
Serving a purpose: should the ethical conception of society bound the ethical focus of policy decision-making?

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Introduction

From the point of view of a theorist in ethics, the purpose of public policy is to develop and implement policies that appropriately address the public, as conceived by one's preferred ethical theory. But this point of view does not take account of the *roles* through which public policies are enacted in practice.

My paper aims to substantiate the claim that additional ethical purposes might arise for agents through the practice of public policy decision-making.

Outline

Discussion question: Is addressing the public, as conceived by one's preferred ethical theory, the extent of the ethical purpose of public policy making?

I outline four reasons to think this is not so.

Reason 1 has to do with the processes involved.

Reason 2 concerns uncertainty over how to define the public.

Reason 3 discusses responsibilities towards the agents in roles.

Reason 4 is about accounting for public policy decisions.

Ethical theories

Utilitarianism: we should value people and other creatures in terms of the benefits or harms our actions create for them; the *consequences* of our actions in terms of happiness or pain is what ethics is about.

Rights theory: we should value people as *equally* deserving of what is necessary to live an individual human life in society; respecting or protecting the equal rights that let us live such lives in society is what ethics is about.

Virtue ethics: we should value our ability to develop particular strengths of character – virtues - through our actions in life and our reflections on those actions; developing a virtuous character is what ethics is about.

Common Thread

A common thread that runs through all ethical theories: the concept that ethics is, at least to some extent, about how we should *value and treat people* (and other creatures) in our decisions and actions.

From the point of view of a theorist in ethics, specifying the ethical purpose of public policy making will involve a conjunction of two things: the conception of ethics – of how we should value and treat people - that is given by a particular theory, and the purpose(s) of public policy.

Rights theory and utilitarianism - impartial

From a rights theorist standpoint, the State ought to serve the basic and equal individual rights of all of its citizens. Consequently, it would appear that the overall ethical purpose of policy making is the development and implementation of decisions that provide this service to its citizens. This position conceives of the public for which these agents make decisions as an group of 'rights-holding' individuals.

A utilitarian viewpoint requires policy making that impartially considers the consequences for all those affected before selecting and implementing the policy option likely to produce the greatest good for the greatest many with the least harm. This position conceives of the public for which these agents make decisions as an aggregate of individuals with an equal interest in being happy and not suffering.

Both the rights theorist and the utilitarian positions require an *impartial* consideration on the part of policy makers of, respectively, the rights or interests of the people affected by decisions.

Virtue ethics – not necessarily impartial

A virtue ethics viewpoint would require consideration of what virtues can be expressed through policy making, and how policies can facilitate the conditions that help people develop and practice strengths of character, so they may live flourishing lives. The ethical purpose of policy making is the practice of an admirable governance that facilitates conditions helpful for the public to flourish.

Virtue ethics does not *necessarily* require strict impartiality in decision-making (although it may require this in certain situations or for certain people, depending on the demands of relevant virtues).

So far, so generic ...

But public policy decisions are not made by a generic policy maker or set of generic policy makers. The development and implementation of policy decisions is performed by agents in particular policy roles.

A discussion of the ethical purpose(s) of public policy decision making needs to consider these public policy roles and what these mean for the decisions of the agents who occupy the roles.

Categories of public policy roles

1) Politicians

2) Policy analysts and advisers, and their managers, who work in Public Service departments (main body of public servants).

3) Decision-makers with expertise in a particular field whose decisions are or can be public policy decisions.

My discussion will focus on the first two categories, as the third is complicated by professional standards of the fields of expertise of the decision-makers (e.g. judges, health professionals, accountants)

Purpose of a politician

Broadly speaking, the role of a politician is to discern or frame issues that are of concern to constituents, locally or nationally, and either commit to working on these issues, or propose policy solutions to these issues, in a way that will get them elected.

Once elected, their purpose is to carry out the above commitments and proposals where possible (and any new commitments or proposals), and / or to stay elected.

Purpose of a public servant

"The State Services is collectively responsible for putting the law into practice, implementing policies of the Government, and administering a wide range of public functions and services. State servants are guardians of what ultimately belongs to the public; New Zealanders expect State servants to serve and safeguard their interests."

(State Services Commission, Dec 2007, p7).

Discussion question

How might the practice of these roles ethically require a focus on something other than addressing the public, as conceived by one's preferred ethical theory, in the particular policies being developed for the public?

Reason 1 Process

The nature of the decision making process may require an ethical focus on addressing the process itself

The decision making process involves multiple agents with differing levels of authority working within time constraints that may not be of their choosing. This can impose pressures on the agents.

Process overview

- identifying the task to be done, specifying the project team
- scoping the problem, defining the issues and the stakeholders
- gathering relevant evidence and consulting stakeholders
- producing background paper/s and analysing the information
- drafting a policy document
- working on policy instruments (such as drafting required legislation changes and identifying departmental capability and accountability issues)
- distribution of the draft policy document and analysis of feedback from stakeholders
- Ministerial cross-party discussions
- revision of draft document as per Ministerial direction
- briefing of the Minister
- Cabinet decision
- policy implementation
- evaluation (E-government S.E.E., n.d. Ch. 6).

Mini-scenario

You and your policy adviser colleagues are preparing a list of policy options regarding a particular issue on the agenda for your Minister, outlining the pros and cons for each option. To you and your colleagues, based on the information that is there, option A seems fairly obviously the best choice. Option B is a somewhat poor second best that does rather less well at serving the public interest.

You know your Minister does not like option A, for political reasons (maybe has spoken out publically against option A in the past, or perhaps it is ideologically unpalatable).

Your Minister is not keen on advice that suggests option A is obviously the best choice. Your Minister favours option B (for political reasons).

Mini-scenario choice

Do you:

- i) provide the advice based on your research that suggests option A is clearly better

- ii) expand on the good points of option B to try to make B look a more plausible option than you think it is, thereby facilitating your Minister's choice of option B?

Reason 2. Uncertainty over how to define the public.

Do the entities in these categories count in the public that is to be addressed by our public policy?

- *future generations of our public*
- *foreign publics*
- *dead persons*
- *non-human animals*

Uncertainty - Key question:

Should we take members of these categories (future generations of our public; foreign publics; dead persons; non-human animals) into account *for their own sake*, rather than in terms of how they affect our general public or the national interest?

And if so, *how* should we take them into account - especially where their interests must be weighed against the interests of (some of) the general public?

Reason 3. Responsibilities to agents in roles

Politicians may be put in a position of having to choose an integrity-threatening action in the course of getting or retaining political power. It is probably inevitable that politicians will face decisions where any course of action involves some trade off of their principles, power or public promises. How often can a person do this before it changes who they are as a person?

Integrity-threatening courses of action for politicians:

- repeatedly compromising one's political ideals
- breaking a firm promise
- betraying the trust of a colleague
- compromising on a deeply-held personal principle (for example, former Prime Minister Rt Hon Helen Clark getting married, when the institution of marriage was against her personal principles, in order to increase her political viability)

Demand for political neutrality

Public servants are constrained by a demand for political neutrality

“Our political interests and activities (and possibly even the political interests of a close family member) have the potential to conflict with our obligations as State servants.”

(State Service Commission, Dec 2007, Understanding the code of conduct – Guidance for State servants, p.11)

Even for persons who are not inclined toward political activism, if a conscientious attempt to maintain a public face of political neutrality means that a person must constantly be on the lookout to censor what they say to all but their nearest and dearest, this could place demands on a person's sense of self.

Reason 4. Accounting for public policy decisions

For politicians, is more transparency always desirable?

“... clarity of purpose, far from being a benefit, may be harmful in terms of implementing policies. If there is a certain degree of vagueness or fuzziness, a number of different goals may be pursued by the same policy means, whereas with clarity, it can be more difficult for the varying parties to sign up to a policy that is being implemented for a single goal that is not shared by all.”

(Rogers, 2007, p. 36)

Mini-scenario update

Updating the mini-scenario for a public servant outlined earlier:

You thought option A was clearly superior but that your Minister did not want to hear this advice. You decide to provide free and frank advice.

As expected, your Minister selects option B for political reasons.

Option B is duly drawn up and, as there are financial implications, Treasury is consulted as a matter of course. Treasury comes back to you asking why your Department wants to do option B.

Mini-scenario update choice

Do you:

- i) simply say that the Minister was fully informed of the alternatives and made an executive decision to go with option B

- ii) communicate that, as far as you're aware, the Minister was swayed by political considerations in selecting B, and that now you're focussing on getting the best outcomes you can from option B for all concerned

- iii) expand on the reasons in favour of B to try to make B look a much more plausible option than you think it is?

Official Information Act – no information

In New Zealand, the Official Information Act 1982 requires much of the information about the development and implementation of policy to be made publically available, so public accountability may be held to be a purpose of a public policy role.

The preceding scenario involves an accounting to Treasury rather than to the public, and if this account were given through meetings involving unrecorded verbal discussions only, there would be nothing of it for the public to access.

Official Information Act – misleading information

Of greater concern is the initial scenario where policy analysts or advisers feel under ministerial pressure to circumvent such accounting by trying to put a spin on the policy advice given to the Minister so that option B comes out looking much more plausible as a choice than the adviser thinks it is.

This would mean that the documents later available for the public to view tell a misleading story of the advisers' conclusions from their research and consultation. So the public would not have a chance to access accurate information about the different policy options in the decision-making process.

Conclusion: additional ethical purposes

1. The nature of the decision-making means there should be some ethical focus on **the decision-making process itself**.
 2. Uncertainty over how the interests of some beings should count (e.g., future generations of our public, foreign publics, dead people, non-human animals) would mean policy making involves *defining the public* rather than simply addressing it.
 3. If policy roles might play a part in shaping the role-filler as a person, then policy agents, especially those with authority over others, should reflect on **the role's (potential) effects on agents**.
 4. Be it to the public or to other agents in the policy process, **accounting for public policy** is also an ethical purpose of policy making roles.
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