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Chapter 2: Identifying Policy Problems

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Policy analyses begin with a systematic overview of the policy problem they address. This includes a comprehensive discussion of the nature and context of the problem, and the institutional and behavioral factors responsible for its emergence (Bardach and Patashnik 2020, 2-7; Weimer and Vining 2017, 24, Mintrom 2012, 20-21). As we saw in the last chapter, problem statements must also explain why the status quo is bad or undesirable, why it is something that governments, rather than private actors, should address, and establish that the relevant government institutions have the legitimacy to intervene.

In this chapter, I provide an overview of the principal types of policy problems that it is morally appropriate for governments to address. Each type denotes a class of states of affairs that (1) are bad, undesirable, or unjust, (2) the government is particularly well-suited to address, and (3) arise from spheres of action over which the relevant government institutions have the right to intervene.

I begin with a discussion of collective action problems, that is, states of affairs in which action by rational and self-interested private actors is collectively self-defeating (Olson 1971, 5-52). Collective action problems clearly satisfy (1) - (3) and are often the focus of policy analysis texts, particularly when they take the form of market failures. I then argue for two additional types of policy problems. First, since the goal of government action is the construction of a *just* legal order, not merely an *efficient* one, states of affairs which are unjust constitute an additional type of policy problem. Relatedly, second, whereas analyses of collective action problems typically presuppose the existence of effective government institutions which can address them, such institutions may be deficient and/or unjust. A third type of policy problem is therefore deficient state institutions.

While this list is not exhaustive, it covers many of the policy problems contemporary governments face. Each type, in turn, corresponds to a distinct rationale for policy making since each identifies a type of problem that governments are best-suited to address.

## 1 Collective Action Problems

Governments are unique institutions, claiming a right "to tell you what to do, and to force you to do as you are told" (Ripstein 2004, 2). Other institutions, by contrast, including for-profit corporations, non-governmental organizations, religious institutions, and private associations largely operate through voluntary agreements. Governments are thus well-placed to address a distinct set of problems, namely, those which cannot be effectively and/or efficiently solved through voluntary cooperation among individual and corporate agents, but instead require the exercise of coercive power.

Collective action problems are a principal example of this type of problem for they arise when it is individually rational for people to act in ways that are collectively self-defeating. More precisely, collective action problems are states of affairs where rational and self-interested individual action leads everyone to be worse off than they would be if everyone acted cooperatively (Olson 1971, 5-52). Table 1 illustrates the basic structure of such problems with a two-person interaction.

Table 1: Collective Action Problem

| **Player 2 (P2)**<br>**Player 1 (P1)** | **X** | **Not X** |
|---|---|---|
| **X** | 3,3 | 1,4 |

| | | |
|---|---|---|
| **Not X** | 4,1 | 2,2 |

The best outcome for P1 occurs when they don't perform X but P2 does (4,1). But because the best outcome for P2 occurs when they don't perform X but P1 does (1,4), both P1 and P2 have an incentive to not perform X, resulting in a worse outcome for both than would be the case if they both performed X (2,2). P1 and P2 thus have an incentive to *free-ride*, that is, to not act cooperatively by performing X while benefitting from other people's cooperative activity. The consequence is that P1 and P2 do not choose the course of action that would make them better off.

A real-world example of a collective action problem is overfishing. Fish are typically a common pool resource, meaning that they are rivalrous and non-excludable. They are rivalrous since a fish caught by one fisher cannot be caught by another. They are non-excludable since it is not feasible for one fisher to prevent others from fishing. Where fish are a common pool resource, a collective action problem can emerge. Each fisher has an incentive to catch as many fish as possible, but if too many fishers act on this incentive, the fish stock will be depleted, making everyone worse off. All fishers would be better off if everyone limited their catch, but no one has a reason to unilaterally do so. The most likely outcome is thus overfishing, which makes everyone worse off in the long term. Table 2 illustrates this dynamic with a two-fisher interaction.

Table 2: Overfishing

| **Fisher 2** / **Fisher 1** | **Limit Catch** | **Maximize Catch** |
|---|---|---|
| **Limit Catch** | 3,3 | 1,4 |
| **Maximize Catch** | 4,1 | 2,2 |

Collective action problems are clearly bad since they leave everyone worse off than they could otherwise be. Sometimes they may be solvable through processes of self-governance, that is, by private actors agreeing on a set of rules and establishing non-state systems to monitor and enforce compliance (Ostrom 1991). It should not be presumed therefore, that governments are always best placed to resolve particular collective action problems. However, governments' use of coercive power may be useful when voluntary cooperation fails. First, governments can implement and enforce regulations which *force* everyone to cooperate - i.e. comply with the rule of action that is best for all. In the case of overfishing, this would involve government specification and enforcement of catch quotas - i.e. specifications of the amount of certain species that may be caught during a particular time period. Second, they can introduce a system of private property rights, effectively taking the resource out of the commons by enabling private parties to exclude others from the benefits of their resources.

Such uses of coercive power are also likely to be legitimate. Governments' exercise of coercive power is legitimate if they have a 'right to rule' over the sphere of action in question. Political philosophers disagree on the conditions governments must satisfy to be legitimate, as well as whether any government could be legitimate (Peter 2017). But some argue that governments which exercise their coercive power in accordance with a constitution that enshrines rights to democratic participation and protects people's basic rights and liberties have a right to rule (Buchanan 2002, 703; Rawls 2005, 217; Christiano 2008, 231-259). A key implication of such accounts is that contemporary liberal democracies which exercise their coercive power in accordance with their constitutions - i.e. in ways consistent with people's basic rights and liberties - do so legitimately. I will presuppose this account of government legitimacy going forward.

Many common activities of modern states involve addressing collective action problems concerning the use of common pool resources. For example, water is typically scarce and so governments often regulate access by implementing pricing or trading schemes. Similarly, governments often manage forests through public ownership and the granting of timber harvesting rights to logging companies.

A specific type of collective action problem which governments may be best-placed to address is market failures. Where markets are perfectly competitive, featuring consumers and producers who are fully informed and lacking market power, among other idealizing characteristics, they lead to Pareto efficient patterns of production and consumption, that is, patterns in which it is not possible to make one person better off without making another person worse off (Weimer and Vining 2017, 60). For markets that satisfy this ideal, the sum total of benefits to consumers and producers - social surplus - is maximized. While no markets are perfectly competitive in reality, they generally promote the satisfaction of people's preferences while also respecting their freedom, enabling them to engage in voluntary transactions that make both parties better off (as judged by themselves).

The construction of markets is challenging and requires working legal institutions and social trust (Satz 2010, 26-33). Markets may fail, therefore, simply in the sense of not existing, for example, because of inadequate development and enforcement of property rights or contract and employment laws. However, even once markets are set up and functioning reasonably well under the rule of law, they may fail in a second sense by not realizing efficient patterns of production and consumption of goods and services. In these cases, markets fail to maximize social surplus, meaning that there is some possible allocation of goods and services in which the total benefits to consumers and producers is greater. Where social surplus is not maximized, there is a *potential* Pareto improvement to be had, for the surplus gain can be used to compensate anyone made worse off by the change, with the remainder used to make someone better off.

Market failures may sometimes be resolvable through voluntary cooperation. Where they are not, governments may be uniquely positioned to address them. Governments thus not only have reasons to *establish* and *maintain* markets, a process itself requiring the formation and successful functioning of significant legal institutions including private property rights, contract law, and the court system, among others; but also reasons to create agencies and implement regulations to *fix* markets when they fail to realize efficient patterns of production and consumption. Market failures are thus a clear example of a policy problem for they involve deficits in people's wellbeing, concern deficiencies in existing legal rules, and can often be solved through the legitimate use of coercive power.

So, when do markets fail? First, while markets are reasonably successful at providing private goods, they fail to supply public goods efficiently. Private goods are goods which are rivalrous in consumption and excludable in use (Weimer and Vining 2017, 74). A good is rivalrous in consumption if one person's consumption diminishes or precludes another person's consumption; it is nonrivalrous in consumption if a particular supply can be consumed by more than one person. A good is excludable in use if one or more people can control its use; it is non excludable if they cannot do so. Public goods, as we will understand them here, are non-private goods (Weimer and Vining 2017, 74). They are therefore non rivalrous in consumption and/or non excludable in use. A hat is a private good since if I am wearing it, you may not do so, and I can control whether you do so or not. A public park is a public good since, with the exception of extreme crowding, multiple people can simultaneously enjoy it and no one may exclude others from doing so.

Where goods are non rivalrous in consumption and/or non excludable in use to some degree, markets will fail to provide them efficiently (Weimer and Vining 2017, 74-93). This is clearest in the case of *pure* public goods which are both non-rivalrous in consumption and non-excludable in use. Markets will not supply such goods because firms have no way to exclude people who do not pay for them. Individual consumers in turn have no reason to pay for the provision of such goods, as opposed to simply free-riding off the purchases of others. I have no incentive to pay for the construction of a lighthouse to guide my ship home safely in the dark since I can use the lighthouse purchased by somebody else.

This failure of markets to provide pure public goods is clearly a collective action problem: everyone would be better off if they pay up but each individual has no incentive to do so (Olson 1971, 5-52). There is thus a role for the state, at least in certain cases, to provide the public good and force people to pay for it through the use of taxation. Contemporary states thus provide public goods, including pure public goods such as public parks and national defense, but also impure public goods such as bridges and roads.

Markets also fail, second, when production or consumption activities have externalities, that is, positive or negative impacts on one or more non-consenting people (Weimer and Vining 2017, 93). *Negative* externalities occur when a production or consumption activity imposes a cost on non-consenting third parties, including air and water pollution resulting from the production activities of firms as well as greenhouse gas emissions from consumers' use of fossil fuel powered cars and heating systems. *Positive* externalities occur when a production or consumption activity imposes a benefit on non-consenting third parties. Goods and services that generate positive externalities thus include COVID-19 vaccinations which reduce the threat of infection for others and education which produces economic value for society. Importantly, what counts as an externality depends on ethical judgments that are often made off-stage (Satz 2010, 32). Cigarette smoke, for example, is typically understood as a negative externality, but the disgust wine connoisseurs experience when they observe people drinking hard seltzers is not.

Externalities are an example of a market failure since they lead to patterns of production and consumption in which social surplus is not maximized (Weimer and Vining 2017, 95-97). In the case of negative externalities, since there is a cost to third parties that is not borne by the parties to the transaction, the price of the good will not reflect the full social cost of the good's production or consumption - the cost to producers and third parties. Transactions will occur therefore that are not socially beneficial, for the costs to producers and third parties will be higher than the benefits to consumers. I might be willing to drive a pickup truck when gas is $2 per gallon, but not when the price incorporates the costs my emissions impose on others. The benefit I receive from driving my truck is thus smaller than its full social costs, meaning my transaction is net socially costly. Since an efficient allocation of goods is one where social surplus is maximized, production or consumption activities with negative externalities are inefficient. If the costs to third parties are not borne by parties to the transaction, transactions will occur that are net socially costly and the goods in question will be overproduced.

In the case of positive externalities, since the benefit to third parties is not received by purchasers of the good, the price of the good will not reflect the full social benefits of the good's production and consumption - the benefit to consumers and third parties. Transactions will not occur therefore that would be socially beneficial since purchasers' willingness to pay for the good only reflects benefits to them and not third parties. This allocation of the good is also inefficient since social surplus is not maximized - there are still socially beneficial transactions to be had.

Governments may not always be best placed to address externalities (Coase 1960). However, they do have several strategies available which may prove net beneficial in some circumstances. First, they can establish a more extensive and effective system of property rights. If people had property rights to clean air, firms would need to compensate them for the harms of air pollution and so their costs of production would include costs to third parties, leading to an efficient allocation of the goods in question. Similarly, if individuals had property rights to the social benefits of their consumption of education, people would be willing to pay more for education and educational services would not be under-supplied.

Governments can also, second, employ Pigouvian taxes or subsidies (Pigou 1962: 185-192). In the case of negative externalities, states can implement a tax to raise the price of the good to the level it would be if it included the cost to non-consenting third parties. This ensures that only socially beneficial transactions occur. Taxes on carbon and soda are often justified by appeal to this rationale (MacKay and Huber-Disla Forthcoming). In the case of positive externalities, states can subsidize demand for the good, leading to a higher, efficient level of production and consumption. Examples of such subsidies include government funding of K-12 schooling and higher education.

Markets can fail, third, in cases of monopolies and oligopolies (Weimer and Vining 2017, 98-104). Monopolies occur when there is only one producer that serves a particular market. Oligopolies occur when a market is served by a small number of producers. In both cases, producers face limited competition and so have *market power*, the ability to set prices. This is different from a competitive economy where any individual producer's production decision has no effect on the total supply of goods or services available for purchase and so producers are price takers, not price setters. In this situation, producers' marginal revenue is equivalent to the equilibrium price, and this does not vary depending on whether it is selling its first good or its one millionth good. In monopolies and oligopolies, by contrast, because producers have the ability to set the price by increasing or decreasing supply, their marginal revenue decreases with each unit sold. Each additional unit produced, after all, lowers the equilibrium price for all units sold, not just for the marginal unit, so firms' marginal revenue is higher for their 50th unit than for their 5,000th unit. This matters for the price at which marginal revenue equals marginal cost is higher in monopolies and oligopolies than in competitive markets. Producers maximize their profits by charging a higher price than would be the case in a competitive economy. This is inefficient since in a competitive market, they would supply a larger amount of goods at a lower price (Weimer and Vining 2017, 101-103). In monopolies and oligopolies therefore, a number of socially beneficial transactions do not occur that would occur in a competitive market.

Monopolies and oligopolies arise for several reasons. First, producers not in the market may face barriers to entry, including high costs of product development, lack of access to essential inputs, or licenses and regulations imposed by policy makers. They may also arise, second, because the market is such that it is simply less costly for one producer to serve the market than for multiple producers to do so. For example, electric utilities are typically monopolies since it is cheaper to run one set of power lines to houses than multiple sets.

Governments have several policy levers available to prevent monopolies and oligopolies from emerging, including preventing mergers among big producers and repealing licenses and regulations that create barriers to entry. When markets are such that it is simply not possible to avoid a monopolistic or oligopolistic situation, policymakers can employ price controls. While requiring producers to sell the good or service at the equilibrium price will drive them out of business since their average costs of production will be greater than their total revenue, setting the price at the average cost of production will not do so. Governments may also take ownership of the producer and provide the good or service themselves. For example, subway systems are nearly always owned and run by government agencies. One problem with both these strategies is that the producers in question, whether highly regulated private firms or government agencies or corporations, face no competition and so have little incentive to improve quality and lower prices.

Finally, market failures may arise when there is an information asymmetry among producers and consumers, that is, when the parties to a transaction have different, materially relevant information regarding the good or service (Weimer and Vining 2017, 104-112). If consumers do not have full information regarding the quality of a good, they may purchase more or less of the good than they would if fully informed. Some transactions may occur, therefore, that do not benefit the consumer, and some transactions do not occur that would have done so. Producers may also be worse off if they lack materially relevant information regarding consumers. Health insurance companies may have limited information regarding the health conditions of consumers and so may offer health insurance at a premium level that is too low to cover consumers' health needs. In this case, the insurer's total costs will be higher than its revenues.

In cases where consumers' lack of full information is likely to lead them to purchase less of a good or service, firms have an incentive to provide this information, for example, through advertising, or by offering warranties which offer consumers some assurance regarding the quality of the good (Weimer and Vining 2017, 105-109). Secondary markets may also arise to address this problem. For example, certification services such as the Better Business Bureau may assure consumers that minimal quality standards are upheld and professional associations may assure consumers that certain service providers satisfy minimum training and experience requirements (Weimer and Vining 2017, 110). Agents may also provide consumers with guidance, particularly in cases where purchases are infrequent, expensive, and heterogenous, for example, in the case of home purchases.

Where information asymmetries will not be addressed through private action, however, there may be a role for government intervention. Governments may mandate the disclosure of certain forms of information or may regulate the sale of certain goods. For example, the vast majority of patients do not have sufficient information to decide whether pharmaceutical products are safe and effective and private action may not be sufficient to address this problem. Government agencies such as the U.S. Food and Drug Administration have stepped in to ensure that all pharmaceutical products only hit the market once they have been shown to be safe and effective.

Collective action problems is a broad category of public policy problem, including the management of common pool resources and the various forms of market failures. In all cases, rational and self-interested action by private actors will be collectively self-defeating, creating a potential role for governments to use their coercive power to enforce rules of cooperation and make everyone better off. Addressing collective action problems thus constitutes an important and wide-ranging rationale for public policy, justifying the management of common pool resources and the regulation of markets, as well as the creation of government agencies to enforce market rules, provide public goods, correct externalities, address monopolies and oligopolies, and correct information asymmetries.

## 2 Constructing a Just Legal Order

Many policy analysis texts identify the resolution of collective action problems as the principal rationale for government action. But this framing of policy problems presupposes that effective government institutions exist and that a functioning market is in place, complete with legal institutions of private property and enforceable contracts. As such, it disregards more fundamental policy problems, including the design of political institutions, which we will return to below, but also the question of which laws should govern people's use of external objects and interactions with each other. Markets and their constitutive institutions are one answer to this problem, but they are not the only one, and not necessarily the best, at least not on their own.

A second type of policy problem therefore concerns the more fundamental laws legislative bodies should enact to govern people's interaction. Which rules should govern the use of external objects? Should people be free to enter into contractual and employment relationships? If so, should there be constraints on the types of agreements people may make? Should employers be free to hire employees on any basis whatsoever? Should the means of production be owned by private parties or the public? Does the government have an obligation to ensure all people can meet their basic needs? Which rules should govern relations between romantic partners, the formation of families, and how parents treat their children?

These questions concern the design of a society's basic social, economic, and political institutions. Because societies are not simply agglomerations of market actors, but rather communities of free and equal people, answers to these and other questions must recognize people's fundamental moral equality, enable them to exercise their freedom, and promote their wellbeing. As such, while collective action problems are important, there is a more fundamental policy problem concerning the construction of a just legal order, not merely the promotion of efficient patterns of production and consumption. As the political philosopher John Rawls (1999, 3) puts it:

> Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.

Political philosophers have developed many theories of justice in recent years, with each aspiring to provide the 'right' account of a just society. My aim in this book is not to develop a single theory of justice to identify policy problems and evaluate policy solutions, but rather to provide an overview of the most widely supported values and principles for policy evaluation. My approach is thus pluralistic, recognizing that no single theory of justice adequately captures the diversity of moral considerations that are binding on policymakers (Wolff 2019). Here, I briefly illustrate how three values, wellbeing, fairness, and freedom offer guidance for lawmakers in different policy domains.

An important set of questions concerns the design of economic institutions - the rules governing people's cooperative use of their bodies, minds, and external objects for productive ends. Wellbeing provides governments with good reason to establish markets and private property rights to structure this domain, for these institutions enable people to satisfy their preferences and facilitate economic growth by incentivizing innovation and technological development (Delong 2022; Satz 2010, 17-21). As I discuss above, it also provides governments with reason to address collective action problems, making everyone better off than they would otherwise be.

Beyond establishing and maintaining markets, governments may promote people's wellbeing further by introducing redistributive policies and laws governing employment contracts, among others (Frijters et al. 2020; Adler 2019 7-40; (Weimer and Vining 2017, 130-133). For example, it is widely recognized that money has diminishing marginal utility, meaning that all else equal, increasing the income of one person by a certain amount will result in less wellbeing than increasing the income of another by the same amount if the former has a higher starting income than the latter (Adler 2019, 16). Governments may better promote people's wellbeing therefore by taxing the income of higher-income households and transferring the revenue to lower-income households since doing so will improve societal wellbeing. Similarly, labor regulations such as minimum wages and health and safety rules may improve societal wellbeing if they benefit low-income workers and the costs of such regulations are largely borne by wealthier consumers. Still further, many educational, public health, and social safety net programs may contribute to people's wellbeing by building human capital, promoting health and longevity, and ensuring an adequate standard of living for all.

The use of markets and private property rights to structure economic production may lead to sizable inequalities in people's income and wealth. Policymakers must not only ensure such institutions promote people's wellbeing, but also distribute income and wealth *fairly*. This may involve implementing a progressive tax and transfer system that is more generous to low-income people than a system guided by the imperative to maximize overall wellbeing. Prioritarians, for example, argue that benefits to the worse off matter more morally than equivalent benefits to the better off (Parfit 1997, Adler 2019, 86-90). This view thus supports a tax and transfer system that is even more redistributive than one designed to maximize overall wellbeing since transferring even more revenue from high-income to low-income people will produce a greater sum of weighted benefits.

Societies featuring large inequalities in income and wealth may also exhibit inequalities in opportunity, with children born to high-income families having significantly higher probabilities of achieving high incomes than children born to low-income families (Chetty and Hendren 2018a; Chetty and Hendren 2018b). John Rawls (1999, 63), among others, argues that such inequalities in life chances are unfair for children's life prospects should not depend on the socioeconomic status of their parents. Policies to reduce these inequalities may require further redistribution of income and wealth, robust public funding for schools serving low-income populations, and reforms to housing policies such as exclusive zoning which prevent low-income families from moving into neighborhoods which foster social mobility (Reeves 2017).

On a smaller scale, regulations designed to address market failures may promote overall social wellbeing, but may nonetheless distribute costs and benefits in unfair ways. For example, regulations addressing negative externalities may be regressive if low-income people are more likely to engage in the externality-promoting policies. This would appear to be the case with cigarette and soda taxes (MacKay and Huber-Disla Forthcoming). For regulations more generally, there is no guarantee that the policy which is net beneficial also distributes costs and benefits fairly. For this reason some propose supplementing cost-benefit analyses with consideration of the distributive impact of proposed regulations (Robinson and Hammitt 2020, 111).

Finally, policymakers face questions regarding the degree to which they may direct or constrain people's actions in the furthering of their goals. For free and equal people, it is of central moral importance that they be free to decide which goals and projects to pursue on the basis of their values and preferences. Governments must therefore respect and protect people's basic liberties, for example, by not interfering with their decisions regarding what to say or write, whom to associate with, or which religion to practice, if any.

Beyond this, policymakers must also construct a legal order which values and maintains people's status as free and equal. As capability theorists have convincingly argued, to live a free and dignified life, people require the capabilities and resources to self-govern and pursue their goals (Robeyns and Byskov 2023). Similarly, children require adequate nutrition, healthcare, education, and loving environments within which they may develop into autonomous adults. To ensure people's freedom, therefore, states may need to fund public education, and enact policies guaranteeing people access to nutritious food, housing, and healthcare.

Legislative bodies face the massive challenge of constructing a just legal order. The values and principles of wellbeing, fairness, and freedom each provide guidance regarding these questions, as well as a basis for identifying deficiencies in current law and policy, for example, unfair distributions of income and opportunity, poverty, and mental illness. As such, they also provide additional rationales for public policy and factors to consider when evaluating policy options. However, as with collective action problems, the resolution of injustice presupposes the existence of effective state institutions. Such institutions may be deficient, and such deficiencies constitute a third type of policy problem, or so I will argue next.

## 3 Constructing Just and Effective Government Institutions

If collective action problems are to be solved and a just legal order to be constructed, effective government institutions which can establish property rights, regulate markets, and pass, enforce, and apply legislation, must exist. While discussions of public policy rationales often take the existence of such institutions for granted, a more basic type of policy problem concerns deficiencies in the design of government institutions. Such deficiencies may be practical, for example, if the institutions in question cannot effectively fulfill their mandates (Weimer and Vining 2017 149-181); but they may also be ethical if the institutions are not constructed nor act in accordance with relevant values. Ineffective and unjust government institutions are clearly a policy problem for they constitute and lead to undesirable states of affairs, and are clearly a problem for governments to fix.

In the following discussion of institutional deficiencies, I shall restrict my attention to liberal democratic governments, that is, governments featuring democratic legislative bodies, accountable executive institutions and agencies, and independent judicial institutions. There is a lively debate among social scientists regarding the variety of shapes that effective government institutions may take. But over the course of the past few centuries, liberal democratic forms of government have emerged across the globe and have demonstrated a strong track record in creating peaceful, law-governed, and prosperous societies (Delong 2022). As *liberal democracies*, moreover, such governments are morally defensible, recognizing the freedom and equality of their citizens by protecting people's basic rights and liberties, prohibiting discrimination on the basis of morally arbitrary factors, and granting all citizens a right to vote. Given the success of these governments, and that the primary audience of this book is students and policy practitioners living and working in liberal democracies, this focus is appropriate.

## 3.1 Deficiencies with Democratic Processes and Institutions

Citizens are equal in the sense that their lives are of equal moral value, but also in the sense that they have equal authority, meaning no one has the right to tell anyone else what to do. It is this equal authority of citizens that provides a direct justification for democratic processes and institutions of collective will formation. Other political systems, by contrast, give one or more persons, whether defined by race, birth, or expertise, the authority to coercively direct the actions of others. As Niko Kolodny (2014, 196) puts it, "The concern for democracy is rooted in a concern not to have anyone else 'above' - or, for that matter, 'below - us: in the aspiration for a society in which none rules over any other." For processes and institutions of collective will formation to be democratic, all adult citizens must have an equal voice at an important stage of the legislative process (Christiano and Bajaj 2022). This may involve giving all citizens a vote on all legislative questions, as in direct democracies; or, it may involve giving all citizens an equal vote in the choice of representatives, as in representative democracies. In this latter case, all citizens must also have an equal right to run for political office.

Beyond this basic commitment to democracy, governments face multiple questions regarding the design of legislative processes and institutions and their answers to these questions may be better or worse along the dimensions of justice and effectiveness. For example, states must decide if it is sufficient to grant all adult citizens a *formal* opportunity to participate in the political process, or whether, as John Rawls (1999, 196-197) argues, governments must ensure all have a *real* or *fair* opportunity to participate in the legislative process. On this account, citizens must not only have a right to run for office, but also a prospect of success that is not affected by their socio-economic status. This may require prohibitions on private financing of political campaigns and the construction of public finance systems.

Governments must also determine how electoral districts should be drawn, and whether partisan gerrymandering should be permitted or prohibited. Is it enough that electoral districts have roughly the same population, thus ensuring that each citizen's vote has the same weight, or should such districts be drawn by independent commissions to prohibit political parties in power from drawing district boundaries in ways that advantage their candidates (Beitz 2019)? Relatedly, should electoral systems employ single-member districts with first past the post voting, or should governments opt for proportional representation systems wherein citizens vote for candidates or party lists of candidates who are not tied to any particular district?

Governments' answers to these and other questions can be more or less just, and can make it more or less easy for legislative bodies to pass laws. First, legislative processes and institutions may be evaluated *non-instrumentally*, in virtue of the degree to which they treat people as equals (Christiano and Bajaj 2022). Rawls (1999, 196-197) argues in favor of processes and institutions that grant all a real or fair opportunity to participate in the legislative process since otherwise the socioeconomically advantaged will have more control over the legislative process and outcomes than the socioeconomically disadvantaged. Regarding the question of electoral district design, Charles R. Beitz (2019, 350) argues that partisan gerrymandering is unfair to members of the disfavored party since it unjustifiably reduces the chances that their preferred legislative outcomes will be realized. Where partisan gerrymandering is effective, members of the disfavored party do not therefore have a fair opportunity to influence the legislative process (Beitz 2019, 358).

These and other legislative processes and institutions may also be evaluated *instrumentally*, in virtue of the degree to which they are likely to yield laws and policies that are just, that is, that facilitate people's pursuit of their conceptions of a good or happy life and show equal concern and respect for all (Christiano and Bajaj 2022). For example, when deciding whether to implement first past the post rather than proportional representation, require super-majorities on certain policy issues, or regulate private funding of political campaigns and advertising, we may wish to know the likely impacts of each policy option on the likelihood that a particular legislative body will pass laws and policies promoting the public good.

Liberal democracies therefore face multiple questions regarding the design of legislative processes and institutions. These questions constitute policy problems for some answers are better than others and governments have the tools and legitimacy to address them.

3.2 Deficiencies with Executive Institutions

Executive institutions enforce, administer, and implement the law. They therefore include the police and military but also administrative agencies with mandates to protect public health, ensure the safety of food and pharmaceutical products, implement and enforce labor standards, build transportation systems, and regulate pollution, among others. As with legislative institutions and processes, governments face multiple questions regarding the design and operation of executive institutions and these questions can be answered in better or worse ways.

Executive institutions must be constructed in ways that respect people's freedom and equality and so they must be democratically accountable. But what form should processes of democratic accountability take (Thompson 2004, 50-70)? Should the heads of executive agencies be appointed by elected representatives, or should they be elected? Many contemporary executive agencies are large organizations and so there are also important questions regarding their internal organizational design. Administrative agencies also face the question of the standards they should use to determine whether a regulation should be implemented or not. Should they employ cost-benefit analysis as many U.S. federal agencies do, or should they aim to set ambitious standards guided by a broad conception of people's rights and the value of equality (Berman 2022; Heath 2020; Adler 2019)? Finally, the 2020 murder of George Floyd in Minneapolis as well as multiple uses of prima facie unjustified police violence in recent years have raised pressing questions regarding the structure and scope of police agencies as well as the rules they should follow in their interactions with private citizens, including the use of 'stop and frisk' practices and body cameras (Monaghan 2023; Brooks 2021).

Answers to these and other questions can be evaluated either in terms of their success in enabling agencies to fulfill their mandates or in terms of the degree to which they are democratically accountable. For example, Joseph Heath (2020, 84) argues that administrative agencies should be designed and their regulatory decision procedures crafted with the aim of effectively fulfilling these agencies' central purpose, namely promoting efficiency through the resolution of market failures:

> If the central role of the state in modern societies is to solve the most intractable collective action problems - where individual contracting and informal community action fail - then there will also be substantive normative principles governing administrative action, which arise from the purposes that the state is committed to pursuing. When it comes to resolving collective action problems, the central principle (or, perhaps better yet, the guiding idea) is that of Pareto efficiency.

Others argue that these questions regarding institutional design and operation should be answered (at least in part) by appealing to the value of democratic accountability (Landemore 2020; Fishkin 2018). With respect to regulatory decision-making therefore, this could take the form of administrative agencies consulting the public by providing citizens with opportunities to comment on proposed regulations, employing citizen juries, deliberative polls, or establishing citizen review boards.

Regardless of whether the instrumental or non-instrumental approach is correct, answers to questions regarding the design and operation of executive institutions can be better or worse and should clearly be the target of government reform efforts. As such, they too constitute policy problems.

### 3.3 Problems with Judicial Institutions

Judicial institutions are responsible for interpreting and applying the law. This involves determining the constitutionality of laws passed by legislative institutions, the legality of directives and regulations implemented by the executive branch, the guilt or innocence of parties accused of criminal offenses, and resolving legal disputes between private parties and/or government institutions. As with legislative and executive institutions, policymakers face multiple questions regarding the design and operations of judicial institutions, and judicial officers, too, face questions regarding the procedures and standards by which they fulfill the mandate of their office.

Judicial institutions and processes must be accountable to the public, but what form should this accountability take? Should judges be elected or appointed by elected officials? Should judicial terms be shorter rather than longer? Should impeachment procedures be available, and, if so, what form should they take? Should juries be relied on extensively as a means to involve the public? There are also multiple questions regarding the design of court systems, appeals processes, and rules of judicial procedure.

These and other questions regarding the design and operation of judicial institutions and processes should be answered with at least two goals in mind: accountability to the public and judicial independence (Thompson 2004, 71-98). First, because judicial institutions render final judgments on legal disputes with often significant consequences for the parties involved, judges must be accountable to the public, exercising this power in defensible ways. Second, because judges ought to decide each case by appeal to considerations of law and facts, not factors such as partisan advantage, likelihood of reappointment, private interests, or the preferences of executive or legislative institutions, questions regarding institutional design and process must be addressed by appeal to the value of judicial independence. Judicial independence may be promoted through lengthy tenures, including lifetime appointments, adequate compensation, and judicial immunity.

Policy problems regarding the design of judicial processes and institutions may concern existing processes and institutions' realization of either of these goals, or achieving an appropriate balance among them. Jurisdictions vary greatly on policies regarding appointment and tenure, among others, and some policies no doubt better realize the goals of accountability and independence better than others.

A third type of policy problem therefore concerns the design of legislative, executive, and judicial institutions and processes. Such institutions and processes must be designed in ways that are just and effective, and existing institutions and processes may be deficient in these regards in multiple ways.

## 4 Conclusion: Policy Problems and Rationales for Public Policy

Policy problems are states of affairs that (1) are bad, undesirable, or unjust, (2) the government is particularly well-suited to address, and (3) arise from spheres of action over which the relevant government institutions have the right to intervene. In this chapter, I've identified 3 types of policy problems: (a) collective action problems; (b) injustice; and (c) deficiencies with legislative, executive, or judicial institutions. Each in turn corresponds to a distinct rationale for government intervention.

This list of types of policy problems is incomplete for additional states of affairs no doubt satisfy 1-3 but do not fit any of types a-c. For example, governments control the money supply and set interest rates and may do so in better and worse ways. Similarly, governments face several questions regarding foreign policy, including the use of military force and provision of international aid that concern bad and/or unjust states of affairs and for which government action is needed. Still, my hope is that 1-3 offer analysts and policymakers with the tools they need to identify problems deserving of analysis and potential reform.

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