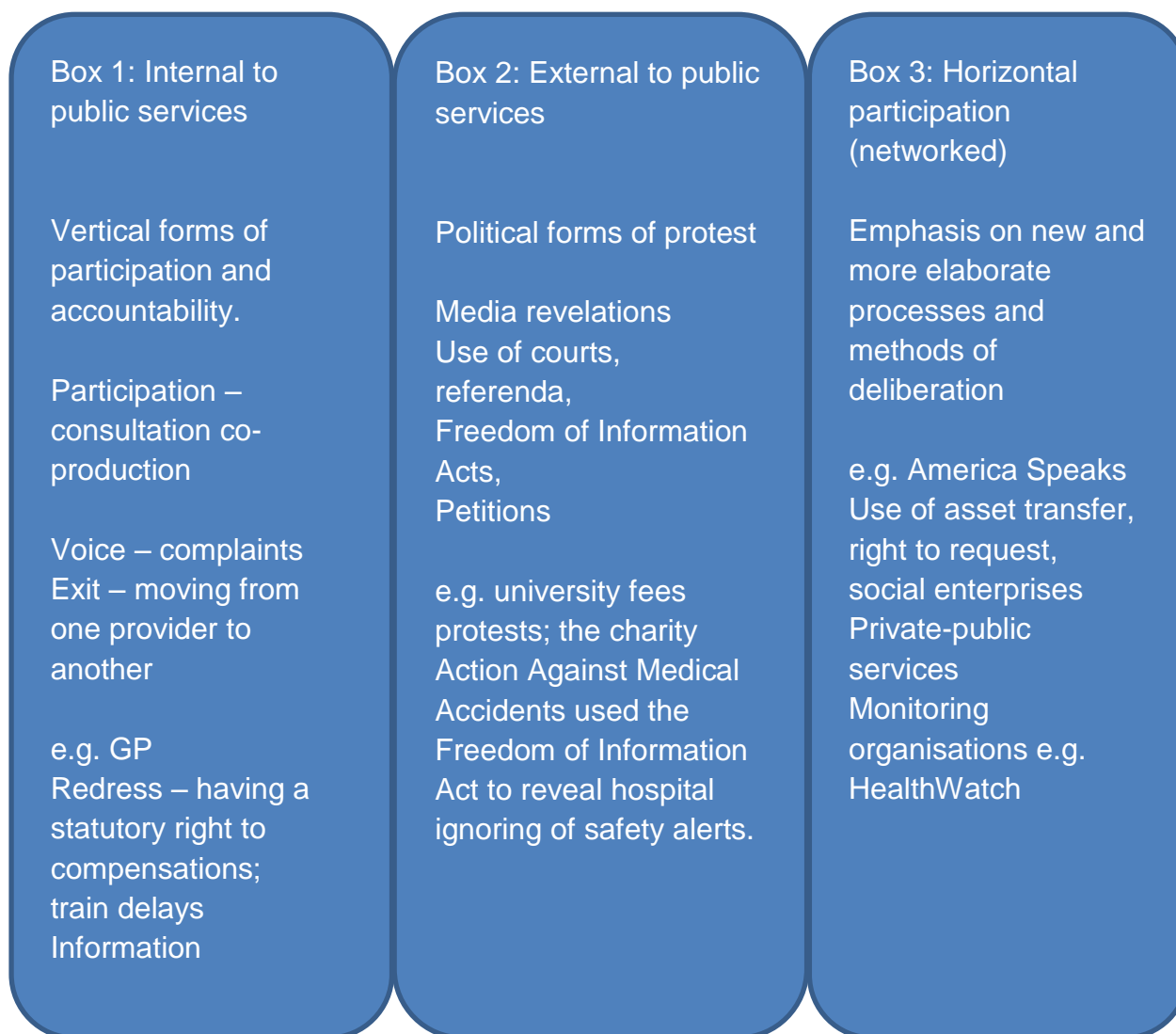
Participation is both of intrinsic value and instrumental in achieving the goals of governance. It is both valued in its own right also a means to an end. Participation not only encourages a sense of belonging, binding individuals into society, but can also serve to improve public services and/or make them more effective:

Participation is a fundamental goal and object of value in and of itself. That is evident from the fact that the right to participate in a society's decision-making processes has been accepted by the world community as a fundamental human right. Participation also has instrumental value because it can help achieve other primary goals. In particular, participation can help to deepen democracy, strengthen social capital, facilitate efficiency and sustained growth, and promote pro-poor initiatives, equity and social justice. (United Nations Economic and Social Council 2007:4)

However, there are many different types and levels of participation. This section illustrates the extent, content and range of participation found in and around public services. These forms of participation can be conceived as hierarchical, political or deliberative and tend to

be located respectively internally (within the service), externally, or networked across organisational boundaries.

Figure 2: Forms of public participation in public services



(Ackerman 2004; Brannan et al. 2006; Cornwall et al. 2000)

What figure 2 illustrates is, in essence, not only forms of engagement, but also of accountability, citizens tend to engage because they want both change, and an account of actions taken that have or will affect their lives – both individually – self-interest, and, more altruistically, for society as a whole.

In box 1 of figure 2, 'Voice' and 'Exit' (Hirschmann 1970) are terms that describe mechanisms used by consumers to either complain or make their views known (Voice); or, to reject the product and choose that of a competitor (Exit). Voice and Exit have been difficult to implement in public services but there are some well-known examples, for example, enabling NHS patients to choose their hospital/dentist/GP surgery. Redress, the payment of compensation in the event of shortfall in service delivery is also commonly employed, e.g. the Delay Repay Compensation Scheme run by UK rail companies offers rail travel vouchers if a train is late or cancelled. Vertical forms of participation extend from obtaining information to being a part of the production of the service itself (co-production) as in personal budget planning for social care (Leadbeater 2004).

Box 2 includes forms of public participation that influence public service decision-making but are outside of any 'invited spaces' (Cornwall & Coelho 2007) of participation. Pressure groups and single-issue groups can exert powerful influences, focus public opinion and change policy as was seen recently with the campaign by the 'Cure the NHS' group who pushed for an investigation into morbidity rates at Stafford Hospital in the UK (BBC 2011).

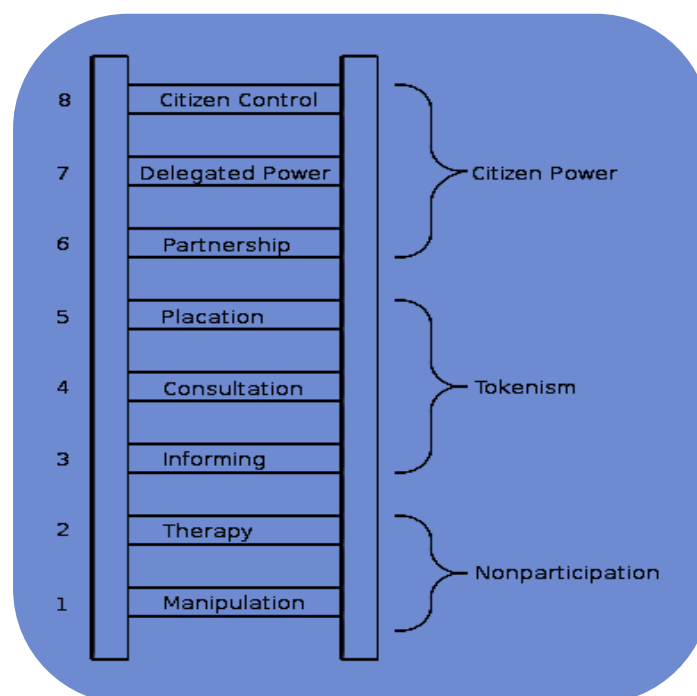
Box 3 is concerned with the blurring of boundaries between state and society by networking between the two. This box contains examples of horizontal participation, for example, the use of participatory audit in India where there is citizen oversight of public works construction (Ramkumar 2007), or the work on deliberative participation by such public interest groups as America Speaks where citizens are brought together both face to face, and via IT, to deliberate on complex policy issues such as budget deficit reduction (Lukensmeyer & Brigham 2005). A UK example would be HealthWatch, which works in partnership with the Care Quality Commission (CQC). Although publicly financed, HealthWatch is completely independent of local or central government. It is one of a relatively new and diverse group of participatory organisations which also includes asset transfer organisations formed to own and manage the local library or village hall or social housing through the process of asset transfer (Pratchett et al. 2009: p. 28-47). This flow can be bi-directional. Social enterprises also supply public services (Haugh 2005), as with the City Health Care Partnership based in Hull or the plans of Lambeth City Council to become the first cooperative council (Social Enterprise London 2011).

Models of public participation in public services

In recent years there has been a substantial growth in strategies by state agencies to involve citizens and consumers in policy formulation and production (Marinetto 2003; Pestoff 2009). UK government departments have increasingly employed participation strategies (Brannan et al. 2006; Cabinet Office 2007) within a developing legal framework supporting participation, from the Local Government Act (2000), Local Government and Public Involvement in Health Act (2007), Sustainable Communities Act (2007) and Local Democracy, Economic Development and Construction Act (2009), through to the current Localism Bill (Communities and Local Government 2011). Participation in local government in one way or another was estimated to involve around 8 million citizens in 2001 (Office of the Deputy Prime Minister 2002). At the same time there has been a rapid growth in government and public agency information available over the internet and a continuing interest in enlarging participation through new technologies such as the mobile phone (Miller & Williamson 2008). Many can be considered 'invited spaces' implying space that is kept private, invisible or deliberately hidden (Gaventa 2007). Such spaces may also be a means of achieving or controlling participation (Brannan et al. 2006:1005).

Of the many models of citizen participation that have been developed Arnstein's ladder is probably the most well-known and enduring (Arnstein 1969):

Figure 3: Arnstein's Ladder



(Arnstein 1969)

Arnstein's contribution has been considerable in demonstrating the multiple and often covert processes, functions and outcomes of participation together with an appreciation of the continuum from personal benefit to wielding authority and control, and has been further developed (International Association for Public Participation 2007). However, it has also been criticised partly for its manifest preference for particular kinds of participation (Collins & Ison 2009; Tritter & McCallum 2006).

These concerns were addressed to an extent by Fung (2006) who put forward a framework for 'understanding the range of institutional possibilities for public participation.' Fung identified three specific 'mechanisms of participation', which may be used in the design of participation strategies. Mechanisms of participation vary along these dimensions:

- Who participates,
- How participants communicate with one another and make decisions together, and
- How discussions are linked with policy or public action.

These three dimensions constitute a space in which any particular mechanism of participation can be located (2006: p. 66). Depending on the particular purpose of public participation these dimensions support the planning of a participatory strategy.

Figure 4: Participant Selection Methods

Expert Administrators	Elected Representatives	Professional Stakeholders	Lay Stakeholders	Random Selection	Open, Targeted Recruiting	Open, self- selection	Diffuse public sphere
State		Mini-publics					Public
Most Exclusive							Least Exclusive

(Fung 2006)

The representativeness of participants is a focal topic in the literature and the subject of Fung's first mechanism showing participant selection methods (figure 4.) The range moves from most selective to least selective, from a generalised public at one end to the expert administrator at the other. A feature of the model is the concept of the mini-populous (Dahl 1989) or mini-publics (Fung 2003) – defined by the engagement strategies employed, such as deliberative polls, consensus seeking conferences and citizen juries (Goodin & Dryzek 2006; Stevenson et al. 2004). These mini-publics are 'groups small enough to be genuinely

deliberative, and representative enough to be genuinely democratic though rarely will they meet standards of statistical representativeness, and they are never representative in the electoral sense' (Goodin & Dryzek 2006).

Representativeness has been an issue in promoting participation strategies (Wilson 1999). When the notion of representation is explored it is invariably in respect of a specific community or public – but there is little consensus on what a community or public is (Barnes et al. 2003). Fung's solution is to ignore the 'continuing controversies regarding accounts of the public sphere', advocating instead small groups as a way of advancing accountability, effective governance and popular mobilization (Fung 2003:340). The central building block of Fung's structure is that it is 'deliberative'. Deliberative democracy refers to the 'capacity of those affected by a collective decision to deliberate in the production of that decision' (Dryzek & List 2003:1) or as Chambers states 'talk-centric democratic theory replaces voting-centric democratic theory' (2003:308). Theories of deliberative democracy have prompted new participatory methods and processes. These have been particularly innovative in North America (see vignette, figure 5. below.). Information is shared with participants and they are given time to listen to the views of others and to shape their own views. While national policies may well be debated citizens tend to be more engaged with issues that affect them at the local level.

Figure 5. Vignette - Deliberative participation

America Speaks, an organisation specifically designed to promote deliberative participation, regularly holds meetings of up to 3000 people debating issues such as childhood obesity and the budget deficit.

Participants sit at tables of eight to ten with a trained facilitator. They discuss a series of questions that build to create a set of collective priorities by the end of the meeting. Participatory technology is utilized to make sure every voice in the room is heard:

A computer on every table serves as 'electronic flipcharts' to record general table agreements.

The table agreements are instantly transmitted to a 'Theme Team', which reads all the entries to identify the strongest themes. These overarching themes are displayed and quickly presented to all the participants.

Individuals use their individual voting keypads to vote on what they believe are the most important priorities.

The 21st Century Town Meeting effectively restores the balance of the 'political playing field' by engaging hundreds or thousands of ordinary, unaffiliated citizens, quickly summarizing their general agreements and priorities, and widely disseminating the results through media coverage.

(America Speaks 2011)

Modes of communication and decision-making (figure 6.) shows a scale from left to right moving from least intensity to most intensity. Intensity here is defined as, 'the level of investment, knowledge and commitment required of participants' (p. 69). Some participants may be spectators; others are the paid administrators and professionals whose training is to resolve policy problems. Fung is not claiming that every public policy decision has to be either expert or deliberative or both, but rather that consideration be given to establishing the most appropriate mode of decision-making.

Figure 6: Modes of Communication and Decision

Listen as spectator	Express Preferences	Develop preferences	Aggregate and bargain	Deliberate and negotiate	Deploy technique and expertise
Least Intense				Most Intense	

(Fung 2006)

A further important dimension to be considered in the design of participatory mechanisms is the extent of authority and power (figure 7.). At one-end of the spectrum participants have little impact on policy; at the other there is direct control over the organisation and its processes and policies. In-between the design may call for advising and consulting, or, in the case of co-production, a contribution to the planning and/or delivery of a policy or service through co-governance.

Figure 7: Extent of Authority and Power

Personal Benefits	Communicative Influence	Advise and consult	Co-Governance	Direct Authority
Least Authority			Most Authority	

(Fung 2006)

To sum up, Fung's model provides an important synthesis of earlier developments in the participation literature, building on the work of earlier democratic theorists such as Robert Dahl (1989). It promotes,

- A range of participation strategies that are planned around the potential and reality of representativeness,
- A flexible approach to participation,
- The use of deliberative techniques, and
- Acknowledges the contribution of expertise and information giving

Public Value theory and participation

An alternative perspective on participation is to use the notion of 'public value'. Public Value is a theory of public sector management put forward by Moore (1995). Public value refers to the value that members of the public place on a particular service or policy choice.

It presents a way of improving the quality of decision making, by calling for public sector managers to engage with services users and the public as a whole. It seeks to promote greater trust in public institutions and meet head on the challenge of rising expectations of service delivery. In simple terms, public value poses three central questions to public sector managers (Coats & Passmore 2008):

- What is this organisation for?

- To whom are we accountable?
- How do we know if we have been successful?

Public Value uses the methods and processes of deliberative participation to ascertain choices and preferences. It requires those working in public services to:

- Focus on what people using services want, and;
- Discuss and refine their preferences in deliberative debate.

This emphasis on public sector management engagement with citizens serves to counter the managerialism of the New Public Management (Hood 1991; Hood & Peters 2004) by 'bringing in the citizen' but how this is to be operationalized within the framework of public value is unclear. The model also provides little guidance on how to deal with conflicts between professional knowledge and the democratic will, where they diverge. Are public sector managers acting for the public as 'Platonic guardians' (Rhodes & Wanna 2007: 406) or are they servants, merely effecting the public will? The theory does not really provide guidance on how a balance is to be struck but it does have value nonetheless, in as much as it provides an approach to decision-making that emphasises the need for public sector managers to engage with citizens (Stoker 2006).

The success of public value theory, or indeed any participative approach to delivering public services, depends to a significant degree on the willingness of public service staff to engage with the idea. The incorporation of citizen engagement strategies by national government in the delivery of public services has increased dramatically in recent years (Brannan et al. 2006; Cabinet Office 2007) but there is little empirical evidence on the value of such strategies. Critically, how do local government officers respond to greater participation by citizens (Cooper et al. 2006; King et al. 1998)? In what ways are decisions, and indeed, outcomes, altered?

What evidence is available draws on the US experience. A study of municipal officials commissioned by the National League of Cities found that nearly all placed considerable value on public engagement and believed it developed 'a stronger sense of community, building trust between the public and city hall' (Barnes & Mann 2010). However, officials were uncertain they possessed the necessary skills for public engagement. Ensuring community governance, the report emphasises, is different from running local government. Officers needed good command of relevant languages used by the citizens, the ability to facilitate, to engage in active listening and to manage participative processes (Barnes &

Mann 2010: 20). An understanding that different interactional skills and attitudes are necessary is underscored in a study on the use of forms of communication in public engagement such as online, telephone and face-to-face (Tomkins et al. 2010). Forms of face to face engagement, it was argued, may be a better way of increasing trust and confidence in government, but they are of course expensive and time-consuming.

The preceding overview of citizen participation provides a context for thinking about how to bring the citizen into decision-making on public services in general, and the particular task of bringing the citizen into regulation. The work by Fung provides the basis for the LBRO to consider the range of mini-publics that populate the local regulation arena, how they can be engaged, and what resources and skills they possess or require? However, as King et al (1998) caution, participation is as much about relationships as it is about strategies. A further important consideration is to examine the relationship between participation strategies and outcomes.

What is the evidence base for improved outcomes through public participation?

The impact of participation on policy outcomes has been significantly under-investigated. This is somewhat surprising given the consistent claim in the academic and policy literature that public participation improves outcomes. This section examines various relevant scoping studies and systematic reviews in a search for evidence on impacts. Most report on interventions while making little attempt to assess impact – with some notable exceptions: the evaluation of participatory budgeting in Brazil (Sintomer et al. 2008) and Jonathan Tritter's work on public participation in healthcare and in environmental regulation (Anderson et al. 2006; Similä et al. 2008; Tritter & McCallum 2006).

Collectively, the benefits of public participation are considered to be the creation of more effective and responsive public services following a deliberative exercise that leads to refined public preferences. Participation therefore fits with the idea of modern government as more than just 'delivering' a service (Cabinet Office, 2007a). In other words, consumers, citizens and communities all have a role to play in creating effective public services, alongside public bodies themselves (Albert & Passmore 2008)

As was seen earlier, public participation is an end in itself - it is valued. It is also a means to an end. Participation, it is argued, delivers better policy outcomes. In this section, the

evidence for the latter view is examined, however, it is far from clear that the two different views can, or should be, separated. Participation as something that is valued has a beneficial outcome, not only to those who experience it but to the communities of which they are a part (Communities and Local Government 2008). Recent literature refers to capacity building for participation, generating social networks, confidence and specialist knowledge (Cornwall & Coelho 2007; 2010) as part of an infrastructure of social capital (Putnam 1995). Participation, it is argued, provides better public and community outcomes and at the same time creates a 'spill-over', boosting social capital and developing democratic forms of organisation.

A systematic review by Pratchett, Durose et al (2009) sought to identify the benefits of community empowerment in relation to UK local authority decision-making. Their conclusion, in common with the other studies in this section, was that most studies were not designed to yield quantitative data on the impact of participation; many reviewed the method or the process used. However, Pratchett et al selected certain participation mechanisms to evaluate their community impact - asset transfer, citizen governance, participatory budgeting, petitions, e-participation and redress. 'Overall, the mechanisms selected showed the potential to empower those directly participating and to both influence and shape decision making. However, it was widely found to be more difficult to empower the community through the use of such mechanisms. Only citizen governance and participatory budgeting showed clear evidence of spill-over from individuals to the wider community' (Pratchett et al. 2009: p. 7).

Burton (2004) found that claims for beneficial outcomes often depended on perceived impacts rather than quantifiable impacts. Nevertheless, drawing on a range of studies (43) examining the impact of Area Based Initiatives (ABI) the review concludes that favourable outcomes reported outweighed the negative impacts. Overall, they found the following benefits:

- Policy and service effectiveness and realism;
- Inclusion of issues such as childcare as well as economic aims into strategies and action;
- Employment and training; and
- Enhanced visibility of the area and its needs.

Further points made in this same study were that although few authors made explicit the contribution of participatory processes to community capacity and social capital ‘ a sense of empowerment, a levelling of power between community representatives and other stakeholders, and a sense of inclusion were all reported’ (2004:vi). The same study also made the point that existing power and resource inequalities in communities were reproduced in participatory initiatives. A point made by most of the literature reviews was that more needed to be done to contact ‘hard to reach’ groups. The authors recommended:

- Better planning for participation including ‘approach, structures, roles processes, methods and resources’ including flexibility
- Need to acknowledge the diverse nature of communities
- Building in appropriate measures of success and impact
- Wide agreement on the need for support for participants

Gaventa and Barrett (2010:25) in a review of 830 outcomes from citizen engagement in international contexts using a sample of 100 cases found positive and negative outcomes across four broad areas in which ‘citizen engagement and participation have the potential to influence state-society relations in either a positive or negative direction.’ Figure 8 outlines these outcomes:

Figure 8. Outcomes of citizen engagement

Positive	Negative
Construction of citizenship	
Increased civic and political knowledge Greater sense of empowerment and agency ¹¹	Increased knowledge dependencies Disempowerment and reduced sense of agency
Practices of citizen participation	
Increased capacities for collective action New forms of participation Deepening of networks and solidarities	New capacities used for 'negative' purposes Tokenistic or 'captured' forms of participation Lack of accountability and representation in networks
Responsive and accountable states	
Greater access to state services and resources Greater realisation of rights Enhanced state responsiveness and accountability	Denial of state services and resources Social, economic and political reprisals Violent or coercive state response
Inclusive and cohesive societies	
Inclusion of new actors and issues in public spaces Greater social cohesion across groups	Reinforcement of social hierarchies and exclusion Increased horizontal conflict and violence

(Gaventa & Barrett 2010)

Gaventa and Barrett found that 75% of total outcomes were positive and 25% negative. These findings suggest that public participation may be linked to development outcomes such as better water, sanitation and to democratic outcomes of building accountability.

The evidence base for types of public participation strategy

This section briefly examines types of public participation strategy. The range of participation methods is shown and where possible an evidence base referenced.

The systematic review by Pratchett et al (2009) examined the following types of participatory methods:

- Asset transfer
- Citizen governance
- E-participation
- Participatory budgeting
- Petitions
- Redress

The above methods were assessed in terms of their effects on participants, the effect on communities and the effect on decision-making. While all methods showed outcomes in one or more of those areas the citizen governance method demonstrated major gains in all outcome areas. Citizen governance covers 'the role of citizen or community representatives on partnerships, boards and forums charged with decision making about public services and public policy' (2009: p. 13). The impact is outlined in figure 9 below:

Figure 9: Types of citizen governance and impact on outcomes

Type of citizen governance	Comment	Effectiveness
Local Representation	Representatives of a wider community – effective in areas of deprivation – ideal type, open to all, linked to decision-making	Personal benefit Community benefit Decision-making benefit
Local knowledge	Citizens provide input to decision making but may have no formal link.	Personal benefit Community benefit Decision-making benefits where linked
Organisational proxy	Voluntary or community sector organisations act as a proxy for citizen representation.	Decision-making benefits May form a chain of representation
Semi-professional	Not open to all. Link to formal decision making	Decision making benefit Personal benefit

(Pratchett et al. 2009)

Pratchett et al emphasise that these types of citizen governance do not form a league table, 'rather it allows us to think about 'fitness for purpose' within an empowerment strategy' (2009: p. 14). Further methods of participation are given in Appendix 1.

Other recent work has addressed participation in the context of 'complex governance' (Fung 2006) and overlapping and horizontal forms of governance (Ackerman 2004; Andersson & Ostrom 2008). Regulators and other scrutiny bodies exercise oversight over critical sectors such as food production and retailing, and indeed government itself, for example, Monitor, the NHS Hospital Foundation Trusts regulator. Often these types of agencies are described as exercising horizontal accountability yet with some exceptions it remains unclear whether the literature is sufficiently focused on this manifestation of complex governance (Goetz & Jenkins 2001; Michels & Meijer 2008).

Citizen participation in regulation

The literature on citizen involvement in public services is substantial and it could be assumed that there is an equally extensive literature on citizen involvement in regulation. However, the academic literature on regulation and citizen involvement is slight and more often than not, takes the theme of 'public interest' and 'public accountability'. These two themes form a rich tradition in regulatory scholarship but there is little by way of empirical analysis on citizen involvement. This is unexpected considering the recent substantial growth in regulation has in large part been based on the claim to further consumer and citizen choice and accountability (Levi-Faur & Jordana 2005).

In regulatory studies the consumer and/or citizen are found most clearly expressed in the notion of regulatory tripartism – empowering public interest groups to counter regulatees (Ayres & Braithwaite 1991) but the primary driver for tripartism has been to minimise risk of regulatory capture rather than to involve citizens per se. Such tactical use of citizen involvement is, arguably, not an authentic expression of citizen involvement.

Although public involvement is understudied in regulation it finds expression in the real-life governance and structures of regulatory organisations. The Financial Services Authority and OFCOM both have consumer panels set up to represent the interests of UK consumers. Both consumer panels describe themselves as being independent of the regulator. OFCOM in addition has a very comprehensive Consumer Research report which provides a state of the market analysis e.g. spread of communications packages, proportion of low income families with broadband, action on 'non-spots' for mobile reception etc. It evidences and accounts for Ofcom's actions for and on behalf of consumers over the past year. As Lunt and Livingston explain both FSA and OFCOM have statutory objectives (Lunt & Livingstone 2007) which require them to be public-facing and proactive in public engagement. A newer regulator, the Care Quality Commission, has been active in exploring new ways of accounting to citizens and encouraging participation. (These are detailed in Appendix 2.)

Citizen Participation and Local Authority Regulatory Services

Little information is available on public participation in local regulatory services. However, consumers in contact with local regulators often request and receive consumer information and advice which the Office of Fair Trading estimates saves consumers approximately £228 million p.a. (Office of Fair Trading 2009). Clearly this can be considered a form of public participation, albeit by consumers rather than citizens. A brief search of trading standards

websites reveals that Suffolk Trading Standards is promoting a scheme to encourage greater participation through Consumer Champions, members of the public who volunteer to disseminate information on trading standards. (Suffolk Trading Standards 2011). The national 'Food Hygiene Rating Scheme' (Food Standards Agency 2011) and the 'Redbridge Conversation' (Local Better Regulation Office 2008: p. 10-11), particularly the latter, suggest that local regulatory services are moving toward greater public participation. However, recent surveys (Beaufortsearch 2010; Ipsos MORI 2008) of public perceptions of local regulatory services in England and Wales, found that, with the exception of environmental health, levels of awareness were low. A survey of local authority regulators conducted by LBRO (2009) with a focus on the relationships of agencies makes no mention of association with public or civic groups. Overall there is concern from organisations such as Consumer Focus (2010) that public awareness of local authority regulatory services needs to be improved particularly in respect of unfair trading practices, loan sharks and other practices that impact especially the poor and hard to reach groups (Franceys & Gerlach 2007).

Citizen participation: Summary and recommendations

- 1) Interest in citizen participation is a response to increased distance and consequent levels of mistrust between the public and elected officials, political parties and electoral processes leading to a perceived lack of accountability.
- 2) Citizen participation is valued as an end in itself as well as a means of improving public services.
- 3) Recent models of participation focus on collaborative rather than adversarial politics.
- 4) While desirable, 'representativeness' is also elusive. Lack of representativeness should not divert policymakers from seeking ways to mobilize the citizenry and improve accountability mechanisms.
- 5) Deliberative participation, bringing citizens together to discuss, share and modify issues and opinions has emerged as one of the most important engagement strategies.
- 6) How public officials respond to citizen participation is a key factor in the success of an engagement strategy, with particular attention being paid to what the public values.
- 7) The evidence for improved outcomes arising from the use of citizen participation is patchy but what systematic reviews are available suggest decision-making, service quality, and sense of community are all enhanced.
- 8) The evidence base for citizen participation with local regulatory services is thin. More work is needed on how local regulators perceive their local communities and how local communities perceive local regulators as a basis for leveraging the potential gains from bringing the citizen into regulation at the very local level.

5. Co-production

The 'co-production of public goods' is a central component of the 'ensuring state' (Giddens 2003); it is a process of 'collaboration between the state and the citizen in the production of socially desirable outcomes' (Dunston et al. 2009). Definitions of co-production are numerous but all refer in some way to the involvement of service users in delivering public services (Brudney 1985; Ostrom 1996; Pammer 1992). Most would assert that citizen involvement improves outcomes by ensuring some or all aspects of the production of a good or service focus on the end consumer - with supply coming from a variety of sources, in recent times of course from the market (e.g. HM Government 2011). The term co-governance may be used if the focus is on the management of the process of providing the service. Alternatively co-delivery may be the preferred term if the focus is on the means or source of supply.

Origins

The concept can be perceived as having two distinct phases of development: the first half of the 1980s (Brudney 1985, 1986; Brudney & England 1983; Clary 1985; Ferris 1984; Kiser 1984; Levine & Fisher 1984; Mattson 1986; Parks et al. 1981; Percy 1983, 1984, 1987; Schneider 1987; Whitaker 1980; Wilson 1981) and the first half of the first decade of the twenty first century (Anderson et al. 2006; Bendapudi & Leone 2003; Bettencourt et al. 2002; Bifulco & Ladd 2006; Bovaird 2007; Boyle et al. 2006; Brandsen & Pestoff 2006; Cummins & Miller 2007; Marschall 2004; Pestoff 2006; Pestoff et al. 2006; Prentice 2006; Skjølsvik et al. 2007). Co-production, in the general sense of bringing in individuals and communities to improve or provide public services is seen by some as a policy response to budget limits or as a means of countering the rise of managerialism in the public services (Coote 2011; Levine & Fisher 1984; Ostrom 1996; Parks et al. 1981). However, a second strand focuses on co-production as a form of community development. In this version of co-production known as timebanking or time dollars (Cahn 1999; Ferris 1984; www.timebanks.org), individual citizens provide or exchange their services, skills, or time at the level of the local community.

It is claimed that this is a way of operationalizing co-production by providing a means of recognising and/or encouraging otherwise hidden voluntary contributions from citizens (New Economics Foundation 2008; The Welsh NHS Confederation 2010). However, a review of

UK timebanks' websites would suggest that it is often little more than a record and means of bartering, albeit for the benefit of local charities or public services. Some overlap exists between the two versions of co-production but timebanking may be of some interest when considering co-production as a means of bringing the citizen into regulation – there may be some lessons in citizen motivation, especially in bringing in poor and disadvantaged groups for whom community engagement without direct and immediate benefit may be difficult to justify (Boyle et al. 2006; Boyle et al. 2010a; Boyle & Harris 2009; Boyle et al. 2010b). The empirical evidence is however not convincing.

Conceiving co-production

Co-production can be conceived narrowly or broadly - from simple co-production involving citizens in the (co-)delivery of predetermined services through co-management (of the latter) to co-governance (Pestoff et al. 2006), to participating in policy design, implementation, execution, review, and so on (Ackerman 2004; Groeneveld 2009).

Figure 10. Co-governance, co-management, co-production, co-design, co-delivery

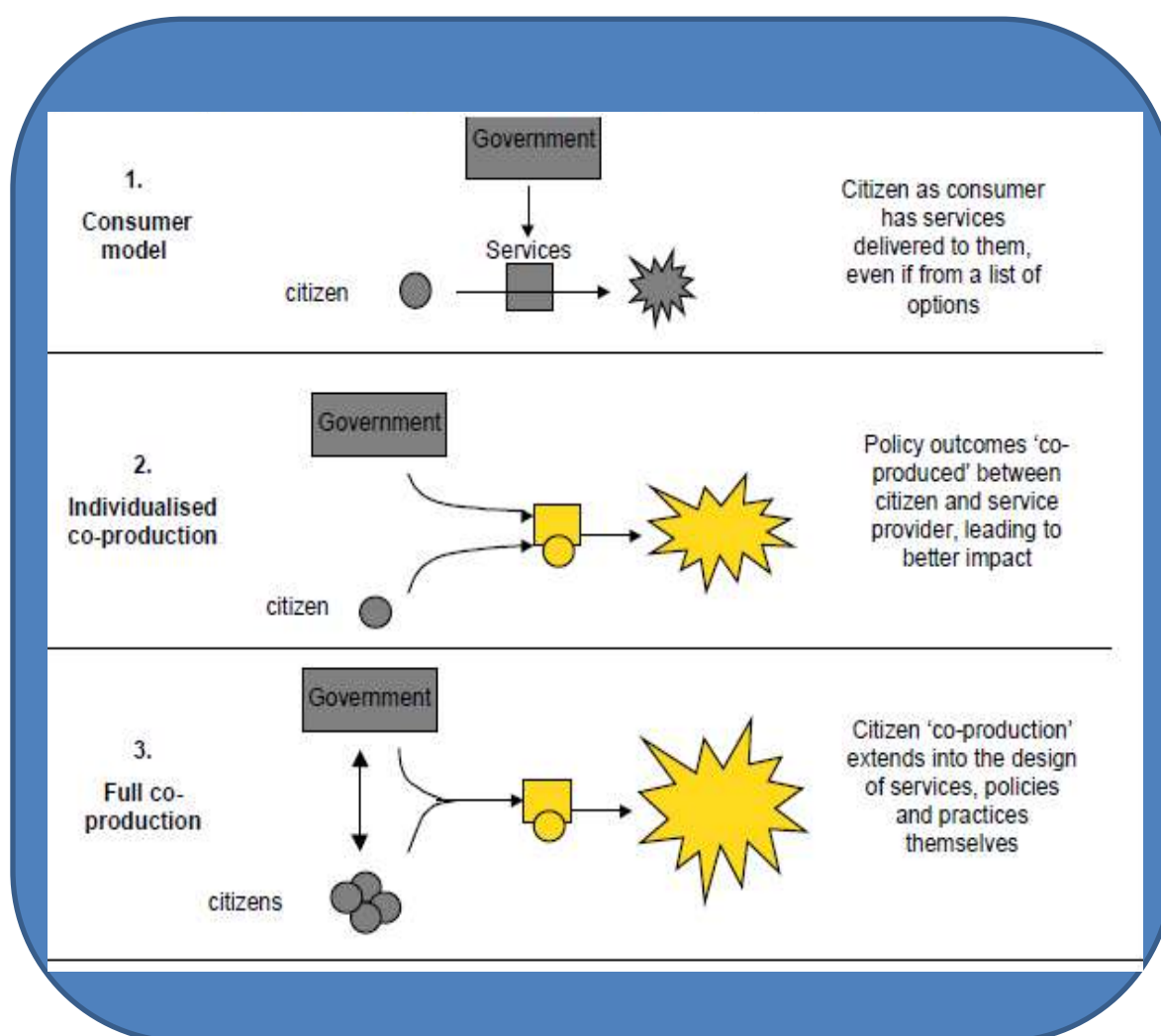
- **Co-governance** refers to an arrangement, in which the third sector participates in the planning and delivery of public services.
- **Co-management** refers to an arrangement, in which third sector organizations produce services in collaboration with the state;
- **Co-production**, in the restricted use of the term, refers to an arrangement where citizens produce their own services at least in part:
 - **Co-design** means that government and service providers work with service users and citizens to design services, and/or
 - **Co-delivery** refers to drawing service users into the delivery of those their services, providing additional resources and benefits.

(Brandsen & Pestoff 2006; Wales Council for Voluntary Action 2010)

Co-production: Participation by citizens or consumers?

Individuals can be considered as consumers participating in the production and delivery of services to themselves (Brudney 1985), or as citizens working with agencies to produce services for the benefit of all (Pammer 1992). The common thread is that they are no longer 'to be the passive recipients of care, dependent on the intervention of the expert' (Anderson et al. 2006). Note this has implications not only for the engagement strategy of service providers but also for the citizen – who has now to be motivated or in some way incentivized to engage in the production of services in order to benefit from them. Figure 11 illustrates consumer and individualised co-production models of citizen-state interactions which suggests, perhaps misleadingly, that consumers do not co-produce, but passively accept services delivered to them by the state. The schema does however illustrate the range of interactions that underpin the various forms of co-production.

Figure 11. Stylised models of citizen-state interactions



(Halpern et al. 2004)

Although political scientists tend to be wary of losing the distinction between citizen and consumer (Livingstone & Lunt 2007; Ostrom 1996) the division between citizen and consumer may not be helpful as individuals are of course both self-interested consumers and altruistic social animals. However, the distinction may be useful to make when considering strategies for bringing the citizen into regulation – what sort of incentive can be provided in order to encourage participation, and how does this vary according to the context? Consumers may be highly motivated to seek redress for perceived wrongs while citizens may have a broader focus around concepts such as justice, accountability, sustainability and so on. There are lessons to be learned from the private sector where the consumer is paramount.

An interesting question is when does mere engagement in civic life, especially when compulsory, become co-production (Alford 1998)? Consider for example a taxpayer completing an annual self-assessment. Is she co-producing the taxation system?

Operationalizing co-production

Co-production also requires consideration of the relationship between the citizen and the professional. Bovaird (2007) warns consumer co-production may serve to diminish the value placed on professional knowledge and by so doing inhibit rather than enhance outcomes. The various permutations in the relationship between the citizen and the professional are outlined in figure 12 below:

Figure 12. Citizen-professional interactions in co-producing services

	Professionals as sole service planners	Service user and/or community as coplanners	No professional input into service planning
Professionals as sole service deliverer	Traditional professional service provision	Traditional professional service provision with users and communities involved in planning and design (e.g., participatory budgeting in Porto Alegre)	N/A
Professionals and users/communities as codeliverers	User codelivery of professionally designed services (e.g., Sure Start)	Full user/professional coproduction (e.g., Caterham Barracks Community Trust)	User/community codelivery of services with professionals, with little formal planning or design (e.g., Beacon Community Regeneration Partnership)
Users/communities as sole deliverers	User/community delivery of professionally planned services (e.g., Villa Family)	User/community delivery of coplanned or codesigned services (e.g., Tackley Village shop)	Traditional self-organized community provision

(Bovaird 2007)

In their consideration of co-production in the health sector, Dunston, Lee et al (2009) conclude: 'Successfully negotiating a transition from a traditional expert-based health system to a co-productive health system, and from traditional expert based professional practice to co-productive professional practice will, we believe, require an in-depth and co-productive engagement with issues and processes of profound cultural, identity and practice change, renegotiation and reformation. How these matters are identified, framed and addressed will be critical to the likely success of a broader co-production project.'

While there is little evidence of implementation of *real* co-production of public services beyond aspects of health and social care e.g. the personalisation agenda (Leadbeater 2006), there are some useful pieces of work delineating realworld citizen-agency interactions. Whitaker (1980) identifies:

- (i) asking for assistance;
- (ii) assisting/facilitating programme execution;
- (iii) critiquing, revising and redirecting future provision.

Outcomes are critical to satisfaction and so also to continued engagement by citizens in the co-production process. It is also noted by Whitaker that participation in production mitigates below expectation outcomes, in part due to a sense of shared ownership of any resultant problems.

Motivating citizens to participate

In developing a strategy for successful co-production attention needs to be paid to the following:

- (i) designing appropriate tasks for citizens;
- (ii) designing appropriate organisational structures and interfaces that are accessible to citizens, and;
- (iii) minimising the possibilities for conflict between citizens and public agencies over tasks and organisation.

To accomplish this, social, economic and personal incentives need to be carefully considered and incorporated into the co-production strategy (Clary 1985). Recruitment and training of co-producers should also be given due consideration (Brudney 1986; Brudney & England 1983). It may for instance be worthwhile an agency focusing on its' and other stakeholders' identities – who do they think they are? – in order to capture what each may get out of engaging in co-production - on which see Downing (2005).

In the case of bringing the citizen into regulation it may be beneficial to seek to learn from the private sector as well as the numerous models and analyses emanating from those concerned with solely the public sector. This would mean considering regulation not only as an element in the co-production of goods and services but also as a good in its own right – to build a process model of regulation from design through 'manufacture' to 'distribution' – in order to benefit from generic learning in manufacturing on co-production. For example, Etgar (2008) distinguishes 'five distinct phases of the production activity chain where consumers can become involved in co-production':

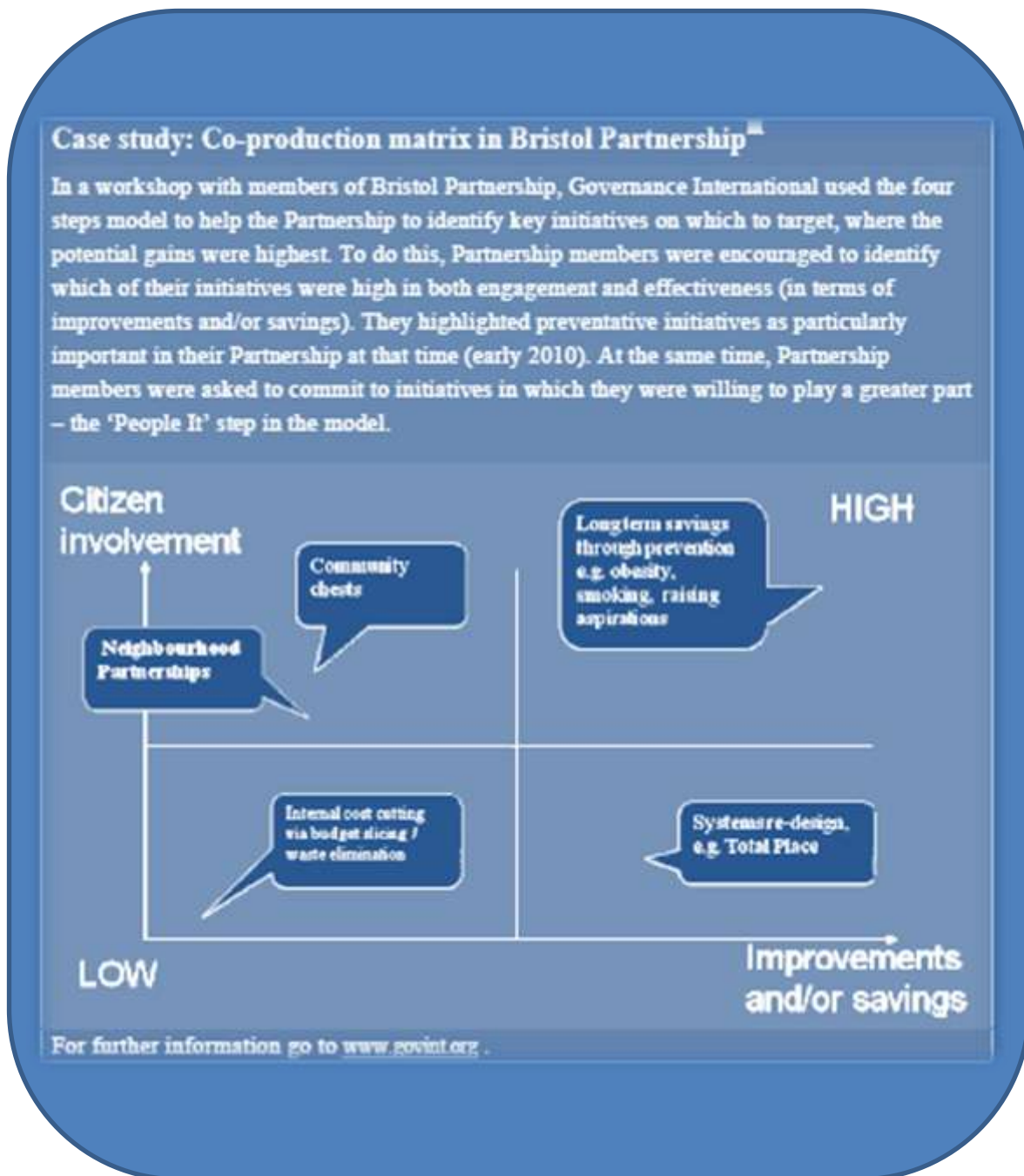
- (i) assessment of the economic, cultural, technological, personal (e.g. time), and (regulatory) context;
- (ii) development of motivations which prompt consumers to engage in co-production;
- (iii) calculation of the co-production cost-benefits;
- (iv) activation when consumers become engaged in the actual performance of the co-producing activities;
- (v) generation of outputs and evaluation of the results of the process.

It should be noted that regulatory context – for example the global financial crisis – can affect demand for involvement with, or at the very least, willingness to consider involvement with, co-production of goods and services (Amengual 2010). One can speculate that the public appetite to engage in the co-production of banking services may be higher now than when the economic climate was less bleak. Percy (1987) notes that while people are more likely to fit locks to their own doors (self-interest) than to join neighbourhood watch schemes (public interest) they are even more likely to undertake either or both if the local media have run a campaign on crime in the immediate vicinity.

‘The results suggest that government action to encourage co-production of security increased both the private and the collective security. Most of the private co-production and ‘protective neighbouring’ was parallel production - i.e., done independently of the government program - but bystander intervention and recent increases in private security involved higher levels of joint co-production’ (Schneider 1987).

In any case it is important to understand (trends in) the division of responsibility and importance attached by the public to the risks being regulated - information already held of course by regulators in most cases. The Department of Health (2010) reports a mapping exercise (see figure 13. below) carried out to assess where the most gains might be made from introducing co-production (as part of a report on how to develop strategies on co-production):

Figure 13. Case Study: Co-production matrix



(Department of Health 2010)

Successful implementation may also require the productive process to be broken down into what is being produced at individual (citizen), organisational level (e.g. regulator) and system level (goods, services, and their value) because ‘institutional arrangements are the key to matching co-productive activities to production opportunities where they would be efficient, and to their avoidance in inefficient areas’ (Parks et al. 1981). Parks et al offer critical

guidance on operationalizing co-production. Not only do they suggest breaking down the productive process into its component parts but also to identify where co-producers can substitute for existing resources, so mitigating budget cuts (zero sum), and/or where outcomes can be improved by co-producers bringing additional resources to the process of production (non-zero sum), so improving outcomes, or indeed where co-producers are already in an interdependent relationship and thus where change out to be minimised. To this one must add, to avoid unnecessary costs, the need to determine the conditions in which citizens are unlikely to engage at all (Pestoff 2009).

Summary of criticisms and benefits of co-production:

Criticisms of co-production:

- Smokescreen for budget cuts. Shifts part of the burden of provision from the state to the citizen who may be ill-equipped to provide. Moreover, aggregate production costs may actually increase as the costs of (encouraging) participation may be considerable (Neiman 1989).
- De-professionalises services by promoting the role of the lay person in relation to the expert, so diminishing the capacity of the expert to act.
- Presumes willingness on the part of citizens to participate yet (i) they may in aggregate have neither the capacity nor desire, and (ii) even where capacity and desire exist, they may do so unevenly, which may serve to increase existing disparities in service provision between rich and poor (Mattson 1986; Needham & Carr 2009).

Benefits of co-production:

- Enables citizen voice and empowers front line staff (street level experts) as intermediaries so improving agency efficiency (Needham 2008). 'By emphasising user input into the productive process, co-production improves allocative efficiency, making frontline providers and their managers more sensitive to user needs and preferences' (Percy 1984) - the positive efficiency argument (Pammer 1992);
- Empowers citizens to take control of their lives - with spill-over effects in both private and public domains – the good society argument (Needham 2008). 'Co-production provides a focus on citizens' participation at the level of local production of ... services.
- Co-production opens up possibilities for better understanding the importance of obtaining the consent and support of all three major stakeholders in such reforms, i.e. the citizens, the professional providers of welfare services and the politicians. However, without a clear vision of a 'good society', or at least a better society than today, it will be very difficult to promote such sweeping reforms' (Pestoff 2006).
- It is argued, citizens already are engaged in co-production: 'Citizens 'co-produce' public services by requesting assistance from service agents, by cooperating with service agents in carrying out agency programs, and by negotiating with service agents to redirect agents' activities' (Whitaker 1980).

Operationalizing co-production: a prescription for bringing the citizen into regulation

Treat regulation as part of the productive process – but producing what? Bringing in the citizen *may* improve regulative efficiency but regulation is a difficult concept for the citizen to engage with, so instead there may be merit in focusing on the positive, the benefits, the outcome sought by effective regulation-‘the good society, the good life.’ To this end it may be useful to examine what is valued by citizens in any given regulatory context. Borrow from the

private sector, especially social network marketing models, which are underpinned by strong values. In other words, to reprise the public value argument in the previous chapter, analyse what is really important to the citizen (Lih-Bin & Hock-Hai 2010).

Also, focus efforts at the local level – citizens understand the local (Marschall 2004). (National representative groups are better equipped to act at national level.) Continue recent efforts to develop positive engagement with citizens and local bodies by, for example, focusing on co-producing safe streets, rather than technically, negatively, policing regulations on alcohol sales. Regulation in this way becomes a co-produced component in a larger co-productive process and it is this larger landscape where the benefits of citizen co-production may be found. To operationalize, break down the productive process. Identify where citizen co-producers can enhance or substitute for existing resources, (and where there is already interdependence.) Then determine how to promote the benefits – for instance, citizens value public safety while consumers value personal safety.

Co-production: Summary and recommendations

- 1) Co-production refers to a process of involving the users of goods and services in their design, management, manufacture and/or delivery.
- 2) The concept as used combines in some proportion or other both the collaborative provision of goods and services and the development of community. Co-production thus addresses individuals both as consumers and citizens.
- 3) Co-production can improve efficiency as providers tend to become more sensitive to user needs. Learning from the private sector may be helpful.
- 4) Active public participation in co-production can however diminish the value placed on professional knowledge, which may lead to sub-optimal outcomes.
- 5) Some individuals may have greater capacity to engage in co-production than others which may exacerbate existing inequalities.
- 6) Willingness to engage may, to a large extent, be determined by external conditions such as the economic climate.
- 7) Co-production is both a means of maintaining or improving provision - and an end in itself, the good society - or the big society. This less immediate benefit may nonetheless be of importance in encouraging citizens to participate in the co-production of less tangible services or processes, such as regulation.
- 8) Focus on values and the positive benefits, e.g. safer streets rather than the detail of rules and regulations.

6. The citizen and co-regulation

Co-regulation

In this section we examine the co-regulation literature, focusing on themes and concepts relevant to bringing the citizen into regulation. At its simplest co-regulation can be understood to be the delegation of regulatory responsibility from a statutory regulator to regulatees:

‘Our approach to social housing regulation is built around co-regulation. By that, we mean that we expect robust self-regulation by the boards and councillors who govern the delivery of housing services’ (Tenant Services Authority:

<http://www.tenantservicesauthority.org/server/show/nav.14727>).

Co-regulation has been a mainstay of EU policy for over a quarter of a century and is seen as an essential component of Better Regulation. However, definitions are far from settled.

Various EU documents suggest co-regulation:

- ‘combines binding legislative and regulatory action with actions taken by the actors most concerned, drawing on their practical expertise;’
- ‘involves the sharing of the regulatory responsibilities between public authorities and private partners;’
- ‘is a mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, nongovernmental organisations, or associations).’

(Senden 2005)

These are mostly definitions around implementation (Verbruggen 2009). So is co-regulation anything more than a division of responsibilities between regulator and regulatee, where the former sets and monitors standards in some areas (statutory regulation) while delegating

such responsibilities for others areas to the regulatee (self-regulation)? Well, yes. Firstly, the regulator has the statutory authority to impose sanctions if regulatees do not self-regulate effectively. Compare the third definition of co-regulation cited above, with the definition of self-regulation contained in the EU Interinstitutional Agreement on Better Lawmaking agreed in 2003:

Self-regulation:

‘ . . . the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements)’ (European Union 2003).

In other words co-regulation, unlike self-regulation, involves a legislative act (Senden 2005) which means that strictly speaking the concept of citizen co-regulation would mean placing a legal duty to ensure standards onto citizens, together with other regulatory stakeholders of course, in a kind of ultra-co-production.

However, there is a second rationale for co-regulation, and indeed a reason for bringing the citizen into co-regulation (beyond arguments around better implementation). There is increased *legitimacy*, both input and output legitimacy. Input legitimacy is established when citizens are sufficiently involved in political choices (‘government *by* the people’) which in turn depends, according to Scharf (1999) on the extent to which citizens have a common political identity. By contrast, policies are output legitimate if their outcomes serve the citizens’ interests, i.e. they are legitimate because they are effective (‘government *for* the people’). Output-legitimate policies can be generated without a common political identity, as policies must effectively solve problems and thereby serve the citizens’ consumer interests (Scharf 1999). In other words, representativeness is not essential. Legitimacy can come from serving multiple mini-publics but is more readily generated by co-production, incorporating citizens into the policy making and implementation process.

Note also that not all iterations of the concept of co-regulation have been *bipartite* (regulator – directly or via an agency - and regulatee). Examples of successful *tripartism*, incorporating the public voice in one form or another, are few but there are some, e.g. the early 1990s Code of Conduct for Computerized Checkout Systems in supermarkets negotiated between the Australian Retailers Association, the Trade Practices Commission and various consumer

groups (Ayres & Braithwaite 1992). However, most have been bipartite. The UK system of financial services regulation prior to establishing the unitary Financial Services Authority, though described as self-regulation, could more properly be defined as traditional bipartite co-regulation. However, this previous system is generally considered to have failed – leading to a loss of trust, and trust is a critical component of any collaborative, deliberative system (Prosser et al. 2010).

Co-regulation: strengths and weaknesses

Strengths:

- improves compliance rates compared to command and control regulation)
- lowers costs of enforcement and monitoring
- lower rates of non-compliance than with command and control regulation.

Weaknesses:

- lack of trust among actors
- higher perceived risks amongst the public if market forces are allowed to play a role in regulation so standards-setting should be retained by institutional regulators;
- higher real risks where private interests take a leading role in securing socially optimal outcomes
- focus on costs of regulation rather than benefits
- increased risk of regulatory capture

Conclusion:

- traditional supplier co-regulation could improve monitoring and compliance levels but standards-setting should remain for the most part with government agencies

(Garcia Martinez et al. 2007; Utting 2005)

Operationalizing citizen co-regulation

An examination of the elements of co-regulation of the workplace by Estlund (2010) concludes the following are essential:

- internal employee committees
- strong internal whistleblower protections
- independent external monitors
- strategic allocation of government enforcement resources.

... which could be translated for the purpose of this project as:

- bringing citizens into the process of 'producing' regulation
- ensuring citizens can speak 'authentically'
- the presence of a trusted equilibrator
- adequate resources

An area where co-regulation has been adopted, though with varying degrees of success, is corporate social responsibility. The following table (figure 14.) from Albareda (2008) outlines the different ways that corporate social responsibility plays out in self, inter-industry, and co-regulation contexts. The latter part of the list, *Business and non-governmental organisations*, suggests citizen co-regulation may be best considered where overall co-production (of an outcome rather than regulation) is promoted and where all key stakeholders are brought in to co-produce. This is consistent with the co-production literature, and the conclusion reached in the survey in the previous chapter, that citizen engagement should focus on values, the good life and/or the good or 'big' society, rather than consumer redress, which is after all one of the immediate and explicit existing responsibilities of the various regulatory agencies and ombudsmen bodies.

Figure 14. Self-regulatory and co-regulatory mechanisms in corporate social responsibility engagement

<i>Mechanisms</i>	<i>Initiatives</i>
Self-regulation	<ul style="list-style-type: none"> Codes of conduct Reporting activities Environmental, social and sustainable management s CSR values Certification schemes Labeling schemes Transparency and disclosure guidelines Stakeholder engagement and dialogue
Inter-firm cooperation	<ul style="list-style-type: none"> Rating agencies Sustainability index WBCSD IBLF Caux Round Table CSR Europe Business for Social Responsibility Forum Empresa Business in the Community
Co-regulation	<ul style="list-style-type: none"> <i>Public-private partnership</i> <i>Business and Intergovernmental Organizations</i> <ul style="list-style-type: none"> UN Global Compact Global Business coalition on HIV/Aids European Alliance for CSR <i>Public-private partnership</i> <i>Business and Non-Governmental Organizations</i> <ul style="list-style-type: none"> Transfair Rugmark Forest Stewardship Council (FSC) Social Accountability International (SAI): SA8000 Standards (Auditing) <i>Global public policy networks</i> Global Reporting Initiative

(Albareda 2008)

Co-regulating with citizens v consumers?

‘Rather than seeing corporate self-regulation and voluntary approaches as a superior alternative to governmental and international regulation, the corporate accountability agenda suggests a re-articulation of voluntary and legal approaches. It focuses more attention on complaints procedures or complaints-based systems of regulation that facilitate the task of identifying, investigating, publicising, and seeking redress for specific instances of corporate malpractice, as a complementary approach to regulatory systems that involve broad but relatively superficial systems of reporting, monitoring, auditing, and certification’ (Utting 2005).

This suggests the dual identity of individuals as both citizens and consumers may be hard to disaggregate and attempts so to do may be sub-optimal from a regulatory perspective – the citizen may serve merely to obscure and defocus efforts to combat malpractice – but this is to conceive the roles of the regulator and individual in a traditional pre Big-Society way – emphasising the *policing* task rather than as outlined in the introduction to this report, as co-producers with suppliers of goods and services to the public. Citizens are members of a community, society, state, etc.; they are by definition in a relatively enduring relationship with their community by virtue of the rights and responsibilities that bind them in. Consumers on the other hand are transient, defined by their passing usage of a good or service. On balance there may therefore be a benefit to conceiving individuals in the main as citizens (as the title of this report suggests) rather than as consumers. An additional consideration is that trust is built over time, so models of participation based on transient consumers may never achieve high levels of trust.

Bringing the citizen into co-regulation

An empirical study by Prosser, Adlard et al (2010) of the co-regulation of energy network access in Germany suggests the devil lies in the detail. Where traditional co-regulation is designed (as is common) as a form of bargaining between parties it leads inevitably to gaming for position and advantage. Drawing on the evidence presented in the previous two chapters it may be better to focus on ways of co-regulating that emphasise and incorporate communication, deliberation and participation of regulator, regulatees, citizens and consumers, and government. One prescription may be for the regulator to take on the task of managing the process as equilibrator, moderating the process of integrating the various stakeholders into the regulatory sub-system and integrating the regulatory sub-system into

the overall system of production – as co-manager. To an extent this would be part of a larger mutual monitoring process whereby regulatees, citizens and regulator each monitor the actions of the others, as co-productive partners, for example by monitoring service levels (TripAdvisor 2011) or standards (FoodVision 2011) rather than more traditionally, as adversaries. Indeed, co-managing may well be a better way of thinking about the role of the regulator in this context than co-producing.

Finally, given the paucity of empirical evidence on co-regulation, and the total absence of the citizen in co-regulation (as against citizen participation in regulation as a whole via for example, consumer consultative committees) it may be instructive to examine the self-regulation literature for insights into how citizens may be brought into co-regulation (Ayres & Braithwaite 1992; Baldwin & Cave 1999; Fairman & Yapp 2005; Gunningham et al. 1998). How can this be translated into citizen co-regulation? Well, perhaps rather than setting up citizens to either fail to get to grips with the issues encountered in regulation, or be captured by ‘experts’ (the lay trustee problem encountered in employee representation in pension fund management), the answer is to *co-opt citizens for their own expertise – for what they are: citizens* – recognising that others may have more expert knowledge.

The citizen and co-regulation: Summary and recommendations

- 1) Co-regulation at its most basic entails sharing regulatory responsibilities between the state and regulatees.
- 2) It combines aspects of both statutory regulation (regulators are authorised by legislation) and self-regulation (regulatees determine the detail of how to comply with the principles laid down in the legislation or by the regulator.) However, unlike voluntary self-regulation by, for example, trade bodies, co-regulation operates within a legislative framework which empowers the regulator to take action in cases of non-compliance,
- 3) Co-regulation may enhance regime legitimacy – by demonstrating citizens are incorporated into the decision-making process, and can lower compliance costs – by demonstrating regulatees are also involved.
- 4) Co-regulation relies on high levels of trust being generated and maintained between regulator, regulatees and citizens. There is a risk of reputational loss for the regulator as equilibrator, co-manager or co-producer of the process, if trust is absent or low, for example if regulatory capture is alleged.
- 5) Citizens should not however be treated as experts. Their role in such a participative process is as citizens, to express their aspirations, values and concerns.
- 6) Co-regulation may focus on communication, deliberation and participation between regulator, regulatees, citizens and consumers, and government, with the regulator managing the regulatory process as an ‘equilibrator’. However, this activity may sit alongside a wider mutual monitoring process whereby regulatees, citizens and regulator each monitor the actions of the others, as co-productive partners, for example, by monitoring service levels (TripAdvisor 2011) or standards (FoodVision 2011)

7. Further research

To operationalize these various recommendations outlined in this report it may be useful to investigate further (i) delineating participating publics – and their values (following Fung, above), (ii) the motivations of citizens to engage in participatory processes, (iii) how to build and maintain high trust relationships in the co-production of regulation, and (iv) citizens' perceptions of local regulation and the perceptions of local regulators in respect of citizens.

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Appendix 1: Methods of public participation

recommendations are then circulated to key decision makers and the media.	Cost: Expensive because of large facilities required.
Deliberative Mapping citizen and expert participants are divided into groups to consider the issue both separately from one another and at a joint workshop. Both groups can learn from each other without the experts dominating. The emphasis of the process is on understanding the different perspectives each offer to a policy process. The groups decide which criteria they will use to score the options against.	Advantages / disadvantages: Good for understanding public preferences but not for reaching a consensus; experts contribute but do not dominate. Cost: Requires expert facilitation that contribute to high costs.
Deliberative Polling - A baseline poll is taken, after which participants meet for a few days to discuss the issues. Information is sent to participants and made publicly available. After a process of deliberation, the sample is asked the original questions again. Any changes in opinion are thought to represent the conclusions the public would reach if people had the opportunity to become more informed about the issues.	Advantages: combines representative methods with deliberative techniques; increases public awareness of issues; demonstrates the difference between peoples views before and after being informed. Disadvantages: It doesn't provide qualitative information and requires the use of TV for wider public awareness Cost: tends to be an expensive process.
Democs (Deliberative Meetings of Citizens') – a card game enabling people to absorb information and to generate discussion. During each round of the game people reflect on their cards and choose one or two that they feel are most important and explaining their choice. Once the group has voted on a range of responses or policy positions they attempt to draw a consensus.	Advantages: encourages people to form an opinion on a complex topic; encourages people to speak and get involved; enjoyable. Disadvantages: it won't deliver lengthy deliberation; can create conflict; it doesn't deliver follow-up to people who have taken part and want more. Costs: tends to be low cost.
Electronic processes – ranging from websites to online forums.	Advantages: allows participation from a broad/dispersed group of people who can participate at their own convenience; anonymous; large numbers can take part. Disadvantages: excludes those without online access; written consultation can be a barrier; unmoderated. Costs: Although the cost of venue hire and recruitment is mitigated, the costs of setting up and

	maintaining online participation are often underestimated and should be considered in advance.
Future Search Conference a large group of stakeholders are selected because they have power or information on the topic at hand or are affected by the outcomes. The preferred approach is to involve 64 people, who form eight tables of eight stakeholder groups. Participants are involved in a highly structured process, which ideally lasts two and a half days.	Advantages: those with a stake in the issue are involved; can be used to make decisions but has to be on an issue that participants feel strongly about. Disadvantages: Requires a participants to contribute a considerable period of time; requires considerable follow up and support. Cost: relatively high.
Participatory Appraisal - a family of approaches that enable local people to identify priorities and make decisions about the future, with the organising agency facilitating, listening and learning.	Advantages: has the potential to be extremely empowering and reliable as proposals are typically acted upon immediately to effect change prior to the next participatory appraisal session. Disadvantages: proper training required for those involved. Costs: can be very expensive.
Participatory Strategic Planning - This is a four-stage process. 1. group comes up with a vision for the future of the organisation or community. 2. They work out the contradictions or obstacles that are preventing them reaching their vision. 3. they agree a strategic direction that will help them overcome these barriers and reach the vision. 4. The final stage is about implementation planning. Each stage uses a consensus workshop process and a combination of working individually, in small groups and with the whole group.	Advantages: A quick way of enabling a diverse group to reach agreement; an inspiring process; Good for building ownership and commitment within a group and can deliver a clear direction, but perhaps not the finer details. Disadvantages: trained and experienced facilitators are required; people need to commit to the process before-hand; requires hard work and commitment on the day; all major stakeholders need to be in the room. Costs: dependent on the cost of trained facilitators.
Planning for Real this uses 3D models of a local area to enable participants to suggest the ways they'd like to see their community develop.	Advantages / disadvantages: Clearly reflects local priorities but risks being dominated by stronger individuals and won't deliver input to regional or national level decision making. Costs: dependent on the size of the group, but does not have to be expensive.
Open Space Technology or events are organised around central theme. Participants are invited to identify	Advantages / disadvantages: This is dynamic and harnesses creativity. It can be used to make decisions but remains an extremely flexible process

issues for which they are willing to take responsibility for running a session. Once discussion topics are exhausted the participants sign up for the ones they wish to take part in. This creates a very open environment for discussion and fosters mutual interest.	so cannot be used to direct people to a specific outcome. Cost: relatively cheap method allowing an unlimited number of participants to form their own discussions around a central them
User Panels: regular meetings between service users to talk about the quality of a service or related issues. By identifying the concerns and priorities of service users they can generate ideas for improvement or help to identify problems early on.	Advantages: It's a good way to work with people who aren't usually heard and is an interesting sounding board for new approaches; Changes can be traced over time; panel members are generally well informed of the issues. Disadvantages: It risks being unrepresentative but it is a good way to establish dialogue between service providers and users. Cost: does not have to be expensive, but is dependent on in-house skills.
Youth Empowerment Initiatives: whilst there is no one method that is used, the focus of participatory approaches to working with young people tends to be on empowerment.	Advantages: allows young people to participate and offers them the support and training to get involved; it can build people's feeling of self worth. Disadvantages: high turnover; some risk being tokenistic or patronising towards young people but it can empower individuals and provide information on young people's values and priorities. Cost: varying dependent on which method used.

Source: Involve (2005) *People and Participation: How to put citizens at the heart of decision-making*, London: Involve

Appendix 2: Care Quality Commission Example

Involvement and regulation

The Care Quality Commission (CQC) has statutory duties to the public and service users. The Commission uses a variety of methods to achieve those objectives. CQC forms of involvement are mapped below to the Fung categories outlined in chapter 4. The CQC does develop the idea of mini-publics with variable access to decision-making.

Involvement and CQC – showing influence level, Fung category, function and selection method

	Influence	Fung categories	Location	Function	Selected by:
CQC Board	Board level	Lay stakeholder Deliberate and negotiate Co-governance	Organisation	One board member	CQC
Equality Voices	Advisory/ critical friend	Lay and professional stakeholder Develop preferences Advise/consult	Organisation	Rights and equality agenda of the CQC. Carers and users plus representatives	CQC?
Mental Health Board	Advisory	Lay and professional stakeholders Develop preferences Advise/consult	Organisation	Advises on priority areas for mental health. Chaired by member of board above.	Open elections
Acting together	Advisory	Co-regulation Lay stakeholder Deliberate and negotiate Co-governance (at MHC visit)	Organisation	Joint visits by service user and inspector	Service User Reference Panel (source panel)
Links Advisory Group	Advisory	Lay and professional stakeholder Aggregate and bargain Advise/consult	Community	Representative from links networks – to be renamed HealthWatch	Put forward by national LINK network
Speak Out Network	Advisory	Lay and professional stakeholder Develop preferences Advise/consult	Community	A network of over 80 small groups who represent the difficult to reach.	Run by English University
People with learning Disabilities Advisory Panel	Advisory	Lay and professional stakeholder Develop preferences Advise/consult Maybe co-regulation in this group	Organisation/ community	Group made up PLD, carers and organisations	Not known
Carers Advisory Panel	Advisory	Lay and professional stakeholder Develop preferences Advise/consult	Organisation/ community	Group made up of carers and organisations that represent family carers.	Not known

