Abstract:

Policy legitimacy is a broad concept. What makes policy legitimate? Policy that is effective and efficient? Or policy that was developed in a democratic way, according to certain rules and norms? Or should we take a more subjective perspective, implying that policy legitimacy hinges on the subjective evaluation by different individuals or organizations? In this paper we will argue that an increasing number and diversity of mechanisms of consultation and participation are being introduced in the policy making system so as to increase overall policy legitimacy. These different mechanisms often aim to cover different elements of policy legitimacy, such as performance, democracy, and legality. As there are different elements as well as perspectives constituting policy legitimacy, a range of mechanisms are introduced so as to cover the broad policy legitimacy spectrum. However, some questions can be raised as new mechanisms are being introduced in the policy making system, with effects such as an increasingly complex and not very transparent policy making process, competition between these mechanisms, competition between legitimacy perspectives, etc. This theoretical perspective on consultation and participation in the light of policy legitimacy, will be linked with results of some recent Flemish research on interactive policy processes, advisory bodies, etc.

Key words: public consultation, public participation, policy legitimacy
1. Problem setting

Policy legitimacy is a broad concept. What makes policy legitimate? Policy that is effective and efficient? Or policy that was developed in a democratic way, according to certain rules and norms? Or should we leave the normative perspective aside and take a more subjective perspective, implying that policy legitimacy hinges on the subjective evaluation by different individuals or organizations? In this paper we will look into the different perspectives on policy legitimacy and argue that in today’s world there is an increasing need on behalf of policy makers to pay attention to policy legitimacy.

Next, we will argue that an increasing number and diversity of mechanisms of consultation and participation are being introduced in the policy making system so as to increase overall policy legitimacy. Merely organising consultation in order for the minimum legal requirements to be met does not seem to be sufficient anymore to develop legitimate policy, as the case of the Lange Wapper bridge in Antwerp demonstrates (Joris, Van Damme, & Brans 2010). Different mechanisms are introduced in the policy making process so as to cover different elements of policy legitimacy, such as performance, democracy, and legality. As there are different elements as well as perspectives constituting policy legitimacy, a wide range of mechanisms are introduced so as to cover the broad policy legitimacy spectrum.

However, some questions can be raised as new mechanisms are being introduced, with effects such as an increasingly complex and not very transparent policy making process, competition between these different mechanisms, but also competition between the different legitimacy perspectives, etc.

Finally, we will link this theoretical perspective on consultation and participation in the light of policy legitimacy, with results of some recent research on interactive policy processes, consultation and participation in policy making, etc. before coming to some tentative conclusions.

2. Policy (legitimacy) under duress

The increasing complexity of the policy environment has been critical for the policy making process. On the one hand, so-called ‘wicked problems’ combining scientific uncertainty with societal dispute, challenge traditional ways of policy making. Governments are increasingly dependent upon external information, knowledge, expertise, but also upon external support and commitment in order to successfully deliver policies (Barker & Peters, 1993). Governments feel the need to interact with more parties, and to do so more intensively, as many societal stakeholders often have the power to make or break policy. On the other hand, there is a shift in political attitudes and
strategies of citizens and stakeholder groups. Today, citizens mobilize differently, more ad hoc and temporarily, and at least some groups guard their stakes very actively. Scholars speak of a turn towards more informal and unconventional ways of political interaction (Dekker & Hooghe 2003). Behind this change in political strategy and behaviour of societal stakeholders, there is a change in their political attitude as more citizens are prepared to resort to strategies of boycott and protest (Van den Brink 2003). Actions, which many citizens a few decades ago would have labelled as illegitimate, now appear to be acceptable to many. One of the implications of these developments, is that the traditional organisations of civil society (at least in a more corporatist democratic system) do not enjoy anymore their status as privileged channel and access point to government.

In sum, the policy arena is becoming ever more crowded with old and new actors, from well established lobby groups over new single-issue groups to ad hoc citizen groups, voicing their opinion and defending their stakes requested and unrequested. These groups not only have different ways of interacting with each other and government, but also often have widely diverging values, stakes and perspectives. In such an environment, it has been observed that policy making becomes increasingly difficult (Agranoff & McGuire 1999; Kjaer 2004)¹ and policy can and is being criticised by diverse parties with different stakes and perspectives. As being democratically elected in itself does not anymore constitute a sufficient basis for policy makers to make legitimate policy choices, “winning the hearts and minds of the people” on policy itself, becomes almost a daily quest for policy makers.

But what does policy legitimacy entail? What makes policy legitimate? To say the least, it is a complex and multilayered concept (Beetham & Lord 1998). Generally speaking, legitimacy ensures that citizens are willing to accept policy. According to Rosenthal et al. (1996) policy can be defined as legitimate when three principles are respected. In the first place, legitimacy depends on the principle of legality. Policy has to abide by certain norms and rules. For example, policy choices should be established by those officially mandated to do so. Secondly, policy needs to be developed in a democratic way. Stakeholders have to have had the possibility to influence policy and policy makers need to be accountable (and give an account) of their decisions. And thirdly, policy has to be effective and efficient. This third principle includes elements such as acceptability and implementability.

Is policy that is effective and efficient, and was developed in a democratic way, according to certain rules and norms, legitimate? Maybe from a normative perspective this question can be answered in a confirmative manner. However, some authors stress that these more objective perspectives contrast with the subjective evaluation of policy. Saward (1996) states that legitimacy

¹ We will not go into detail here, but New Public Management trends, with its tendency to break up governmental units has also compounded this evolution.
is the subjective evaluation by different individuals or organizations. In this way, the three principles of Rosenthal will be ranked as well as evaluated differently according to different stakeholders. This insight is in line with literature on policy support (Boedeltje 2009; de Graaf 2007). The results of policy processes will be perceived and weighed differently by the different parties involved. Typically, policy makers often have the perception that there has been quite a lot of policy impact of certain consultations, whereas societal stakeholders do not have that perception. If societal stakeholders greatly value the actual impact on policy and they have the impression that this impact was limited, they will be less satisfied and will believe the policy to be less legitimate.

In the following figure we indicate that, next to the normative perspective which posits the norms of legality, democracy and performance, there is also an evaluative perspective. As we will discuss in a later section, public consultation and participation are often organized so as to contribute to the different elements of and perspectives on policy legitimacy.

To briefly return to the case of the Lange Wapper bridge mentioned in the introduction, citizen groups were able to challenge this large scale infrastructural project in Antwerp from different legitimacy angles. According to these groups, the proposed project was not performant (e.g. a credible alternative for the proposed bridge was being developed by a citizen group), it was not democratic (e.g. the project was developed by a project group without a clear democratic mandate; e.g. not enough consultation and participation had been organized), and it was not legal (e.g. procedural mistakes were made in the organisation of the consultation).

![Policy Legitimacy Diagram](image)

*figure 1: the triple legitimacy perspective*
3. Trends of professionalization and interactiveness reconciled?

We can link the policy makers’ quest for policy legitimacy with some international trends that can be observed in policy making today. The first trend, towards professionalization of policy making, is a movement towards increasingly academic and scientific policy analysis and evaluation. Thus, this route increases the government’s capacity for problem solving through increasing the scientific knowledge base available for policy decisions. Policy, in such a view, needs to be “evidence based”.

The second trend, “interactiveness”, is mainly based upon the need of governments to garner support for their decisions (Brans & Vancoppenolle 2005). Policy decisions down this path involve direct consultation and interaction with target groups, bringing stakeholders and/or citizens directly into the policy making process. Stakeholders can have a role to play in one or more of the different stages of policy making: agenda setting, policy development, decision making, implementation, as well as policy monitoring and evaluation. Brining in stakeholders early in the policy making process would also benefit (from an instrumental point of view) policy implementation, as those responsible for policy delivery have crucial knowledge and information.

Clearly, the trends of professionalization and interactiveness fit with the quest for increased policy legitimacy, although both trends may aim for different elements of the legitimacy concept. An obvious first question that can then be raised is whether these trends can be reconciled? Can policy be both based on the best possible evidence, and be developed in an interactive way? Whereas obviously the balance between professionalization and interactiveness highly depends upon the policy issue at hand and the policy context, both appear to have a role to play. For example, in many policy making processes one of the first stages is based on scientific research, looking into the characteristics of policy problems and/or solutions, the results of which feed into a consultation stage where certain options are further analyzed and debated with a variety of stakeholders (Van Damme & Brans 2009). In other cases, stakeholders define the problem and decide which policy options to further explore in a subsequent scientific stage of the policy making process. The question is then, does the research frame the societal debate, or does the societal debate frame the research?

To complicate matters even further, next to professionalization and interactiveness, a third trend (or discourse?) can be discerned, a trend that focuses on political primacy, with the underlying fear of interest group ‘capture’ of a policy domain. This view posits that political decisions should be taken independently by the government, by those officially mandated, with any advice coming from independent experts and not from those with a possible vested interest in particular policy outcomes (Klijn & Skelcher 2007). In such a view, public consultation and participation should take place within clear frameworks that have been set by the mandated policy makers. Clearly, there is
direct tension between the public management perspective, in which policy is believed to be increasingly developed in complex policy networks and communities and the traditional public law perspective with a focus on hierarchy and a clear division of specific powers to the different governmental actors (Hendriks & Tops 2001).

4. Public consultation and participation as drivers of policy legitimacy

The international development towards more and more diverse mechanisms of public consultation and participation in the policy making process (Hendriks 2010; Papadopoulos & Warin 2007; Van Damme & Brans 2008) can be seen in the light of the trends towards professional and interactive policy making, and the quest for increased policy legitimacy. In consensus democracies such as Belgium and the Netherlands this means that traditional mechanisms such as permanent advisory bodies with representatives of large stakeholder groups are being joined with more “recent” mechanisms such as white and green papers, opinion polls, citizen panels, deliberative polling, etc. which are often borrowed from other democratic systems and cultures (Hendriks 2010). These newly introduced mechanisms aim to contribute to more innovative, more efficient, better supported, etc. policy. More actors are being involved, from both within and beyond the governmental system. Not only academic experts and big interests are being consulted, but also individual citizens, specific target groups, etc. These groups can be involved during the development of policy, when stakeholders give some kind of advice or opinion on policy, but they can also play a role in other stages of the policy making process.

As public consultation and participation are often very broadly defined concepts, they can be (and are) introduced and used in the policy making system for a broad variety of reasons. The fact that these concepts are so broad is actually one of the main drivers of their success. We will not try to define these concepts in depth, but limit ourselves to referring to the OECD definition (OECD 2001), which stresses the direction and intensity of interaction between public and government in the overall policy making process as a core element in the concept (from agenda setting over policy preparation, decision making, implementation, monitoring and evaluation). Now, in what way can public consultation and participation contribute to policy legitimacy? What possible benefits can public consultation and participation bring to policy?

When we return to the need to increase policy legitimacy, we can first say that, from a normative perspective, these mechanisms can increase the performance of policy (“output legitimacy”). As for the output legitimacy, these consultative and/or participatory processes need to contribute to policy decisions that are more efficient, more effective, etc. These consultative processes then need to generate clear “deliverables”. It has been argued that involving more diverse actors increases the possibility of developing more insight in different perspectives on the problem, finding
common ground (for example in order to develop a shared problem definition), gaining knowledge about relevant elements of policy implementation, developing more innovative and/or integrative solutions, etc. (Edelenbos 2000; Pröpper & Steenbeek 1999). When knowledgeable local or sectoral actors are involved, a better problem definition and better solutions can possibly be developed. But, importantly, these innovative ideas and insights need not only be developed during consultation and participation, they also have to stand their ground and have an actual impact on policy during the decision-making stage (Bekkers et al. 2004).

At the same time, final policy decisions after public consultation and/or participation are supposed to be more effective, as strongly concerned stakeholders are involved (Papadopoulos & Warin 2007). Thus, and here we already make a link with the evaluative perspective, if stakeholders are involved, have a chance to influence policy, and their contributions are to a certain extent taken into account, policy support will increase and the implementation of policy will be more effective. For example, actors will be better informed, gain more insight in the problem but also in the policy making process, and their opinion will be taken into account. In such circumstances, they will tend less to resort to protest activities which will also make for less delays and more swift policy implementation. Even better, consultation and participation can also contribute to more policy “output” as more parties become involved, new networks are developed, etc. and these societal resources can be actively mobilized for policy implementation. As the governments’ resources are limited, involving stakeholders in policy making offers the possibility of tapping into societal resources in order to develop more/better/.. policy effects, etc.

If we mainly look at public consultation and participation as a means of increasing policy performance or output, we focus on the managerial or the instrumental perspective. For example, when choosing who to involve, often those actors who have the expertise or power to contribute to output results, are being selected by government parties. However, public consultation or participation is also supposed to contribute to a democratic policy making process, as they strengthen what has been labelled input and process/throughput legitimacy (Papadopoulos & Warin 2007). Issues of input legitimacy (open access to the policy making process) and process legitimacy (a fair and transparent process) are for example stressed in quite a few normative definitions of interactive policy making (Van Damme & Brans 2008). In this case, the policy making process is the focus of attention, and consultation and participation need to contribute to a legitimate process. What can this mean, from a normative perspective? As for input legitimacy, consultation and participation should enable open access of citizens to the policy making process. Important norms are, for example, inclusion, diversity, transparency, etc. When we look at the process legitimacy, norms such as information equality, equality in interaction, accountability, etc. come to the fore. Not only should people have access to the policy making process, they also should be able to engage in meaningful interaction. Whereas the more instrumental perspective focuses on “what does consultation bring to policy?”, this perspective focuses on “what does consultation bring to democracy?”. 8
The consultative and participatory processes also need to heed the legality principle. In order for policy to be legitimate, the rules that have been legally established for consultation and participation in the policy making process need to be met. In some cases, legislation stipulates in detail the “who, how and what” of consultation and participation.

Again, next to a normative perspective we place an evaluative perspective. Consultative and participatory processes that objectively speaking heed certain rules and norms are not automatically perceived and evaluated in a positive manner by all parties concerned. From an evaluative perspective, such processes have to contribute to policy that is positively evaluated by stakeholders, that is perceived and valued as legitimate. This line of thinking goes that, if stakeholders are satisfied with process (input and throughput) and/or output, this will also be a good indicator of the level of policy support. In the next framework, we combine a normative and evaluative perspective.

<table>
<thead>
<tr>
<th>LEGITIMACY OF CONSULTATION/PARTICIPATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>From a normative perspective</strong></td>
</tr>
<tr>
<td>Input legitimacy</td>
</tr>
<tr>
<td>• Diversity</td>
</tr>
<tr>
<td>• Representativeness</td>
</tr>
<tr>
<td>• Inclusion</td>
</tr>
<tr>
<td>• Transparency</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>From an evaluative perspective</strong></td>
</tr>
<tr>
<td>• Satisfaction with input results (part of process)</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

*figure 2: public consultation and participation as drivers of policy legitimacy*
5. Consultation competition

As policy becomes increasingly contested, the quest for policy legitimacy becomes very important for policy makers. One of the ways in which they aim to increase this legitimacy is by introducing new mechanisms of consultation and participation in policy making. By setting up a diversity of mechanisms, they aim to cover the different aspects of policy legitimacy. In some cases legislation stipulates in detail who should be when consulted, and how. In other cases policy makers have more autonomy in deciding on the design of the policy making process and the consultation and/or participation of citizens, stakeholder groups and/or experts. They have to make difficult decisions that have an impact on (perceived) policy legitimacy. Should a representative group be consulted, or a group that is as diverse as possible? Should an extra effort be made to include specific target groups? Should the focus be on reaching as many stakeholders as possible, or is it better to go for a high quality, intensive dialogue with a limited number of people? Should time and resources be invested in informing those that are to be consulted, or should only knowledgeable actors be consulted? Should innovation be the first aim, or should more ‘realistic’ policy options be developed, so as to increase policy impact?

It appears that the more complex the issue at stake, the more (and more diverse) the mechanisms of consultation and participation that are brought in. Often, next to those mechanisms that are required by law (and often have a fixed slot rather late in the formal planning process), new mechanisms are introduced, that can be used more flexibly, in line with the issue and societal and political context. Especially “wicked issues”, combing societal dispute and a lack of scientific knowledge, seem to be accompanied by “wicked” policy making processes and a broad array of mechanisms of consultation and participation. Some mechanisms for example aim to increase input legitimacy, such as large scale opinion polls, focus groups, etc. trying to involve the broad public or to reach specific target groups. But also more traditional systems in a consensual democracy such as permanent advisory bodies with representatives of large stakeholder groups aim to increase input legitimacy (Brans, Van Damme, & Gaskell 2010). Other mechanisms focus more on process legitimacy, such as deliberative polling or citizen juries’, stressing the quality of interaction and dialogue. Still other mechanisms mainly look at increasing policy performance, by focusing on the output legitimacy of consultation and/or participation, such as processes of coproduction and cocreation that often want to involve stakeholders so as to improve policy implementation (Van Damme & Brans 2009). Many of these mechanisms actually aim not for a single but for different elements of the legitimacy spectrum. Typically, deliberative opinion polling aims to combine a certain measure of representativeness with intensive deliberation, interaction and debate. A representative sample of the general public is being polled on a specific policy issue before and after a day of professionally facilitated intensive interaction. Not only is the expectation that (social) learning will take place during the course of such an event, but ideally, innovative insights and ideas are being developed as well. In complex policy issues, different mechanisms are combined
(Nie 2002) often in a system of checks and balances, as some mechanisms appear to be better at covering certain aspects of the legitimacy spectrum. Mechanisms aimed at involvement of a large number of people (let’s say “notice and comment”), can often not achieve the same in depth interaction of a small group of people intensively working together on the same issue (let’s say, in a citizen jury or a steering group).

However, introducing these new mechanisms in the policy making process introduces new problems. First of all, the research results are mixed about what these “new” mechanisms contribute to the policy making process, or to democracy. For example, Goverde et al. (2005) found that citizens in participatory processes are less likely than policy makers to develop innovative or creative solutions. The same possibly goes for involving stakeholders in policy making, as they sometimes merely focus on guarding their own interests and tend to water down, to compromise, making policy less ambitious (Van Damme & Brans 2009). Moreover, developing innovative ideas is not sufficient from the instrumental perspective, they also need to be actually used in policy. Some research indicates that the actual impact on policy of ideas generated in consultative processes with citizens is limited, as these ideas are often outside the policy space that is available, as there is often no mechanism to prioritize policy options, as there are often no strong linkages between these processes and the formal policy making process, etc. (Arts & Tatenhove 2004; Edelenbos 2000; Hendriks 2006; Hendriks 2010). As for policy support, it has been found that policy arenas with more intensive interaction between government and stakeholders do tend to lead to more policy support by these stakeholders. However, the power resources that actors have, define which arenas they gain access to (de Graaf 2007). Clearly, not all stakeholders can enjoy access to the arenas with more intensive interaction. If we look at it from an evaluative perspective, it appears that for stakeholders, satisfaction with the process of consultation is often less important than satisfaction with the level of impact they have had on policy (Edelenbos 2000). However, norms and values differ among individuals, one person will pay specific attention to transparency, another to the quality of interaction, and a third will focus on impact and influence (Boedeltje 2009).

From a democracy perspective, another desired effect of public consultation and participation is increased citizen involvement. According to Ryfe (2005) there is quite some empirical research that confirms that, under certain circumstances, deliberation can lead to increased citizen involvement. However, other authors arrive at the opposite conclusion (Delli Carpini, Loax Cook, & Jacobs 2004). Analysis further shows that it is mostly ‘the usual suspects’ that are involved in processes of public consultation and participation: highly educated, middle-aged men (Lowndes, Pratchett, & Stoker 2001).

Not only are the research results mixed of what these new mechanisms actually ‘deliver’, one of the results of introducing these mechanisms is an increasingly complex and not very transparent policy making process. There is competition between these different mechanisms, for example between the traditional mechanisms and new ones. In some cases, these new mechanisms can score better
on some aspects of policy legitimacy, for example, reach more knowledgeable actors on a certain subject, or develop more innovative solutions. As these mechanisms of consultation and participation function as policy arenas, the scope of the policy discussions in one arena are often framed by discussions in previous arenas. The more mechanisms being set up, the more competition. In such a competitive environment, the different mechanisms will stress their specific contribution to policy legitimacy. Recent research shows for example that permanent advisory bodies are increasingly under pressure to pay attention to (and communicate) the way in which they contribute to policy legitimacy (Brans, Van Damme, & Gaskell 2010; Fobé et al. 2009). These bodies develop strategies such as membership enlargement, more intensive facilitation of meetings, and mechanisms of impact assessment of the advice produced, in order to increase input, process, and output legitimacy.

From this, we can see that there is not only competition between the different mechanisms, but also competition between the different legitimacy perspectives. And here we come back to the questions that we started with: what makes policy legitimate? How can consultation and participation contribute to policy legitimacy? How do we weigh the different perspectives and norms? Should we focus on the contribution of consultation and participation to policy or to democracy? Should we take a normative or an evaluative perspective? Should we follow the rules that have been stipulated concerning consultation and participation, or design the consultative processes depending on the issue and the policy situation? Policy makers have to make some tough choices here. As citizens will have different expectations and values that they want to be met in policy making (one will stress an open and transparent process, another wants to see his or her comments taken up in policy, a third one would stress the quality of policy, a fourth wants the rules to be followed meticulously..), it is almost impossible to do good for everybody. In such an environment, it appears beneficial that policy makers at least have some autonomy in designing a policy making process with the necessary consultation and participation, so as to successfully balance the different elements of policy legitimacy.
6. Conclusion

In this paper we have argued that an increasing number and diversity of mechanisms of consultation and participation are being introduced in the policy making system so as to increase overall policy legitimacy. These different mechanisms often aim to cover different elements of policy legitimacy, such as performance, democracy, and legality. As there are different elements as well as perspectives constituting policy legitimacy, a range of mechanisms are introduced so as to cover the broad policy legitimacy spectrum.

However, some questions can be raised as new mechanisms are being introduced in the policy making system. Not only are the research results mixed about what these new mechanisms actually contribute to policy and democracy, their introduction makes for an increasingly complex and not very transparent policy making process, competition between these mechanisms, competition between legitimacy perspectives, etc. In the end, policy makers still have to make tough decisions in order to make policy (sufficiently) legitimate. It appears that they should at least have some autonomy in designing a policy making process with the necessary consultation and participation, in order to properly balance the different elements of policy legitimacy, depending on the issue at hand and the policy situation.

7. References

References

Ref Type: Magazine Article


Ref Type: Magazine Article


Ref Type: Magazine Article


Ref Type: Magazine Article

