

**Doing the right thing:
Ethical dilemmas in public policy making**

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Doing the right thing: Ethical dilemmas in public policy making

Abstract

Ethical dilemmas in public policy making arise because resources are inadequate to meet all demands, and because people are committed to different values and ideas.

How ought the state allocate resources and determine 'trade offs' between conflicting priorities? By empirical analysis of 'the evidence' and 'what works'? By calculating 'the greatest good for the greatest number'? Or by some kind of 'co-production' (collaborative governance) that factors in explicit critical reflection and public deliberation on purpose, values and emotions?

If the latter, how might we proceed in public policy making when people disagree on the priority of basic moral principles and the requirements of justice? This paper draws on Rawls, Sen, Nussbaum and Schattschneider to frame a set of questions to guide deliberation on 'doing the right thing' in public policy making, and notes competencies required of both elected and appointed officials in a co-production approach to policy making.

Key words

Public policy; ethical issues; evidence-based policy; utilitarianism; cost-benefit analysis; co-production

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Introduction

Public policy is largely about deciding who gets what and who pays. Ethical dilemmas in public policy arise for two reasons: resources are inadequate to meet all demands, and people are committed to different values and ideas about 'doing the right thing'.

When faced with such dilemmas, how ought the state calculate 'trade offs'¹ between conflicting demands and priorities? One approach is to confine the role of public servants to empirical analysis of 'the evidence' and 'what works', leaving politicians to concern themselves with desired outcomes and priorities between these. Another approach is to anchor policy advice in the utilitarian maxim, 'the greatest good (or happiness) for the greatest number', using cost-benefit analysis as a core tool of policy making.

This paper argues that policy makers need to go beyond evidence-based policy, and beyond utilitarianism and cost-benefit analysis, and engage in co-production with citizens that factors explicit critical reflection and public deliberation on purpose, values and emotions into policy making. This requires policy advisors to engage in both technical and practical reasoning, and demands particular competencies in politicians and those who advise them.

Resource scarcity

Public finance is always a matter of relative resource scarcity. This is particularly the case at the present time. The financial statements of the New Zealand Government for the year to 30 June 2011 show a record deficit of \$18.4 billion (New Zealand Treasury 2011a). Excluding the net cost of the Canterbury earthquakes (\$9.1 billion as at 30 June 2011) the deficit would have been significantly less. Nevertheless, it is what it is. The Government issued \$19.5 billion of domestic market bonds in the 2011 financial year, which equates to gross borrowing of \$390 million per week, based on 50 weekly tenders during the year. Net core Crown debt is at 20% of GDP and is forecast to peak at 29% of GDP in the year ending 30 June 2015 (New Zealand Treasury 2011b). Resource scarcity generates ethical dilemmas in deciding who gets what and who pays.

Beyond evidence-based policy

Given resource scarcity, public policy making involves 'trade offs' between conflicting demands and priorities. Can these choices be made rationally, by reference to empirical economic analysis and empirically oriented research on 'what works' in service and programme delivery?

¹ Sen (2009a, 99) reminds us that 'trade-offs' is somewhat crude vocabulary for the specification of relative importance or significance in multi-dimensional assessment.

‘Evidence-based policy’ was a mantra of the Blair Government that came to power in the UK in 1997.² The slogan subsequently caught on in New Zealand under the fifth Labour Government (1999–2008). Cabinet established, for example, a Social Policy Evaluation and Research committee (SPEaR) to ‘improve the knowledge base for social policy’ and the Ministry of Social Development organised three international conferences in 2002, 2004 and 2007 on social policy research and evaluation focused on ‘what works’.

Sustainable improvements in quality of life for all New Zealanders are unlikely to be delivered by policies and programmes founded on a weak or non-existent evidence base. We especially need to know, through monitoring, evaluation and review, whether policies and programmes are effective in achieving the outcomes New Zealanders want and expect from them.

Social science cannot leapfrog moral argument in public policy making, however, or solve ethical dilemmas for us, because no convincing way has yet been found to construct a logical bridge between descriptive or existential ‘is’ and moral or prescriptive ‘ought’ (Hume 2007: Book III.1.1; Pielke 2007, 12–13).³ Evidence only takes us so far in moral argument and public policy making. Social science provides methods of explanation and interpretation of phenomena but cannot answer questions about what we should value, how we should live and which outcomes we should prioritise over others (Weber 1968, 302ff.; 1949). No compilation of facts or evidence alone can tell us, for example, whether the distribution of income and wealth within a society is fair (Barry 2005, 13).⁴ That requires explicit critical reflection and political deliberation on values and normative theory, because public policy making almost invariably involves an inter-weaving of information, interests and ideologies—or facts, values and theories of social dynamics and social change (Lindblom 1980; Weiss 1983; Bromell 2010).

For this reason, it is more accurate to refer to ‘evidence-informed policy’ than to ‘evidence-based policy’. As the Prime Minister’s Chief Science Advisor, Professor Sir Peter Gluckman, has acknowledged: “There are limits to scientific knowledge and to the scientific approach; governments and their advisors must be aware of such limitations, otherwise science can be misused to justify decisions that should legitimately be made on the basis of other considerations” (Gluckman 2011, 3).

There are thus two pitfalls to avoid in public policy making. The first lies in deciding policy on the basis of weak or non-existent evidence; for example, by relying solely on polling and focus group findings, or on an ideological proposition that is taken ‘on faith’. The second lies in

² For a brief genealogy of ‘evidence-based policy’ and the linear model of the relationship between evidence and policy, see Freiberg and Carson (2010, 153–156); and St John and Dale (2012, 39–40). Head (2010) usefully summarises key issues and challenges in reconsidering evidence-based policy.

³ Logically one can derive a moral ‘ought’ from an ‘is’, provided the ‘is’ expresses a truth about a reality that embodies a moral norm. Grisez, Boyle and Finnis (1987, 102) provide an example: “Thus, from ‘This is the act an honest person would do’ one can deduce ‘This act ought to be done.’”

⁴ Wilkinson and Pickett (2010, ix) state in the preface to *The Spirit Level: Why equality is better for everyone* that they considered giving their book the title ‘evidence-based politics’. This is disingenuous. They do not merely report evidence; they construct a normative argument about what developed nations ought to do that they claim is warranted by that evidence. Admittedly, they present their argument in relatively straightforward consequentialist terms with little reference to ideas of justice. Nevertheless, as Marquez (2011) has noted, it is clear that Wilkinson and Pickett (2010, 84, 247–49) do think that income inequality is unjust, at least on account of its consequences.

proceeding as if empirical analysis of ‘the evidence’ and ‘what works’ is not only necessary but also sufficient in public policy making.

In May 2011, the New Zealand Treasury published a paper on higher living standards for New Zealanders (Gleisner, Lewellyn-Fowler and McAlister 2011). The paper acknowledges that the determinants of well-being are both material and non-material and go beyond income and GDP. It is a welcome contribution to discussion on how public policy can contribute to improving the living standards and social well-being of New Zealanders in a sustainable way, and on how we might best measure social and economic progress.

The Treasury paper (Gleisner, Lewellyn-Fowler and McAlister 2011, 6, 27–28) disavows responsibility, however, for normative, values-based analysis and advice:

To maintain an apolitical position, Treasury avoids making value judgments on what represents a ‘fair’ distribution of living standards.... Where normative approaches ask what the distribution of living standards should be, positive approaches ask what the distribution is. They also consider whether there is evidence to suggest that a particular distribution poses social or economic problems and the effect different policy interventions may have on how living standards are distributed. Treasury takes a positive approach to distribution as opposed to a normative, value-based one.

The Treasury paper reflects a linear, and positivist, understanding of the role of science and of expert advisors in public governance. The elected government of the day determines its distributional priorities; Treasury makes no value judgments on those distributional priorities and provides advice grounded in empirical economic analysis on how government might best implement its goals and objectives. Is this an adequate way to conceive the role of science and of expert advisors in public governance?

Science and governance: Four models

Van Zwanenberg and Millstone (2005) have provided a useful typology of ideas about science and governance. They compare four models: the ‘decisionist model’ of Max Weber and Émile Durkheim; the ‘technocratic model’ of Henri de Saint-Simon and Auguste Comte; an ‘inverted decisionist model’; and a ‘co-evolutionary model’ of science and policy making.⁵

According to the **decisionist** model, ministers set policy goals and objectives and are accountable to parliament and the public. Bureaucrats and experts are accountable to ministers for effective implementation of these goals and objectives, and to colleagues within their professional disciplines for the knowledge and judgements they bring to bear on this. The New Zealand Treasury paper implies a decisionist model of governance.

A **technocratic** model of policy making is assumed in the claim that policy (and politics) should be ‘evidence-based’, as distinct from ‘evidence-informed’. It presupposes that science and ‘the evidence’ are objective, sufficient, and socially and politically neutral. Its vulnerability lies in scientific uncertainty and complexity, and disputes between experts as to what the evidence is and what it means. Wilkinson and Pickett’s aspirations in *The Spirit Level* to an ‘evidence-based politics’ (2010, ix) imply a technocratic model of governance.

5 Van Zwanenberg and Millstone distinguish a fifth model (a risk management model), which I have included in this summary as a variation on the inverted decisionist model.

Inverted decisionism, in response to technocratic critique and the rhetoric of ‘evidence-based policy’, has scientific experts identifying policy problems, goals and objectives, with policy makers deciding the most appropriate means with which to reach science-defined targets. A variation on this model replaces the vocabulary of ‘science’ (or ‘evidence-base’) with the vocabulary of ‘risk assessment’, and the vocabulary of ‘policy goals and objectives’ with ‘risk management’ (van Zwanenberg & Millstone 2005, 25). When policy analysts define ‘desired outcome frameworks’ for measuring social progress and developing public policy without reference to ministers and cabinet, inverted decisionism is at play.

In 1990, Sheila Jasanoff (1990, 230, 245) summed up the evolution of thinking about science, politics and policy making by observing that:

Although pleas for maintaining a strict separation between science and politics continue to run like a leitmotif through the policy literature, the artificiality of this position can no longer be doubted. Studies of scientific advising leave in tatters the notion that it is possible, in practice, to restrict the advisory process to technical issues or that the subjective values of scientists are irrelevant to decisionmaking.... The notion that scientific advisors can or do limit themselves to addressing purely scientific issues, in particular, seems fundamentally misconceived.

In response to a general acceptance of the validity of this critique, the **co-production (or co-evolutionary) model** abandons both decisionist and technocratic approaches. It acknowledges that scientific deliberations are located in particular social, political and cultural contexts that affect both the content and direction of those deliberations. Consequently, representations of risk are assumed to be hybrid judgements constructed out of both scientific and non-scientific considerations.

Gluckman (2011, 7; cf. Weingart 1999, 154–57) observes that the decisionist and technocratic models rely on three conditions that are becoming increasingly difficult to fulfil:

- the need for uncritical public trust in the values and outputs of the scientific process;
- acceptance of the notion that science is a process that establishes incontrovertible and absolute fact; and
- complete separation between scientific advice and policy judgement.

Consequently, Gluckman (2011, 8) commends an iterative, co-production model of policy making, in which “policy makers, expert advisors and society negotiate to set policy goals and regulatory decisions are agreed to be scientifically justifiable (in terms, say, of the information available and the levels of future risk that are tolerable) as well as socially and politically acceptable.”

A co-production model requires expert advisors to be sophisticated in the way we engage with policy makers and the public. We need to communicate assumptions, limitations and uncertainties in a transparent manner, and present options in ways that allow decision-makers to factor the full range of their possible benefits or adverse effects into regulatory decisions. Gluckman (2011, 8) is concerned to promote more and better use of evidence in policy making, but notes that “caution is also needed to avoid co-opting scientific advice as an inappropriate proxy in difficult decisions that should be made on other grounds.” Both the ‘scientification of politics’ and the ‘politicisation of science’ are to be avoided, as the boundary between science and politics is constantly redrawn (Weingart 1999, 160).

Tornado politics and abortion politics

Pielke (2007) has proposed a thought experiment that distinguishes between two types of decision context: ‘tornado politics’ and ‘abortion politics’:

Imagine that you are in an auditorium with about fifty other people... As you entered the auditorium you noticed a thunderstorm approaching, but you paid it little attention. All of a sudden someone bursts into the room and exclaims that a tornado is fast approaching and that we must quickly proceed to the basement... As the milling about continues, someone shouts loudly to all in the room, ‘We must decide what to do!’ (Pielke 2007, 40).

In this decision context, the people in the auditorium have a shared common interest and values—preserving their own lives. To reach a consensus to commit to a course of action, they need to know whether a tornado is indeed coming their way. They could establish this by turning on a radio, logging onto the internet, or simply looking out the window. That is, public policy planning of the ‘tornado politics’ sort can resolve a commitment to a specific course of action primarily through the systematic pursuit of knowledge (science).

Contrast this with ‘abortion politics’:

Imagine that you are in the same auditorium with the same group of fifty people, but, in this case, instead of deciding whether or not to evacuate, the group is discussing whether or not to allow abortion to be practiced in the community... One person stands up and exclaims, ‘The practice of abortion violates my religious beliefs and therefore must be banned in our community!’ The next speaker states with equal passion, ‘The community has no right to dictate what can or cannot occur inside a woman’s body. The practice of abortion must remain legal!’ As the murmur of dozens of conversations grows louder, someone shouts loudly to all in the room, ‘We must decide what to do!’ (Pielke 2007, 41).

In this sort of decision context, there is no shared commitment to common values or a specific goal; rather, there are conflicting commitments based on differing values. Neither is it likely that any amount of scientific information about abortion can reconcile these different values. Abortion Politics requires a different sort of process of bargaining, negotiation and compromise.

In a decision context characterised by both general agreement on valued outcomes and relative certainty about the impact of particular actions on the achievement of desired outcomes (‘tornado politics’), science can compel action. Where, as is more commonly the case,⁶ there is no clear consensus on values and there are objective and subjective uncertainties about outcomes associated with particular decisions and actions (‘abortion politics’), policy makers need to go beyond ‘evidence-based policy’. As well as considering relevant evidence, policy makers need to engage in explicit critical reflection on desired outcomes (purpose), conflicting values, trade offs between these, and the management of risk arising from unintended consequences of policy decisions.

⁶ Scott and Baehler (2010, 21) note that “making policy nearly always entails taking positions on value-laden issues and designing actions to address them.” Of course, there is no tidy duality here; some decisions are more like ‘tornado politics’, others are more like ‘abortion politics’. As Sandel (2009, 21) explains, thought experiments involve scenarios “stripped of many realistic complexities, so that we can focus on a limited number of philosophical issues.”

As David Gruen (Gruen, Kelly and Gorecki 2011, 6) from the Australian Treasury has commented on the New Zealand Treasury's working paper on living standards, there is good reason for being cautious about becoming lost in the normative jungle, "but there is no avoiding that jungle."

Beyond utilitarianism and cost-benefit analysis

In 2004, I managed the development of a social sector strategy commissioned by the Minister for Social Development and Employment (2004). The strategy proposed five critical social issues for interagency action over the medium term. The Ministry of Social Development nominated as one such issue family violence and the abuse and neglect of children and older persons.

A senior Treasury official was not convinced. He asked me, "How many children die each year from abuse and neglect?" I answered, "On average, seven or eight." He replied, "So it's not significant; it's less than the road kill."

He was simply, if crudely, expressing Treasury's commitment to the utilitarian formula, 'the greatest good for the greatest number' and, implicitly, to cost-benefit analysis as a core tool of public policy. For every seven or eight children aged 0–14 who die each year from abuse and neglect,⁷ 26 die in motor vehicle accidents,⁸ including an average of five children each year, mostly aged under six years, who are run over on private driveways.⁹ For that matter, an average of 12 children dies in New Zealand each year by drowning.¹⁰ In a context of relative resource scarcity, where should public policy focus—on abuse and neglect, drowning or the road toll—and where can government make the most difference for the least cost?

My argument with the man from the Treasury was that our analysis must factor in more than the mortality rate; public policy must also factor in the social cost of those who survive. Table 1 (see next page) highlights some aspects of the social cost of child abuse and neglect.

⁷ Source: National Mortality Collection. Average mortality of children aged 0–14 from assault, neglect or maltreatment, 2000–08.

⁸ Source: Ministry of Transport. Average mortality of children aged 0–14 from motor vehicle accidents, years ending 31 December, 2005–09.

⁹ Source: Safekids New Zealand 2011. Average mortality of children aged 0–14 from private driveway run over, 1998–2001 and 2001–05.

¹⁰ Source: Water Safety New Zealand 2010. Average mortality of children aged 0–14 from drowning, five year average, 2005–09.

Table 1: The greatest good for the greatest number?

Motor vehicle accidents		Child abuse and neglect	
Ave. annual fatalities, age 0–14	26	Ave. annual fatalities, age 0–14	7.4
Ave. annual injuries, age 0–14	1,058	Ave. annual hospital admissions	1,286
		CYF confirmed cases of abuse and neglect, 2009/10 ¹¹	21,000
		Children (aged 0–16) present or usually residing with the victim at an incident of family violence reported to Police, 2010 ¹²	47,374
		Proportion of children born in 1993 known to the care and protection and/or youth justice systems by age 17 ¹³	24%
		Proportion of children born in 1993 with at least one instance of substantiated findings of abuse or neglect ¹⁴	8%
		Proportion of those young people born in 1989 imprisoned by age 19–20 (2009) with a CYF record ¹⁵	83%
		Corrections costs accrued for those young people born in 1989 who had either a community-based or prison sentence before 30 June 2009 and who had a CYF record. ¹⁶	\$64.2 m

The value of a life

Cost-benefit analysis requires us to place a monetary value on each unit of analysis.¹⁷ The question that arises when we are considering complex policy questions of the ‘abortion politics’

¹¹ Source: Minister for Social Development and Employment (2011), 2.

¹² Source: Minister for Social Development and Employment (2011), 2.

¹³ Unpublished Ministry of Social Development research, 2011. Estimates are derived from linked administrative data sets for the cohort of children born in 1993 who were ever present and resident in New Zealand before turning 17 in 2010; i.e., 76,000 individuals.

¹⁴ *ibid.*

¹⁵ Source: Ministry of Social Development (2011).

¹⁶ *ibid.*

¹⁷ On cost-benefit analysis (CBA), see the New Zealand Treasury’s primer (2005). CBA is an economic assessment tool to support decision making. It seeks to quantify all costs and benefits in monetary terms, in order to provide a consistent basis for ranking alternative proposals against each other and the status quo in terms of the net benefits or costs of a proposal in today’s dollars. For a helpful discussion of the discipline (and limits) of CBA, see Sen (2002, 553–77). Sen describes CBA as a very general discipline, with some foundational principles (explicit valuation, consequential evaluation, additive accounting) and structural demands (assumed completeness, full knowledge or probabilistic understanding and noniterative or nonparametric valuations) that establish an approach rather than a specific method. Weaknesses of CBA include the nonvaluation of actions, motives and rights; indifference to the intrinsic value of freedom; an instrumental view of behavioural values, and other limitations inherent in market-centred valuation, including neglect of distributional issues and disregard of social choice options.

sort is what value to place on a human life. The Ministry of Transport (2010) calculates the average social cost per fatality by motor vehicle injury as \$3,584,400 at June 2010 prices.

Is every human life of *equal value*, however, and should the same ‘utility’ value be placed on the loss of every life?^{18,19} Think about your own moral intuitions—do you feel differently about:

- an 87-year old who dies from pneumonia, and an 87-year old who is murdered in a home invasion?
- a 23-year old who dies in a car accident, and a 23-year old who suicides?
- a three-year old who dies from leukaemia, and a three-year old who dies from assault?

Emotions in public policy making

Nia Marie Glassie was three years old when she died on 3 August 2007 following extensive physical abuse by members of her family. Nia was continually told she was ugly. She was kicked, beaten, slapped, jumped on, forced into a TV cabinet drawer, held over a burning fire, bathed in cold winter in mid-winter and had wrestling moves copied from a PlayStation game practised on her. She was spat on, placed in a clothes dryer spinning at top heat for 30 minutes, folded into a sofa and sat on, shoved into piles of rubbish, dragged through a sandpit half-naked, flung against a wall, dropped from a height onto the floor, and whirled rapidly on an outdoor rotary clothes line until thrown off. Her family waited 36 hours after she lapsed into a coma on the floor before taking her to hospital. Her 34-year old mother, Lisa Michelle Kuka, went out clubbing while Nia lay dying in the hospital. At the trial in November 2008 of the members of Nia’s family who assaulted and killed her, Judge Judith Potter wept as she delivered the sentences (Nia Glassie trial archive).

Debate about public policy is hardly ever an emotion-free zone, and our emotional responses are relevant data for moral argument about ‘the right thing to do’. As Freiberg (2001) and Freiberg and Carson (2010) have argued, evidence alone is unlikely to be the major determinant of policy outcomes. Policies are more likely to be adopted and implemented successfully when they are developed through extensive engagement and evidence-based dialogue with interested and affected parties.

The model of policy making proposed by Freiberg and Carson does not require us to abandon evidence for intuition, or reasoned, empirical analysis for emotion, but it does invite us to recognise emotion and affect within “a reasoned and open dialogic process of policy formulation” (Freiberg and Carson 2010, 161). Public policy in a liberal democracy requires us to engage with diverse others in *public reasoning*—not mere assertion of how we feel. Neither do hard choices and trade offs go away just because we feel strongly about something.

¹⁸ The Ministry of Health and Pharmac, when making decisions about high-cost surgical or pharmaceutical interventions, do not assign the same utility value to every human life, but calculate disability adjusted life years (DALYs) and/or quality adjusted life years (QALYs). The Accident Compensation Corporation similarly uses QALYs. For a brief discussion of QALYs and DALYs in the New Zealand policy context, see Guria (2010).

¹⁹ This is the question posed by the ‘trolley problem’ thought experiment conceived by Philippa Foot and Judith Jarvis Thomson, and variations of this in what has become known as ‘trolleyology’. The trolley problem brings our conflicting moral intuitions to bear on the types of questions to which cost-benefit analysis is commonly applied, and exposes a flaw in utilitarian theory. For a brief introduction to the ‘trolley problem’, see Edmonds (2010) and Sandel (2009, 21–27).

Calculating trade offs and the challenge of intergenerational equity

What is an acceptable rate of child mortality from abuse and neglect? A comparison across OECD countries of the death rate per 100,000 children aged 0–19 due to negligence, maltreatment or physical assault over the period 2006–08 (or the latest three years available) shows that New Zealand’s rate is 0.73, roughly double the OECD median of 0.36 (OECD 2011). Would it be acceptable, then, to halve New Zealand’s rate to the OECD median, or ought the goal to be zero?

If the goal were to be zero, how much state intervention in the lives of communities, families and individuals might we tolerate in order to achieve this? And how, in a context of relative resource scarcity, might we reallocate public expenditure to pay for increased early intervention in the well-being of New Zealand’s children and young people?

This raises difficult questions of intergenerational equity, as shown in Table 2.

Table 2: Intergenerational equity?

Provisional population estimates, June 2011²⁰	
Age 0–14	20.3% of total population
Age 0–19	27.5% of total population
Age 65+	13.3% of total population
Proportion of Crown annual operating expenditure, social services (including New Zealand Superannuation and health), for New Zealanders aged 65+²¹	
2010	25% on 13% of total population
2050, projected	40% on 25% of total population
Proportion of population in low-income households by age, 2010²²	
Age 0–17	21%
Age 65+	7%

Given that children have neither voice nor vote and that people aged over 65 years had the highest reported turnout in the 2008 general election,²³ policy making that involves trade offs between public expenditure on children and young people and expenditure on older people requires moral leadership and explicit deliberation on ethical dilemmas inherent in these trade offs. This in turn requires us to go beyond utilitarianism, and beyond cost-benefit analysis.

²⁰ Source: Statistics New Zealand.

²¹ Source: Makhlof (2010, 91).

²² Source: Perry (2011, 104, Table G.2). Low-income households are defined as having a real equivalised household disposable income (after housing costs) less than a ‘constant-value’ threshold set at 60% of the 2007 median.

²³ In the New Zealand General Social Survey conducted between April 2008 and March 2009, 80 percent of respondents said they had voted in the 2008 general election. People aged 65 years and over had the highest reported turnout (94 percent), followed by people aged 45–64 years (89 percent) and those aged 25–44 years (77 percent). Fewer than half of 15–24 year olds (46 percent) said they had voted, but many were not eligible to do so on age and other grounds. Source: Ministry of Social Development 2010, <http://socialreport.msd.govt.nz/civil-political-rights/voter-turnout.html> (accessed December 2011). Total voter turnout in the 2011 general election was 74.21% of those enrolled, compared to 79.46% in 2008.

Pluralism and public policy

People have argued about what justice is and what it means to ‘do the right thing’ since at least the fourth century BCE when Plato wrote *The Republic*. Isaiah Berlin (1969, 167) concluded that not all good things are compatible and that “conflicts of values may be an intrinsic, irremovable element in human life.” James Flynn (2000), after some 50 years of reflection, similarly abandoned as impossible the attempt to win moral arguments by means of objective ethical truth-tests or proofs. He has not given up on humane-egalitarian ideals, or on the possibility of convincing others of the merits of those ideals on reasonable grounds. We can live with the dialectic between our own conflicted ideals. We can advance reasons that fall short of an ethical truth-test or proof but that are reasons nevertheless—Flynn calls these ‘substitutes for objectivity’—and we can inform and buttress those reasons with relevant social science evidence.

The fact is, however, that in a pluralistic, liberal democracy like New Zealand, people are committed to basic moral principles in different ways, to diverse conceptions of the good (desired outcomes), and to conflicting theories about how social goods should be distributed. As John Rawls (2005, 4) explains:

The political culture of a democratic society is always marked by a diversity of opposing and irreconcilable religious, philosophical, and moral doctrines. Some of these are perfectly reasonable, and this diversity among reasonable doctrines political liberalism sees as the inevitable long-run result of the powers of human reason at work within the background of enduring free institutions.

For the most part, we manage these conflicts within the broad set of ideas, institutions and social practices known as liberalism. Liberalism is the tradition of thought and practice that asserts, as the primary political value, “a society of free and equal citizens” (Rawls 1971, 13) and the liberty of every individual (guaranteed in the common rights of citizenship) to pursue, in an autonomous manner, her or his own conception of ‘the good life’.

Three basic moral principles are in tension within liberalism, however, as captured in the French republican slogan, *Liberté, égalité, fraternité* (Moroney 1981). Table 3 (see next page) maps these basic moral principles and some corresponding political theories against various understandings of people’s essential interests and implications for the distribution of social goods.

Table 3: Basic moral principles, corresponding political theories and implications for the distribution of social goods

LIBERTY	
Libertarianism e.g. Rand, Nozick	<ul style="list-style-type: none"> • minimise the state; maximise liberty and political freedom • individuals are self-interested, rational utility-maximisers; utility cannot be summed for a collective, only inferred by observing behaviours in markets
Neo-liberalism e.g. Hayek, Friedman	<ul style="list-style-type: none"> • the state should not impose on citizens a preferred way of life, but regulation and coercion are tolerated to ensure that individuals' pursuit of freedom does not deprive others of their freedom
Classical liberalism e.g. Locke, Hume, Smith	<ul style="list-style-type: none"> • protect individual rights, including and especially property rights, that all share equally • minimal state interference in, or support for, markets and voluntary associations; no special group rights
EQUALITY	
Social liberalism e.g. Beveridge, Keynes, Titmuss	<ul style="list-style-type: none"> • all persons are of equal moral worth and their interests matter equally, therefore people should get the same, or be treated the same • (temporary) special measures may be necessary to promote equality of opportunity and equity of outcomes
Egalitarianism e.g. Rawls, Dworkin	<ul style="list-style-type: none"> • largely symbolic recognition of minority social groups, rather than more or less permanent allocation of special group rights and resources
FRATERNITY	
Utilitarianism e.g. Bentham, Mill	<ul style="list-style-type: none"> • minimise pain/shame (domination and humiliation) and maximise utility—'the greatest good for the greatest number', at least in the long run and all things considered • acceptable to sacrifice an individual's or minority's interests and rights (in the short run) for the greater good (in the long run)
Communitarianism e.g. MacIntyre, Taylor, Sandel, Walzer, Oakeshott, Arendt	<ul style="list-style-type: none"> • the self is socially constituted, so public policy should promote interdependence of persons and 'the common good' • the purpose of any special measures is less to achieve resource equality than to promote social inclusion and participation in civic life (equal citizenship).

Although selective and partial, a schema like this can help us understand the different values commitments of political parties and those who vote for them, and some of the tensions within governments formed by coalition arrangements and confidence and supply agreements under Mixed-Member Proportional (MMP) representation in New Zealand since 1996. Of course, any such schema over-simplifies matters—it is not possible to order political theories and parties in a tidy manner in one dimension.²⁴ My point is simply that in a modern democratic society, people are committed, as Rawls (2005, xvi) puts it, to “a pluralism of incompatible yet reasonable comprehensive doctrines.” We have genuinely different conceptions of the good (desired outcomes) and theories about how social goods ought to be distributed. These different commitments and theories overlap in complex ways.

It is this very overlapping, however, that makes it possible for us to move beyond talking past each other and relying solely on “a convergence of self- and group-interests, or on the fortunate outcome of political bargaining” (Rawls 1987, 2). We may not be able to reach consensus on a ‘comprehensive’ theory of justice, as Rawls puts it, but perhaps we can arrive at an

²⁴ Table 3 is broadly organised along a continuum (from top to bottom) between a deontological and a teleological/consequential ethics. See **The Political Compass** (<http://www.politicalcompass.org/nz2011>, accessed February 2012) for an alternative way of charting political convictions and parties on two dimensions—an economic left-right scale, and a social authoritarian-libertarian scale—including an analysis of the main parties contesting the 2011 general election in New Zealand.

‘overlapping consensus’ that allows action to occur, through a public exchange of reasons informed by relevant evidence.²⁵

Realisation-focused comparison

To sum up my argument thus far: Sound public policy is informed by relevant evidence, including monitoring and evaluation of ‘what works’. In decision contexts where there is general agreement on desired outcomes and operative values, and little or no uncertainty about the impact of particular actions on the achievement of those desired outcomes (i.e., ‘Tornado Politics’), then a more or less direct line can be drawn between science and policy. This is, however, a relatively rare occurrence. For the most part, we make policy in contexts where there is a merely latent or weak consensus on values and where there are objective and subjective uncertainties about outcomes associated with particular decisions and actions (‘Abortion Politics’). We make public policy in contexts of conflict over values and ‘the right thing to do’.

Arguments about values and basic moral principles (such as liberty, equality and fraternity) are unwinnable. For the purposes of public policy, this does not matter. Liberalism is not a set of values and moral standards to which a ‘liberal’ society must adhere (Kukathas 2003, 19). Liberalism is a way of managing conflict and co-existing without violence, despite a diversity of cultures, beliefs, values and moral commitments.

In the absence of objective ethical truth-tests or proofs, a liberal democracy turns to politics to manage conflict. As Pielke (2007, 29) puts it, “When there is conflict over decision-making, politics is necessary to reach a consensus that allows action to occur.” Given the multitude of potential conflicts between citizens in a pluralistic society, and the conflicts we experience within ourselves over values and the right thing to do, our commitments to action will for the most part involve compromise (‘trade offs’) of some sort or another.

Sen (2009a, 2009b) argues that in any case, we need to abandon the notion of creating a perfectly just world with perfectly just institutions (‘transcendental institutionalism’, as per Kant and Rawls), and opt instead for ‘realisation-focused comparison’ based on social choice theory. What he means is the relatively modest ambition of identifying, choosing and acting politically to address remediable injustices—locally, nationally, regionally and globally. This will not create a perfectly just world, but it will improve the actual lives that people are able to lead in terms of their capabilities or ‘real freedom’.

Sen’s ‘capabilities approach’ views a person’s life as a combination of *functionings* (‘beings and doings’) and *capabilities* (freedom to choose among these functionings, or real opportunities to lead a life one has reason to value) (Sen, 1993, 30).²⁶ He proposes to go beyond utilitarianism, and beyond Rawls, by focusing on real (substantive) freedoms rather than utility (happiness or desire-fulfilment) or access to resources (income, commodities, assets):

²⁵ Rawls (1987, 6–7; cf. 1971, 387–88, 517, 580–81; 2005) argues that a stable, overlapping consensus on a political conception of justice can be worked up from the fund of shared political ideas latent in the public political culture of a democratic society through the exercise of “free public reason” (1987, 17). This is a particular responsibility of government officials and candidates for political office (Rawls 2005, 442–45).

²⁶ On his capabilities approach, see Sen (1979, 1987, 1993, 2002, 2005, 2009a).

Because of the nature of the evaluative space, the capability approach differs from utilitarian evaluation (more generally 'welfarist' evaluation) in making room for a variety of human acts and states as important in themselves (not just *because* they may produce utility, nor just to the *extent* that they yield utility). It also makes room for valuing various freedoms—in the form of capabilities. On the other side, the approach does not attach direct—as opposed to derivative—importance to the *means* of living or *means* of freedom (e.g. real income, wealth, opulence, primary goods, or resources), as some other approaches do (Sen 1993, 33).

As Nussbaum (2000, 71) puts it, the key question is not 'How satisfied is X?', or 'How much in the way of resources is X able to command?', but 'What is X actually able to do and to be?'

The point is to advance justice, not to perfect it. Making our life together more just than it is now requires social judgements based on relevant social science evidence and reasoned argument. It requires choosing between social alternatives, rather than a search for a supreme, or ideal, alternative:

Debates about justice—if they are going to relate to practicalities—cannot but be about comparisons. We do not abstain from comparisons even if we are unable to identify the perfectly just (Sen 2009a, 400).

More often than not, the best we will manage are partial rankings and limited agreements, reached through personal and public reasoning (Sen 2009a, 399). Despite the non-commensurability involved, when our priorities or weights over the relevant values are clear, it can be relatively straightforward to decide what we should sensibly do (Sen 2004). Nussbaum (2000, 299–300) explains how this is possible, and why it is necessary:

People do not go through life without forming ideas about the human good and the right, about what has value and what does not, about what choice is, about what justice and mercy and aggression and grief are. They have views about these things and they use them—not least when they enter the political arena. Often these views embed pieces of highly general theory, derived from custom, or religion, or social science. When public policies are chosen, then, they are the product of many people's intuitions and theories, some of them examined, and many of them unexamined. It seems sensible to deliberate about which theories we really want to hold onto, which intuitions are really the most deeply rooted in our moral sensibility. In the absence of such a public deliberation, the most influential views are likely to be those, simply, that are held by the most powerful or rhetorically effective people.... Philosophy asks for public deliberation instead of the usual contest of power.

The model of democracy that this implies is 'government by discussion' through a public exchange of reasons and 'open impartiality' (Sen 2009a, 321–54). We will never achieve a perfectly just society. We can make our society less unjust than it is now, however, by proceeding from a reasoned assessment of conflicting claims, through practical, public reasoning, to democratic decision-making between a range of feasible alternatives to remedy manifest cases of injustice.

The art of politics lies in reducing a multitude of possible conflicts into a manageable few that people can actually deal with, and presenting the electorate with a choice between clearly defined options as a basis for majority decision-making. As Schattschneider (1975, 138) puts it, "Democracy is a competitive political system in which competing leaders and organizations define the alternatives of public policy in such a way that the public can participate in the decision-making process."

Making hard choices in public policy—together

Given a context of resource scarcity and of a pluralism of values and ideas about ‘the right thing to do’, seven questions might helpfully frame an approach to public policy making in which elected officials and expert advisors work together to co-produce policy in ways that engage citizens, address ethical dilemmas and facilitate inclusive, participatory decision making.

1. What is the problem we want to address and/or the result we want to achieve and why? What is our **purpose** here?
2. Who has a particular **interest** with respect to this issue and what is the nature of that interest?
3. What **values** are at stake with respect to this issue?
4. What relevant **evidence** can inform our decision making and how certain are ‘the facts’ and our knowledge of ‘what works’?
5. How might we factor our own and others’ **emotions** and **moral intuitions** into **practical public reasoning** about the right thing to do?
6. What options are **implementable** at what cost, and which of these are most likely to secure a **democratic (i.e. majoritarian) mandate**?
7. How can we protect the dignity and rights of **individuals and minorities** while promoting the **public good**?

Implications for public servants and elected officials

A co-production model of public policy making requires state sector policy analysts, advisors and their managers to be more than ‘back-office’ implementers of what ministers want to do. As the long title of the State Sector Act 1988 puts it, employees in the state services are to be ‘imbued with the spirit of service to the community’. The Westminster convention is that we serve the government of the day by offering free, frank and fearless advice that helps shape the views and priorities of the government of the day, as well as being responsive to it. This advice is to be apolitical, but not amoral—we cannot evade moral responsibility by pretending to offer ‘values-free’ policy advice.

The role of state sector policy analysts and advisors is to facilitate public reasoning and to clarify a range of practicable options that, on the best available evidence, are most likely to achieve results that reflect an ‘overlapping consensus’ on ‘the right thing to do’. When policy makers have decided on a preferred option and have a democratic mandate to implement this, public servants then work with others (local government, the private sector, the community and voluntary sector, communities, families and individuals) to implement it, monitoring and evaluating whether and to what extent the policy or service achieves the results ministers, parliament and the public expect from it.

A co-production model of public policy making is evolving as New Zealand moves beyond the ‘new public management’ (NPM) reforms of the late twentieth century (Ryan 2006, 2011). This movement in the direction of collaborative governance, if it is to be more than a passing and fragmentary fad, requires different skills and capabilities from those of the bureaucratic and NPM eras (Ryan 2011, 31–32). Citizens acting in official capacities, whether elected or appointed, need to have and exercise six generic attributes characterised by Kenneth Winston (2002, 2008, 2009) as ‘moral competence in public life’:

1. **civility**—a public conscience; act only on the basis of beliefs and principles that citizens in general are committed to, or could be after deliberation and reflection, rather than on the basis of personal beliefs and moral convictions;²⁷
2. **fidelity to the public good**—and not only to private and particular interests;
3. **respect for citizens as responsible agents**—view citizens in terms of both well-being and agency;²⁸ exercise political power via a facilitative rather than a directive style of governance;
4. **proficiency in democratic architecture**—enable citizens to engage with others in self-rule; facilitate modes of participation in decision making that are fit for purpose and effective;²⁹
5. **prudence**—exercise practical reason (wisdom), acquired through cumulative experience, and not only technical reason, in making strategic, contingent judgments about how to act in particular cases, in the full awareness of moral ambiguity, the fallibility of human planning and the inevitability of unintended consequences; and
6. **double reflection**—understand, take into account and mediate between diverse moral viewpoints, across geographical and cultural divides; pay attention to what a course of action might mean to others; contemplate with equanimity the contestability of one’s own worldview.

As the late Václav Havel, first President of the Czech Republic (1993–2003), said in a Commencement Day Address at Harvard University in 1995:

The main task of the present generation of politicians is not, I think, to ingratiate themselves with the public through the decisions they take or their smiles on television. It is not to go on winning elections and ensuring themselves a place in the sun till the end of their days. Their role is something quite different: to assume their share of responsibility for the long-range prospects of our world and thus to set an example for the public in whose sight they work. Their responsibility is to think ahead boldly, not to fear the disfavour of the crowd, to imbue their actions with a spiritual dimension (which of course is not the same thing as ostentatious attendance at religious services), to explain again and again – both to the public and to their colleagues – that politics must do far more than reflect the interests of particular groups or lobbies. After all, politics is a matter of serving the community, which means that it is morality in practice (Havel 1995).

²⁷ Baehler (2005, 7) proposes the following features of a public argument model for policy making, which summarises practical implications of ‘civility’:

- establish clear principles and rules of thumb to distinguish public and non-public policy rationales;
- scan the ideological and evidence terrain and build multi-dimensional cognitive maps of a policy field, including both descriptive data and competing policy approaches in ideological space;
- develop better methods to build and test public arguments;
- use evidence as one ingredient (linked with logic, linked with an appeal to people’s values) to build and support the argument framework; and
- engage ministers in the shared goal of building public good arguments.

²⁸ Winston draws here on Sen’s argument (see 1987; 1999; 2002, 659–695; 2009a, ch. 13) that both the ‘well-being aspect’ and the ‘agency aspect’ of persons are relevant to the assessment of states of affairs and actions; i.e. that we must distinguish between an ‘opportunity aspect’ and a ‘process aspect’ of freedom. The issue is whether an individual’s capability to lead the kind of life she values should be assessed only by the culmination alternative that she actually ends up with, or by a broader approach that takes note of the process of choice involved and, in particular, the other alternatives she could also choose within her actual ability to do so.

²⁹ Cf. Wildavsky (1987, 255): “Whatever else policy analysts may be ... they should be advocates of citizen participation.... Designing policies that facilitate intelligent and effective participation is an essential task of policy analysis.”

Conclusion

More often than not, public policy making requires us to make hard choices in decision contexts where resources are constrained, and where people are committed to different values and ideas and have strong feelings about these. Going beyond ‘the evidence’, and beyond utilitarianism and cost-benefit analysis, and facilitating citizen engagement and public deliberation that factors purpose, values and emotions into public policy requires a co-production model of governance.

Public policy is more than a numbers game. Policy advisors are, or should be, more than number crunchers and implementers. Ministers and members of parliament are, or should be, more than poll-iticians—slavish followers of opinion polls and focus group findings (cf. Edwards 2011).

What Winston terms ‘prudence’ does not, of course, displace the need for technical reason. The practical and the technical are two indispensable aspects or dimensions of policy making, not two distinct and self-contained kinds of enterprise. Policy making may be more art and craft than science, but the sound application of technical reason can help prevent the craft from being exercised in ways that are merely ‘crafty’. The argument of this paper is that policy makers need to go beyond evidence, and beyond utilitarianism and cost-benefit analysis, but not that we can dispense with evidence or technical reason.

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