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# A Deliberative-Democratic Theory of Policy Analysis

By

Daniel Baker

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Public Policy

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Steven Raphael, Chair
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A Deliberative-Democratic Theory of Policy Analysis

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# Abstract

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Doctor of Philosophy in Public Policy

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Professor Steven Raphael, Chair

This dissertation offers a normative account of policy analysis based on the idea that policy analysis must enable reasoned deliberation among equal citizens. It gives policy analysis a normative core, emphasizing the value of deliberation both as a means to govern on free and equal terms of social cooperation and as a means to make better public decisions. Policy analysis is one institution in a basic structure designed to make democratic deliberation possible.

Policy analysis is situated within the institutional structure of democracy by defining three roles for unelected analysts: (1) informing public deliberation, (2) ensuring policy justification, and (3) serving as a symbol of democratic legitimacy. These roles require analysts to be neutral, but not in a technical or objective sense. Rather, analysts can and must be held accountable for looking outward to collect evidence on all minimally acceptable reasons that citizens and policy makers believe to be relevant. In so doing, policy analysis is standardized and impersonal, without unjustifiably limiting public deliberations to only quantifiable impacts.

The dissertation charts a middle path between a purely quantitative approach to policy analysis and an argumentative approach, where all analysis is political argument. It does so through the mechanism of professional ethics, assigning analysts a duty to be comprehensively neutral. This standard acknowledges that analysis can never be value-free, but it does not abandon neutrality as a goal. Instead, it asks analysts to prepare citizens and policy makers to weigh controversial evidence and questions of equity. Taken together, the articles of this dissertation show how careful institutional design can enable an epistemic division of labor among experts, analysts, and citizens, while holding those professionals accountable for enabling deliberation on complex issues of public concern.

To my mother,

who set me on this path and took the journey with me

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# Chapter 1

## Introduction: A Deliberative-Democratic Theory of Policy Analysis

Policy analysis stands between science and democracy as an intercessor, translating complex evidence to inform citizens and policy makers and prepare them to deliberate public policy on the merits. This role places policy analysis between two great social institutions—the institution of science, broadly understood as including all of the scholarly disciplines and their research organizations, and the institution of democracy, which I understand as the structure of self-government that enables reasoned deliberation among free and equal citizens. The central question of this dissertation is how policy analysis can play this contributing role in a way that is justifiable to self-governing citizens.

By identifying policy analysis, science, and democracy as institutions, I am adopting an institutional approach to justifiable public actions, where the rights and duties of particular agents follow from their role in justifiable social institutions.[1] As introduced by John Rawls, an institution is "a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like."[2] Because I will identify policy analysis as a *democratic* institution, an institutional account of policy analysis offers a public system of rules that defines the role of the policy analyst within a democratic system of self-government. It is a normative account based in a normative theory of democracy.

The basic idea of an institutional account, as I understand it, is that justification of any particular institutional role should come in two stages.[3] First, we should ask why, as a general matter, it is justifiable to have an institution of this kind. What interests are served by the institution that would go unserved without it, and why are those interests important? Second, we should ask how an institution must be designed to ensure that those interests are achieved.[4] Given the purposes or goals of the institution established at the first stage and the practical context where they play out, how should the institution be designed? Therefore, institutions are purposive systems designed to achieve particular objectives.[5]

The difficulty in applying an institutional account to policy analysis is that policy analysis is but one component of a larger basic structure of democracy.[6] Policy analysis combines with other institutions of a representative democracy to collectively achieve the goals and interests that democracy is designed to achieve. In other words, the institution of policy analysis must be evaluated both under the shadow of a normative account of democratic legitimacy and in relation to other institutions within the basic structure, such as free press, free expression, public education, and science.

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[1] See John Rawls, *A Theory of Justice, Revised Edition* (Cambridge: Belknap Press, 1999), pp. 47–52.

[2] Rawls, *Theory of Justice, Revised*, p. 47.

[3] My understanding of institutional reasoning has been heavily influenced by T. M. Scanlon's account of inequality in *Why Does Inequality Matter?* (Oxford: Oxford University Press, 2018).

[4] It is also sometimes necessary to include a third level that deals with the substantive background opportunities of individuals who are governed by the institutions in question. This third level will generally not be relevant to my account of policy analysis, where background conditions can be treated as fixed, but it would be relevant to a broader account of the basic structure. See Scanlon, *Why Does Inequality Matter?*, p. 76; John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge: Belknap Press, 2001), pp. 52–57.

[5] Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), p. 73.

[6] "The basic structure is understood as the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation." John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 258.

For this dissertation, the normative theory at the first level of my institutional account is provided by a theory of deliberative democracy. In a deliberative account of democracy, the core of legitimate political decision-making is public deliberation among free and equal citizens.[7] By publicly giving and demanding reasons, citizens and representative policy makers justify public decisions and the sacrifices and harms that come with those decisions.[8] At the second level then, institutions must be designed to make deliberation possible, to enable citizens and their representatives to reason together and to find mutually acceptable reasons.[9] My account sees policy analysis as one step in that process—a step that gathers specific information about particular policy actions to prepare deliberation on those actions. Policy analysis is defined relative to the demand to justify policy and enable deliberation of public policies on the merits. Once properly situated in its institutional context, the primary question of my account then focuses on how policy analysts should act given their role in this overall normative account of deliberative democracy.[10]

## 1.1 The Argumentative Turn in Policy Analysis

Despite the prevalence of deliberative democracy within political theory and the rapid ascent of policy analysis and public administration over the relevant time horizon, there has been surprisingly little effort to situate policy analysis within a deliberative theory of democracy. The policy analysis literature remains situated around the paradigms of welfare economics and cost-benefit analysis, which pay little attention to distinguishing the institutional role of the analyst from other actors in the system. My account thus begins in chapter 2 by showing why quantitative welfare-economic tools are insufficient as a stand-alone public decision procedure and how deliberation addresses those weaknesses.

More heterodox approaches to policy analysis—those that share a divergence from welfare economics—tend to focus on what they call the "argumentative turn" in policy analysis, a movement that predates deliberative democracy under the label of "post-positivist policy analysis."[11] This branch of theory seeks "to understand just what policy analysts and planners do, how language and modes of representation both enable and constrain their work, how their practical rhetoric depicts and selects, describes and characterizes, includes and excludes, and more."[12] Exemplified by such works as Giandomenico Majone's *Evidence, Argument, and Persuasion in the Policy Process*[13] and Deborah Stone's *Policy Paradox*,[14] this view sees policy analysis as practical processes of argumentation, rejecting the idea that policy analysis can be a value-free, technical project. Rather, it sees language as shaping political reality and seeks to clarify normative arguments to understand the relationship between empirical and normative statements as they are employed in the policy process.[15]

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[7] James Bohman, "Deliberative Democracy and the Epistemic Benefits of Diversity," *Episteme* 3 (2006), 175–91, p. 177.

[8] Joshua Cohen, "Democracy and Liberty," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1998]), 223–67, p. 224.

[9] Joshua Cohen, "Deliberation and Democratic Legitimacy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1989]), 16–37, p. 29.

[10] The place of policy analysis in deliberative democracy is laid out in §5.5; see also §4.3.

[11] Martin Rein, *Social Science and Public Policy* (New York: Penguin Books, 1976); Frank Fischer, *Politics, Values, and Public Policy: The Problem of Methodology* (Boulder: Westview Press, 1980).

[12] Frank Fischer and John Forester, eds., *The Argumentative Turn in Policy Analysis and Planning* (Durham: Duke University Press, 1993), p. 2.

[13] Giandomenico Majone, *Evidence, Argument, and Persuasion in the Policy Process* (New Haven: Yale University Press, 1989).

[14] Deborah Stone, *Policy Paradox: The Art of Political Decision Making*, 3rd ed. (New York: W. W. Norton, 2012).

Majone sees the policy analyst as "a producer of policy arguments, [whose] basic skills are not algorithmical but argumentative: the ability to probe assumptions critically, to produce and evaluate evidence, to keep many threads in hand, to draw for an argument from many disparate sources, to communicate effectively."[16] Building on Aristotle's notion of a craft, Majone places policy analysts in a dialectic, which cannot assume a fixed understanding of the problem to be solved or the relevant values.[17] For Majone, methodology is evaluated on process-oriented criteria of adequacy,[18] then incorporated into a policy argument to persuade an audience, where a big part of the analyst's job is to push the boundaries of what is possible by changing attitudes, values and beliefs.[19] Stone argues that the categories of thought behind reasoned analysis are themselves politically motivated. "*Reasoned analysis is necessarily political*. . . . Policy analysis is political argument, and vice versa."[20] Policy is politics, a process of argument, where the actors search for criteria and justification for their position through persuasion.

While these positions have been influential in the development of my account, especially with respect to the value-laden nature of social-scientific and empirical methods, I believe that the argumentative approach is undermotivated and underspecified. It is undermotivated because it does not adequately answer the question of why democratic citizens should accept the fact that unelected policy analysts have a significant impact on developing policy argumentation. In placing policy analysis within a system focused on persuasion, the argumentative approach emphasizes the role of judgment and advocacy in the job of the policy analyst.[21] However, with judgment and advocacy come the potential for unequal influence over public decisions, and the argumentative approach fails to show how democracies can hold analysts accountable for their role.

The argumentative approach can easily be confused with my account, especially since the trend has been to rebrand the argumentative approach as "deliberative policy analysis."[22] While this thesis and mine share a criticism of aggregative and welfare-economic approaches that are dominant in policy analysis, the theoretical connection is tenuous. Rather than seeing democracy as a normative theory—as my account will—"deliberative policy analysis" sees democracy as a network where practical actors exert influence. As Maarten Hajer and Hendrik Wagenaar argue, "when there is talk of 'democracy', what we have in mind is not some abstract philosophical idea of democracy, but the concrete organization of collective social and political life 'as we know it'."[23] Frank Fischer diverges directly from the institutional thesis of this dissertation, arguing that democratic deliberation "can better be understood as an experience rather than institutional procedures and practices," and "the theory of deliberative democracy is unrealistic and utopian."[24] My account rejects those arguments by using the theory of deliberative democracy to define the institutional role and proper limitations of policy analysis in practice.[25]

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[15] Frank Fischer and Herbert Gottweis, *The Argumentative Turn Revisited: Public Policy as Communicative Practice* (Durham: Duke University Press, 2012), p. 2.

[16] Majone, *Evidence, Argument, and Persuasion*, pp. 21–22.

[17] Majone, *Evidence, Argument, and Persuasion*, pp. 44–46.

[18] Majone, *Evidence, Argument, and Persuasion*, p. 67.

[19] Giandomenico Majone, "Policy Analysis and Public Deliberation," in *The Power of Public Ideas*, ed. Robert B. Reich (Cambridge: Harvard University Press, 1988), 157–78, p. 165.

[20] Stone, *Policy Paradox*, p. 380.

[21] Majone, "Policy Analysis and Public Deliberation," pp. 175–77.

[22] Maarten A. Hajer and Hendrik Wagenaar, *Deliberative Policy Analysis: Understanding Governance in the Network Society* (Cambridge: Cambridge University Press, 2003), pp. 13–15; Frank Fischer and Piyapong Boossabong, "Deliberative Policy Analysis," in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren (Oxford: Oxford University Press, 2018), 584–94.

[23] Hajer and Wagenaar, *Deliberative Policy Analysis*, p. 15; see also John S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000), p. 29.

The interactive, practical approach may be descriptively useful, but it is normatively undermotivated. In particular, citizens should wonder if analysts who acknowledge the complexity of policy arguments, in the way the argumentative approach recommends, end up acting as a quasi-guardian class, constructing policy arguments that appeal to experts and analysts without proper regard for the perspective of the people.[26] If policy analysts only bring some perspectives into focus in the policy debate, then those who hold values not favored by experts and analysts will have reason to disfavor policy analysis altogether.[27]

Defenders of the argumentative approach would no doubt respond to these objections by saying that wider perspectives are included through deliberation. Hajer and Wagenaar argue,[28]

> To find their way in such situations, people deliberate. Such deliberation, as will now be obvious, should not be confused with the kind of systematic, principled reasoning of traditional moral philosophy. Rather, deliberative judgment emerges through collective, interactive discourse. As we saw above, telling stories and reacting to each other's stories in situations of collective action does a lot of work of practical judgment.

Under this view, the practical and normative goal is to facilitate communicative exchanges through interactive discourse.[29] However, these broad gestures at deliberation give policy analysts little guidance to define their role as facilitators. What information is relevant to prepare these deliberations? To ensure that deliberation is fair, I will argue that analytical standards must be defined to give policy makers, citizens, and fellow analysts a basis to criticize analysis as incomplete and hold them accountable for adequate preparation.[30] These standards constrain policy analysts in how they facilitate deliberation.

From a similar perspective, Robert Reich argues that the task of policy analysts and administrators is "to provide the public with alternative visions of what is desirable and possible, to stimulate deliberation about them, provoke a reexamination of premises and values, and thus to broaden the range of potential responses and deepen society's understanding of itself."[31] One can certainly see the potential for such a role and why it would be valuable, but before it may be integrated into democratic theory, we need an account explaining why that role would not be biased toward particular policy perspectives. If policy analysts are to be "natural and desirable aspects of the formation of public values," then we need to justify why all reasonable perspectives should agree that policy analysts should play that role.[32] Otherwise, policy deliberation would become a competition where only certain teams are allowed to have a coaching staff. That would be unjustifiable as an institutional design.

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[24] Frank Fischer, *Democracy & Expertise: Reorienting Policy Inquiry* (Oxford: Oxford University Press, 2009), pp. 81–82.

[25] C.f. Robert E. Goodin, Martin Rein, and Michael Moran, "The Public and Its Policies," in their *The Oxford Handbook of Public Policy* (Oxford: Oxford University Press, 2008), 3–36, p. 9 (arguing that deliberative democracy is easier to reconcile with the argumentative approach and equating arguments for deliberation with arguments for rhetoric).

[26] See §5.1.

[27] See §4.2.

[28] Hajer and Wagenaar, *Deliberative Policy Analysis*, p. 23.

[29] Fischer and Boossabong, "Deliberative Policy Analysis," pp. 584–85.

[30] See §5.6.

[31] Robert B. Reich, "Introduction," in his *The Power of Public Ideas* (Cambridge: Harvard University Press, 1988), 1–12, p. 4.

Thus, argumentative policy analysis is underspecified because it does not give analysts standards to evaluate their work or guidelines for citizens and policy makers to hold policy analysts accountable to democratic values.[33] I will agree that policy analysis cannot be value-free and scientific disciplines inevitably have normative underpinnings, but this does not entail that policy analysis should abandon values of impartiality and neutrality. Argumentative policy analysis promises to be a flexible form of governance that is "more effective, accountable, and democratic," but it refuses to define itself as an operational methodology, preferring instead to develop an alternative inquiry system based on dialectical argumentation.[34] In failing to operationalize, I will argue that it does not ensure that policy analysis actually is accountable and democratic.

Seeking "to disarm the pretence of objective, neutral scientific policy analysis,"[35] supporters of argumentative policy analysis lose sight of the strong reasons for policy analysts to maintain some form of neutrality. Orthodox, quantified policy analysis is not only favored because it is perceived to be value-free. It also provides a shared and publicly accessible method of inquiry that promotes accountability, transparency, and consistency.[36] An alternative account that promotes deliberation—rather than or in addition to dominant quantitative approaches—must do more than show that a perfect quantitative ideal is unsustainable. It must also show that deliberative approaches can do better within a fair and accountable system of public evaluation.[37]

## 1.2 A Deliberative-Democratic Account of Policy Analysis

The aim of this dissertation is to situate policy analysis within a deliberative democracy, which is to say, within a basic structure of institutions designed to make possible reasoned deliberation among equals. This approach answers the problem of undermotivation by giving the theory a normative core, emphasizing the value of deliberative democracy both as a means to govern on free and equal terms of social cooperation and as a means to make better public decisions. It answers the problem of underspecification by defining a specific role for policy analysts within the basic structure and explaining how policy analysts can be held accountable for playing that role through ethical rules of professional conduct.

Following the advice of my committee, my dissertation consists of four independent articles. These articles are freestanding—other than section numbering that has been added for reference within the dissertation—and are written with a mind to the related literature and the intended audience. My goal in this section is to show how these articles relate and how they together constitute the deliberative-democratic approach to policy analysis referenced in this introduction. To make this case, the dissertation develops four structurally related claims across the four articles:

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[32] Robert B. Reich, "Policy Making in a Democracy," in his *The Power of Public Ideas* (Cambridge: Harvard University Press, 1988), 123–56, pp. 153–55 (Reich counsels prudence, but gives no standards to determine how an unelected analyst should play this role in an acceptably limited way).

[33] Standards of completeness are distinguished from standards of competence or adequacy. See Majone, *Evidence, Argument, and Persuasion*, pp. 66–67; §5.2–§5.3.

[34] Fischer and Boossabong, "Deliberative Policy Analysis," p. 586.

[35] Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford: Oxford University Press, 2003), p. 15.

[36] See §2.4.2.

[37] See §2.1; c.f. §5.6.

### (1) Deliberation is an essential element of a justifiable public decision procedure.

Central to my account of policy analysis is that desirable features of public decision procedures remain inaccessible to an analyst or agency working alone to quantify policy impacts. Public decision procedures should incorporate deliberation because it allows those decisions to be better—which is to say that deliberation (a) transforms preferences toward the common good, (b) incorporates information that is inaccessible without deliberation, and (c) makes controversial public decisions more acceptable to the public.[38] These virtues make it unjustifiable for a public decision procedure to omit deliberation in favor of pure quantification or a combination of quantification and rights.

My account differs from other critiques of quantification and cost-benefit analysis in two primary ways. First, it provides a clearer account of the virtues of quantification in generating information within a widely accepted method of inquiry and confronting trade-offs. These virtues are often disregarded by critics and emphasized by defenders, such that the literatures talk past each other.[39] I consider my argument to be a "qualified defense of cost-benefit analysis" against more strident critics because I see quantification as a necessary element of many justifiable public decision procedures.[40] It is also a targeted critique of cost-benefit analysis, especially with regard to the priority relations among values, which I call "contextual equity" issues.[41] Thus, I argue for an approach that sees a necessary role for both quantification and deliberation.[42]

Second, my account provides a clearer explanation of the vices of quantification at the level of individual decisions and compares those vices to a coherent alternative decision procedure. Critics of cost-benefit analysis are often satisfied to show that quantification violates fundamental rights claims in some cases, without providing an alternative decision procedure that simultaneously incorporates rights and approximates the virtues of quantitative policy tools.[43] My account defines a role for rights while also showing how quantification and deliberation play related roles, acknowledging that each has a necessary role.[44] Thus, there is a role for quantification, rights, and deliberation in a justifiable public decision procedure, or put differently, a public decision procedure is unjustifiable without each of these three elements.

My account of the role of deliberation in public decision procedures is consistent with deliberative accounts of democracy offered by prominent democratic theorists,[45] including Jon

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[38] See §2.6.
[39] See §2.1.
[40] See §2.4.2.
[41] See §2.4.3.
[42] See §2.8.
[43] See, e.g, Martha Nussbaum, "The Costs of Tragedy: Some Moral Limits of Cost-Benefit Analysis," *Journal of Legal Studies* 29 (2000), 1005–36; Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets* (New York: Farrar, Straus and Giroux, 2012).
[44] See §2.5.
[45] While I defend only the role of *deliberation* in §2, rather than the role of deliberative democracy, this emphasis is only chosen to isolate the specific issues for that article. The dissertation as a whole works from *deliberative democratic* premises, as are adopted in §3.6 and §5.5. Deliberation alone would not be enough to sustain the account. See Joshua Cohen, "Reflections on Deliberative Democracy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009), 326–47, p. 330.

Elster, Joshua Cohen, Cass Sunstein, Amy Gutmann, and Dennis Thompson.[46] My account of deliberation differs from these scholars largely in terms of emphasis, foregrounding the role that deliberation plays in informing context-dependent equity judgments within individual decisions, where earlier accounts have often emphasized the transformation of preferences.[47] These accounts are entirely consistent—contextual equity judgments will appear as a transformation of preferences in each decision—but I emphasize contextual equity as a way of showing that deliberation is necessary within *individual* public decision procedures. Thus, deliberation makes individual decisions better, and it is an essential element of a justifiable decision procedure.[48]

If deliberation is valued only as a means to shape perspectives and identities, then democratic theory may be satisfied so long as deliberation is occurring *somewhere* in the system. Deliberative conceptions become unspecified exhortations for a more discursive civil society. Perspectives and identities can be changed through contact with diverse voices, then carried through to later decisions by means of changed values. In contrast, if deliberation is valued to make contextual equity judgments in individual public decisions, as I argue, then it makes clear that deliberation is a necessary part of each public decision. Deliberation is not only desirable in the system as a whole, but also desirable within specific decisions.

### (2) Democratic institutions should be designed to make deliberation possible.

I draw my second major claim directly from Cohen's work on deliberative democracy, such that it is worth quoting at length:[49]

> The key point about institutional reflection is that it should *make deliberation possible*. Institutions in a deliberative democracy do not serve simply to implement the results of deliberation, as though free deliberation could proceed in the absence of appropriate institutions. Neither the commitment to nor the capacity for arriving at deliberative decisions is something that we can simply assume to obtain independent from the proper ordering of institutions. The institutions themselves must provide the framework for the formation of the will; they determine whether there is equality, whether deliberation is free and reasoned, whether there is autonomy, and so on.

Where the first claim establishes that deliberation is necessary for a justifiable public decision procedure, the second claim emphasizes that institutions are necessary to ensure deliberation takes the proper form. Deliberation weighs the reasons relevant to a decision with a view to making a justified decision.[50] To achieve reasoned deliberation among free and equal deliberators, institutions need to be in place to ensure that deliberators are adequately prepared and sufficiently informed.[51]

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[46] Jon Elster, "The Market and the Forum: Three Varieties of Political Theory," in James Bohman and William Rehg, eds., *Deliberative Democracy: Essays on Reason and Politics* (Cambridge: MIT Press, 1997 [1986]), 3–33; Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1989]), 16–37; Cass Sunstein, "Preferences and Politics," *Philosophy & Public Affairs* 20 (1991), 3–34; Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996).

[47] Elster, "Market and the Forum," pp. 11–12; Sunstein, "Preferences and Politics," p. 16.

[48] See §2.6.

[49] Cohen, "Deliberation and Democratic Legitimacy," p. 29.

[50] Cohen, "Reflections on Deliberative Democracy," p. 329.

Consider an example that I use frequently, the deliberation of a jury on a question of fact. For a jury deliberation to adequately play the role of a finder of fact within the legal system, numerous institutions must be in place. The police must be constrained to collect evidence according to due process; the prosecution and defense must produce evidence through discovery; judges must enforce rules of evidence; witnesses must testify under oath; defendants must be given the opportunity to cross-examine witnesses; and so on. Each of these institutions are defined with the goal in mind of preparing a jury of peers to deliberate questions of fact as part of a public trial. Without these institutions in place, the jury system would fail to capture the value of a trial by jury.

Various institutions combine to make democratic deliberation possible.[52] Public education prepares citizens to understand complex public issues.[53] Free media and free expression spread information and public opinion.[54] Collectively, these institutions are designed to ensure that policy makers and citizens can effectively deliberate policy.[55]

### (3) Policy analysis is necessary for effective democratic deliberation.

Having argued that deliberation is a necessary component of justifiable public decision procedures and that institutions should be designed to make deliberation possible, my next claim argues that policy analysis is necessary for effective democratic deliberation.[56] My account sees policy analysis as one component of a democratic division of labor, which divides epistemic tasks with the ultimate goal of enabling deliberation among citizens and policy makers on the merits of policies.[57] In other words, policy analysis is one part of the institutional structure that should be designed to make deliberation possible.

There are two parts to this argument. First, policy deliberation requires preparation using complex scholarly evidence to play its proper role in democracy. Second, policy analysis is the proper institutional approach to ensuring that preparation. The first claim is generally undisputed. As Brian Barry has argued, an information condition is necessary to get any normative account based on unforced agreement and deliberation off the ground.[58] More novel is the second claim, which requires examining closely the relationship of various institutions that inform citizens and policy makers. In particular, I argue that the media and the political process cannot be expected to sufficiently inform policy deliberation on their own.[59] I also differentiate a policy analyst from a scientist or an expert—making the case that public analysts are needed to inform citizens about specific policy changes.[60] Policy analysis is the ideal institution to play this role because (1) it can be expected to inform itself of relevant policy evidence across multiple disciplines, and (2) it can be held to ethical standards consistent with the justification for policy analysis as a profession.[61] Thus, policy analysis has a necessary role in preparing deliberation that is separable from institutions with related roles in the basic structure.

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[51] See §5.5.

[52] John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997), 765–807, pp. 772–73; Joshua Cohen and Joel Rogers, "Power and Reason," in *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, ed. Archon Fung and Erik Olin Wright (London: Verso Press, 2003), 237–55, p. 249.

[53] See John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (New York: Macmillan, 1916).

[54] See Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York: Harper, 1948); Robert C. Post, *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State* (New Haven: Yale University Press, 2012).

[55] These institutions need not be justified *entirely* on democratic grounds, as they serve other important interests that should also play a role in their institutional design. See Joshua Cohen, "Freedom of Expression," *Philosophy & Public Affairs* 22 (1993), 207–63; T. M. Scanlon, "Why Not Base Free Speech on Autonomy or Democracy?," *Virginia Law Review* 97 (2011), 541–48.

[56] "Necessary" is perhaps too strong. Various institutional designs would be able to incorporate democratic deliberation, including some where the policy analysis profession does not play precisely the roles I define for it here. For example, designs around novel institutions intended to promote deliberation, such as mini-publics, may take different institutional forms that structure evaluation in different ways. My claim is more accurately stated: policy analysis is necessary for effective democratic deliberation *given any institutional structure substantially similar to the representative structure our current democracy takes*. My approach should be taken as increasing legitimacy and accountability within that structure. It is intended as an alternative to specifically deliberative institutions, but it could also be supplementary to other institutional innovations.

[57] See §5.1.

### (4) Policy analysis must be constrained by ethical rules to play its democratic role.

A critical claim in my account is that policy analysis should be constrained by ethical rules of professional conduct. To understand the force of this argument, it is necessary to see ethical rules as one element in an institutional account of policy analysis, rather than an independent argument for ethical rules. Ethical rules give democracies two mechanisms that allow my account to avoid the pitfalls seen in my discussion of the argumentative approach.

First, ethical rules allow policy analysis to use normative standards of analysis—avoiding the pitfalls of claiming to be value-free—without undermining the neutrality of policy analysis as an institution. Argumentative theorists are correct to argue that purely technical or quantitative analysis is insufficient,[62] but by asking policy analysts to be rhetorically persuasive, they take a role that undermines the legitimacy of policy analysis as an institution.[63] By enforcing ethical rules on all analysts equally according to the demands of their role in a democratic system, ethical rules can ask analysts to introduce value-laden evidence without compromising their neutrality.[64] Doing so requires a standard I call "comprehensive neutrality," which asks analysts to look outwards, evaluating relevance with the idea of preparing citizens to deliberate on the reasons they find to be relevant. It places deliberation at the heart of policy evaluation by asking analysts to prepare citizens and policy makers on their own terms, but it also maintains the fairness and efficiency of the system by ensuring that different policy analysts give consistent information.[65]

Second, ethical rules give policy analysts the means to hold fellow analysts accountable for complete analysis. With this accountability mechanism in place, I argue that policy analysis can be trusted to make critical judgments about selecting relevant evidence from the various scholarly disciplines and preparing democratic deliberation.[66] Without properly defined ethical rules in place, analysts can manipulate deliberation by selectively introducing information, imposing a form of quasi-guardianship.[67]

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[58] Barry, *Justice as Impartiality*, pp. 68–69; see also §4.3.
[59] See §5.6.
[60] See §4.4; §5.5.
[61] See §5.4.
[62] See §2.3; §4.4.
[63] See §4.2.
[64] See §4.5.
[65] See §3.5; §4.4.
[66] See §4.6; §5.4.
[67] See §4.2; §5.6.

These two features allow policy analysis to answer an open question in democratic theory, which I call "the problem of expert discipline." The problem of expert discipline asks democratic institutions to justify the selection among scholarly experts from alternative disciplines.[68] Why ask an economist to evaluate a policy, rather than a sociologist or a historian? This question is intimately related to the selection of criteria in a policy analysis, which implicitly selects the kinds of evidence that will be taken to be relevant to an analysis.[69] I argue that democratic theory currently does a poor job answering this question, but policy analysis can help to answer it by enforcing comprehensive neutrality through a professional code of ethics and tasking fellow analysts to hold each other accountable for the completeness of that analysis.[70]

## 1.3 Looking Forward

The dissertation begins with "Quantification, Deliberation, and Contextual Equity," an article written with the intention of bridging the divide between deliberative theories of democracy and the practical policy literature, especially the literature on cost-benefit analysis. The goal of the article is to defend the role of deliberation in public decision procedures by identifying specific claims that neither quantification nor rights can adequately address. These "contextual equity" claims give us good reasons to design public decision procedures to include deliberation as a means to answer those equity questions by incorporating community values in a procedurally consistent, transparent, and accountable manner. The heart of the article is identifying the virtues and vices of quantitative decision procedures[71]—acknowledging the virtues of quantification that normative theorists often miss—and then showing how deliberative procedures can address those weaknesses in ways that quantitative distributional equity and rights claims cannot.[72]

This article contributes to the overall thesis of my dissertation in three main ways. First, it justifies my claim that deliberation is an essential element of justifiable public decision procedures. As discussed above when I introduced claim (1), my argument shows that deliberation should be incorporated into the everyday work of public decision procedures.[73] Second, it shows how deliberation and quantitative policy tools relate to each other. Under my account, deliberation does not replace cost-benefit analysis or other quantitative tools. Rather, it is supplemental, weighing questions of equity after being informed about the context by relevant policy evidence.[74] Third, it identifies specific weaknesses that can be successfully addressed in deliberation. In particular, the comparison between the Lake Pollution and Noisy Airplanes examples shows that typical policy reasoning around equity principles is insufficient.[75]

The second article, "Values in Science and Democracy," introduces conceptual distinctions from my framework to similar questions in the philosophy-of-science literature. Building on a recent article that questioned whether democratic values should influence the actions of scientists in policy-relevant research and analysis, I lay out necessary features that an adequate account of the interrelation of science and democracy must have. I argue that an adequate account must differentiate actors by the role they play in institutions and maintain the status of science as a reliable and widely shared method of inquiry.[76]

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[68] See §5.3.
[69] See §5.4.
[70] See §5.6.
[71] See §2.4.
[72] See §2.6.
[73] See, e.g., Sandel, *What Money Can't Buy*, p. 202.
[74] See §2.8.
[75] See §2.6.

This article contributes to the overall thesis of my dissertation also in three main ways. First, it introduces a distinction between evidence and reasons and shows how contextual reasoning relates to scientific and analytical methods.[77] This distinction is critical to my account, as deliberation works in a space of reasons, as distinguished from typical standards of policy analysis that have traditionally focused on the competent use of evidence. A critical question that distinguishes my account is how policy analysts can be asked to identify relevant *reasons* to prepare deliberation. Second, it distinguishes between a scientist and an analyst by the role that they play in the respective institutions of science and democracy.[78] My account assigns democratic duties to analysts, and this role must be distinguished from scientific roles and their corresponding duties. Third, it outlines a framework of the necessary features for an institutional account relating science and democracy, foreshadowing my final two articles.

The third article, "Ethics and Neutrality in Policy Analysis," argues that unelected, unappointed analysts within a public agency must remain neutral with respect to moral, religious, and ideological views. To do so, a professional code of ethics should be designed to hold them to a standard of "comprehensive neutrality." Directed to policy scholars and political theorists, this article argues against the view that analysts should advocate for particular policy positions, a view that is prominent in the argumentative approach outlined above. Such a view is inefficient and unfair as a matter of institutional design.[79] To avoid these inefficiencies while also avoiding false claims of remaining value-free, policy analysts have an obligation to remain comprehensively neutral, which entails a prima facie obligation to collect evidence on reasons that citizens find to be relevant.[80]

This article directly defends key tenets in my account, including making explicit my argument against approaches that place analysts in an advocacy role. Comprehensive neutrality is my central standard of relevance—a standard that is intended to acknowledge that policy analysis is not and cannot be value-free, but simultaneously retaining the neutrality of the analyst herself. It does so by asking all analysts to be comprehensive, standardizing a single rule for all analysts, while incorporating value-laden evidence into that standardized account.[81] Comprehensive neutrality receives a full definition in section 4.4 and will play a key role in the final article. Also critical is my defense of professional ethics as a tool of institutional design. By enforcing comprehensive neutrality on all analysts, the profession as a whole can achieve a neutrality that would not be possible without an enforceable ethical standard.[82]

The final article, "Expertise and Democratic Accountability," is both the most complex and the most important of the four articles for my account. Written for an audience in political theory and social epistemology, this article argues that policy analysis has an essential democratic role in promoting accountability and that analysts can achieve that role through ethical standards of comprehensive neutrality. The article focuses on the question of expert accountability, which asks whether and how democracies can incorporate expert knowledge without imposing a de facto guardianship that undermines democratic accountability.

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[76] See §3.7.
[77] See §3.3.
[78] See §3.4–§3.5.
[79] See §4.2.
[80] See §4.4.
[81] See §4.5.
[82] See §4.6.

The first part of the article argues that expert accountability is more difficult than commonly acknowledged, looking at an example of expert evaluation in practice and arguing that simple delegation is not feasible under commonly offered theories of expertise in democracy.[83] Accountability is a three-part predicate:[84] the accountability *of* an expert *to* the people *for* some standard. Common theories poorly demonstrate the latter two parts, failing to explain how democratic institutions can hold experts accountable and failing to define a standard for which expert analysis should be held accountable.[85] In particular, I argue that recent theories overemphasize competence and factual accuracy, while they neglect "the problem of expert discipline, which challenges democratic theory to justify which disciplines contribute relevant evidence to a policy evaluation.[86]

The second part of the article defends policy analysis as an institution that can fully answer the problem of expert accountability if it is constrained by ethical rules defined by comprehensive neutrality. Sections 5.4, 5.5, and 5.6 define each of the three parts of accountability, defending (1) why policy analysis is an institution that can or could accountably choose among expert evidence from different disciplines, (2) what it means to hold institutions accountable to the people in a deliberative conception of democracy, and (3) what standards policy analysts should apply to make those judgments. These define the accountability of policy analysts to the people for ethical standards of comprehensive neutrality, respectively.

This article is the culmination of my thesis, defending the place of policy analysis within democratic theory, the complexities of that role, and the reasons why that role can be played in a justifiable way. In particular, this article answers the key questions that I have used to challenge both the welfare-economic and the argumentative approaches to policy analysis—why the people should accept that policy analysis play a significant role in a democracy designed to be self-governing. The article answers these challenges by showing how policy analysts can use their professional background to enable self-governing citizens and their representatives to deliberate key issues themselves.

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[83] See §5.1.

[84] Robert E. Goodin, *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn* (Oxford: Oxford University Press, 2008), p. 156.

[85] See §5.1.

[86] See §5.3.

# Chapter 2

## Quantification, Deliberation, and Contextual Equity

### 2.1 Introduction

While modern political theory has embraced deliberative theories of democracy, the practical application of policy analysis and public administration have yet to see much influence. Developed under the far-reaching influence of John Rawls and Jürgen Habermas, these theories of deliberative democracy emphasize the importance of mutual respect and reciprocity through reasoning among free and equal citizens.[87] In contrast, the practical policy literature has continued to develop under the influence of welfare economics, emphasizing quantitative analysis and rigor, usually in consequentialist terms. Rather than integrating with quantitative approaches that have dominated the policy field since the 1960s, deliberative reasoning is often seen as an argument for novel institutions, such as mini-publics or citizen polls, which feature deliberation as a critical part of their design,[88] or for enhancement of the "informal public sphere" beyond the reaches of public administration.[89] Deliberative approaches have made little progress changing the core of policy analysis or contradicting the cost-benefit approaches that continue to hold sway within the policy analysis literature.

The divide between normative theory and practical application was captured neatly by Ethan Bueno de Mesquita, addressing the incoming class of master's students at the Harris School of Public Policy at the University of Chicago. "We don't quantify because we are utilitarians. We are utilitarians because we quantify."[90] From the perspective of the policy analysis profession, this statement is hardly revolutionary—it was delivered to incoming master's students after all. For practicing analysts, there are many reasons why rigorous, quantitative analysis using widely shared methodology promotes the goals of the profession. However, from the perspective of a normative theorist, Bueno de Mesquita might appear to confuse means for ends, putting the quantitative cart in front of the normative horse. Surely, this argument would say, we should decide our fundamental values first and only then devise the means of achieving those values. If we are utilitarians (or consequentialists more broadly), then we should devote our efforts to quantification and cost-benefit analysis; whereas, if we are non-consequentialists, then we should devote our attention to the careful analysis of rights and duties that we owe to each other.

My goal in this article is to make sense of these competing perspectives by clarifying the virtues and vices of the quantitative approaches that hold so much sway in the policy field. I hope to explain both why quantification is so attractive and why specific weaknesses demand that rights and deliberation must be included to adequately evaluate equity issues. Adopting an approach where justifiability lies at the heart of the theory, as it does in prominent approaches to deliberative democracy,[91] I will argue that both quantification and deliberation are necessary for a public decision procedure to be justifiable, and I will explain the relationship between the two elements in a two-stage decision procedure.

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[87] See Simone Chambers, "The Philosophic Origins of Deliberative Ideals," in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren (Oxford: Oxford University Press, 2018), 55–69.

[88] See, e.g., Cristina Lafont, "Deliberation, Participation, and Democratic Legitimacy: Should Deliberative Mini-publics Shape Public Policy?," *Journal of Political Philosophy* 23 (2015), 40–63; Archon Fung, "Recipes for Public Spheres: Eight Institutional Design Choices and Their Consequences," *Journal of Political Philosophy* 11 (2003), 338–67.

[89] See Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge: MIT Press, 1996), pp. 359–87.

[90] Ethan Bueno de Mesquita, "The Perils of Quantification: The Aims of Public Policy Address" (2013), https://cpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/c/1708/files/2019/03/aims-2epmw5y.pdf. The speech was published in edited form as "The Perils of Quantification," *Boston Review* (March 11, 2019).

The key insight is that there are specific weaknesses in aggregative quantitative approaches that exclude contextual equity judgments that groups have reason to demand their decision procedures include. These specific weaknesses counteract the strong reasons—keenly recognized by practitioners and often underestimated by political theorists—for quantifying policy impacts in a single framework.[92] Cost-benefit analysis and related approaches to quantification used widely in policy analysis and public administration are publicly shared methods of inquiry that promote accountability, transparency, and consistency. Each of these are values that groups have reason to demand in a public decision procedure. Furthermore, quantification is a uniquely fruitful source of information about trade-offs in values, which is difficult to replace in non-quantitative approaches.

These virtues of quantification demand a specific accounting of vices to justify a different approach. In addition to several weaknesses already chronicled in the literature, I will argue that quantitative approaches to public decisions have significant vices in their inability to incorporate or even approximate some common equity claims—those that prioritize some harms or benefits over others without defining a universal right to that priority. These contextual equity claims, exemplified by Viktor's objection in my main example of the celebration party and Jones's objection in the transmitter room example, give groups reason to look beyond mere quantification to deliberative procedures that can bring these contextual equity objections to light and to devise a consistent approach to weigh them in decision procedures.

Having identified specific weaknesses in quantitative decision procedures, I argue in section 2.5 that rights, even if they are well-defined and properly enforced, cannot address all of these weaknesses. Some theorists are tempted to draw a false dichotomy between the welfarist approaches that underlie many quantitative tools and rights-based deontological approaches. These theorists tend to criticize quantification only from the perspective of establishing that *some* rights claims are not properly quantified. I will agree with these theorists that rights have a place as limits on public decisions, but I will argue that limiting the non-quantitative domain to rights claims fails to adequately address contextual equity.

Finally, I defend the role of deliberation as a supplement to both quantification and rights by drawing an analogy to the role of a jury in a trial. As a deliberative procedure, juries incorporate community values and encourage acceptance of the verdict, where frustrated stakeholders may dispute the judgment of the court. Importantly, deliberative procedures both (1) supplement the weaknesses identified in quantification by incorporating community values to make contextual equity judgments and (2) replace the virtuous features of quantification by making those judgments in a consistent, transparent, and accountable manner. As a result, deliberative procedures have the potential to address the weaknesses in a purely quantitative procedure without sacrificing the virtues that make practitioners hesitant to relinquish quantitative methods.

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[91] Joshua Cohen, "Procedure and Substance in Deliberative Democracy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1996]), 154–80, pp. 160–64.

[92] See, e.g., Richard O. Zerbe, Jr., "Ethical Benefit-Cost Analysis as Art and Science: Ten Rules for Benefit-Cost Analysis," *University of Pennsylvania Journal of Law and Social Change* 12 (2008), 73–105, p. 80 (arguing that economists and practitioners ignore critics of cost-benefit analysis because they fail to acknowledge its virtues and provide viable alternatives).

Purely quantitative decision procedures unjustifiably omit equity considerations that can and should be addressed in deliberative procedures. Thus, public decision procedures should be designed with an eye to making deliberation possible in order to bring these equity considerations into the decision and make better public decisions.

After covering some preliminary definitions, the article will begin in section 2.2 with a simple example of a work group seeking a mutually acceptable venue for a celebration party. For the purpose of illustration, the example will simplify many familiar elements of preference-based quantification to demonstrate the deliberative approach advocated later in the article and to provide a running example to evaluate decision procedures throughout the article. Section 2.3 argues against decision making entirely through quantification—a position I call the "strong quantification argument." Section 2.4 analyzes the virtues and vices of quantification with an eye toward identifying weaknesses where improvements are needed. Two primary claims are made: (1) quantification is necessary because it has informational virtues that other procedures lack; (2) quantification is insufficient because it omits relevant equity considerations related to the prioritization of values. Section 2.5 defends a role for individual rights, but argues that rights cannot feasibly address all the weaknesses in quantification. Section 2.6 analyzes the virtues of procedural decision making, arguing that deliberative procedures can address the equity considerations omitted by quantification in a consistent, transparent, and accountable manner. Section 2.7 contrasts contextual equity judgments with prominent examples of transformational deliberation in the deliberative-democracy literature, arguing that contextual equity a distinct, less demanding class of judgments. Finally, section 2.8 weighs the hybrid quantitative-deliberative approach defended here against a prominent quantitative account within an applied example of the Oahe Dam, arguing that cultural values provide a good demonstration of values better analyzed through deliberation than through a distorting quantitative calculation.

## Preliminaries

Before beginning, it is worth distinguishing the argument here from two related topics. First, I do not present here an alternative theory of deliberative democracy. Deliberative democracy combines *deliberation*, which is about weighing the reasons relevant to a decision with a goal of making a joint decision based on that weighing,[93] with *democracy*, which is a way of making collective decisions that connects those decisions to the interests and judgments of the governed while treating them as equals.[94] Here, the focus is on the contribution that deliberation can make to a decision procedure and the related roles of quantification, rights, and deliberation. As a result, I do not invoke the equality of citizens or impose strong constraints on what counts as a public reason within deliberation.[95] I do not mean to overemphasize this distinction—considerations such as accountability, transparency, and consistency will play an important role, and they are central values in a democracy, as well as being desirable features in any public decision procedure. Nonetheless, the goal here is to analyze the reasons that groups have in making decisions through quantitative tools, rights, and deliberative procedures, not to build in the necessary features for a decision procedure to qualify as democratic.[96]

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[93] Joshua Cohen, "Reflections on Deliberative Democracy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009), 326–47, p. 329; see also Henry S. Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002), p. 76.

[94] Cohen, "Reflections on Deliberative Democracy," p. 329; see also Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004), pp. 9–10.

[95] For comparison, see Cohen, "Procedure and Substance in Deliberative Democracy," pp. 161–64.

Second, the terms "quantification" and "quantitative tools" are used in a specific context in this article, which is the context they are often used in the cost-benefit literature. The quantitative tools of interest are used to weigh relevant inputs to evaluate or motivate public decisions. They are components of a decision-making process, where the results are reason-giving when combined with relevant value judgments. For example, a public opinion poll is quantification in the relevant sense because it combines various individuals' opinions, and the poll results are reason-giving where favorable public support is thought to count in favor of taking an action. In contrast, descriptive social science that uses econometrics to describe the impacts of a public policy after it has been implemented is not a quantitative policy tool in the sense that I intend. The paradigmatic example of quantification in the sense I intend is a cost-benefit analysis that prospectively analyzes policies by projecting their costs and benefits in terms of self-assessed preferences, as measured by estimates of each person's willingness to pay. While simplified from a cost-benefit analysis, the survey results in my central celebration party example retain the relevant features of quantification because they serve as the basis of a reason and display the vices that I will later argue are unavoidable in quantitative policy tools.

A "reason," in the standard normative sense, is a four-place relation $R(p, x, c, a)$.[97] A reason is a fact $p$ for an agent $x$ to take action $a$ under conditions $c$. Thus, my analysis will focus on quantification that generates facts for particular agents to take particular actions. Cost-benefit analysis runs calculations to establish the fact that the projected benefits of an action are greater than the projected costs, and this fact is taken by many to count in favor of taking that action.[98] A reason combines a fact with a contextual value judgment to speak for or against an action. In contrast, quantification may be used in descriptive social science as evidence test a hypothesis or describe an impact.[99]

### 2.2 The Celebration Party

**The Celebration Party**: After a lengthy work project, Oscar is tasked with planning a celebration party among coworkers. Oscar considers local restaurants that might be able to accommodate a large group and sends out a list of ten alternatives, asking his coworkers to rate them on a scale of one to five. Oscar totals the results and makes reservations at Luigi's, the restaurant that received the highest composite rating. Unfortunately, when they later arrive at Luigi's, the workers find that one of their coworkers, Viktor, is missing. Viktor had recently separated from the hostess at Luigi's, and he refused to attend, not wanting to open fresh wounds or make a scene in front of his coworkers.

We can ask two separate questions about Oscar's celebration party—one to evaluate the outcome and the other to evaluate the decision procedure. First, did Oscar choose the best venue for the party? In one sense, he did. Luigi's scored the highest composite rating among the ten alternatives included in the survey. However, in another sense, Oscar's party seems to have fallen short. The goal was to pick a mutually acceptable location for a celebration party, and Oscar did not select a location where all of his coworkers were willing to gather to celebrate. Viktor will express his regret by not attending, but it also seems appropriate for Oscar and his coworkers to regret that Viktor did not celebrate with them and to wish they had known that Viktor felt so strongly about Luigi's.

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[96] Because I do not offer a democratic theory, I also draw no sharp distinction between group decisions and "public" decisions. Specific demands on public agencies, such as treating members with equal concern, would constrain these democratic actors beyond the scope argued here.

[97] T. M. Scanlon, *Being Realistic about Reasons* (Oxford: Oxford University Press, 2014), p. 31.

[98] See Steven Kelman, "Cost-Benefit Analysis: An Ethical Critique," *Regulation* 5 (1981), 33–40, pp. 33–34.

[99] I explore the distinction between evidence and reasons in more depth in other work. See §3.3.

Second, did Oscar make a reasonable decision? This article will focus on selecting justifiable decision procedures, considering how many groups may justifiably choose one action among alternatives using policy tools based on quantification and deliberation.[100] To evaluate Oscar's decision, we need to know not only whether the outcome was successful, but also which decision procedures were possible, what information was (or could be) available to him, and what expectations were reasonable to place on his coworkers. If Oscar had no better decision procedure than Decision Procedure 1 below, then we might say that he made the decision in a reasonable manner, even if the outcome falls short in an important way. Alternatively, if Viktor is unreasonable by refusing to attend the party, then it may be he, not Oscar, who is to blame for the party planning falling short.

**Decision Procedure 1** *(predominantly quantification)*: (1) Select ten plausible venues; (2) Survey coworkers, who rate from 1 to 5; (3) Aggregate the results; (4) Select the highest composite score.

**Decision Procedure 2** *(quantification with deliberation)*: (1) Select ten plausible venues; (2) Survey coworkers, who rate from 1 to 5; (3) Aggregate the results; (4) Publicly ask for objections to highest rated venue; (5) Deliberate any objections offered and select.

Let's see if we can improve on Oscar's first decision procedure. Suppose instead that Oscar uses Decision Procedure 2. Under Decision Procedure 2, Oscar still selects ten alternatives, asks his coworkers to rate them, and compiles the results—but this time, he adds a step by publicly asking his coworkers whether anyone objects to Luigi's before he makes the reservation. This question would give Viktor a forum to voice his objection and allow the group to deliberate then vote whether the group should respect Viktor's objection or disregard it. It would add a deliberative step to the procedure.

In considering Viktor's objection, his coworkers are given new information. When Oscar initially surveyed the group, the workers had no way to know that one of their coworkers had a serious objection to any of the restaurants. They knew their own preferences about the restaurants, as well as their opinions about which of the venues would be best to hold a celebration, but they had no reason to suspect any strong objection. After hearing Viktor's objection, they have new information, and they are effectively making a new determination. They can now evaluate whether they still want to go to Luigi's, considering the fact that Viktor will be placed in a difficult position. Some coworkers who rated venues purely based on the quality of the food and ambiance may immediately see these concerns as trivial compared to the importance of choosing a mutually acceptable location where everyone is comfortable. These coworkers may now favor the second-highest rated venue as the best selection for the group. Others may see this objection as yet another example of Viktor putting his concerns over the group and feel unsympathetic to his claim. To reach a mutually acceptable solution, the group deliberates and votes on the best venue in light of the initial survey and Viktor's subsequent objection.

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[100] "A standard or criterion of rightness explains what makes an action or motive right or justified; a decision procedure provides a method of deliberation." David O. Brink, "Utilitarian Morality and the Personal Point of View," *Journal of Philosophy* 83 (1986), 417–38, p. 421.

I will argue that Decision Procedure 2 is superior to Decision Procedure 1 and that this simple example provides a good demonstration of the related role of quantification, rights, and deliberation in public decisions. In particular, this example shows that there is an irreducible role for deliberation that cannot and should not be assigned to either quantified analysis on one hand or substantive rights on the other. Rather, like this example, public decisions can only adequately incorporate the pluralistic values of their members by adding deliberative procedures to provide a forum for contextual equity judgments.

### 2.3 The Strong Quantification Argument

The celebration party shows that groups looking for a mutually acceptable decision have an interest in finding objections that can be obscured or ignored by aggregative quantitative tools, and it undermines any claim that decisions ought to be made by quantification alone. When Oscar took his initial survey, he simplified the complex domain of opinions about the various venues into a quantifiable scale. On a scale of one to five, Viktor was free to rate Luigi's as one—he was not excluded from the procedure—but his coworkers could overwhelm this low rating with high ratings of their own. This interpersonal trade-off in values is both a vice and a virtue, and we must address both aspects to properly assess the relationship between quantification and deliberation and to bridge the divide between normative and practical theorists.

Simplifying the complex normative domain into a quantifiable scale is a vice because the trade-offs imposed by the quantitative or aggregative procedure do not necessarily match the trade-offs that would be chosen by the group. In other words, quantification does not necessarily impose appropriate trade-offs. If this is true, then the decision procedure will have weighed competing values in a manner that group members may reasonably reject. T. M. Scanlon offers a classic example where many citizens would consider the harm to a single individual weightier than aggregated small benefits to millions.[101]

> Suppose that Jones has suffered an accident in the transmitter room of a television station. Electrical equipment has fallen on his arm, and we cannot rescue him without turning off the transmitter for fifteen minutes. A World Cup match is in progress, watched by many people, and it will not be over for an hour. Jones's injury will not get any worse if we wait, but his hand has been mashed and he is receiving extremely painful electrical shocks. Should we rescue him now or wait until the match is over? Does the right thing to do depend on how many people are watching – whether it is one million or five million or a hundred million?

Scanlon argues that it is wrong to continue transmitting the World Cup match and allow Jones to suffer extreme pain, no matter how many people are watching and enjoying the game. In other words, he argues that we should not ignore Jones's claim based on concentrated harm, regardless of how many times the enjoyment is multiplied across watchers.

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[101] T. M. Scanlon, *What We Owe to Each Other* (Cambridge: Belknap Press, 1998), p. 235.

For Scanlon, the rightness of an action or policy depends on whether it would be permitted by justifiable principles, where the justifiability of a moral principle depends on the reasons that individuals have for objecting to that principle.[102] Scanlon argues that Jones's objection to continuing the transmission rules out any principle that would allow the transmission to continue uninterrupted. Under Scanlon's contractualist approach, there is a limit on the imposition on one person in order to provide some relatively trivial benefit or reduce some relatively trivial harm to others, regardless of their numbers.[103]

For our purposes, it is not necessary to debate whether Scanlon is correct that it is morally required to stop the transmission. Rather, it is important to see that an exclusively quantitative decision procedure—such as Decision Procedure 1, where Oscar selected the venue according to the survey without allowing separate deliberation on Viktor's objection—precludes the type of ethical argument Scanlon makes because it gives that claim no venue to be adjudicated. Given the opportunity, Jones would argue that his extreme pain is enough to justify ending the transmission despite the enjoyment of the many watchers. Similarly, Viktor would argue that his objection is strong enough to justify moving the party despite the results of the survey. Each would claim that fairness requires prioritizing particular harms over small benefits, even when many people enjoy those benefits. In other words, Jones and Viktor each argue that harms and benefits should be treated differently in these specific circumstances.

We need not agree that Viktor or Jones have a strong claim in their particular circumstances to see the force of the examples as arguments against a quantitative decision procedure. If it is *possible*, in the right circumstances, that the group would rightly accept Viktor's plea and choose instead the second-highest-rated restaurant, then the group will have an interest devising a decision procedure that identifies and considers these objections in those circumstances. Otherwise, the group will sometimes act unfairly toward its members by ignoring valid equity objections.

Denying this possibility would entail what Douglas Amy calls the strong version of the "ethics is unnecessary" argument, which I will call the "strong quantification argument."[104] The strong quantification argument says that additional equity or ethical considerations are unnecessary in public decision procedures because fairness is sufficiently addressed entirely within quantitative analysis, and nothing needs to be added to consider equity or fairness. In the celebration party, the strong quantification argument would say that equity objections are unnecessary because all necessary information is contained within the aggregated survey results. Compiling the survey results already generates one candidate for an equitable distribution by bringing each person's ratings together and weighing them by aggregation. In a more complex example, a quantitative analysis might include other measures, such as the costs and benefits of each party. Here, the argument would say that a cost-benefit analysis sufficiently weighs the trade-offs among competing preferences so that no further input is necessary.

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[102] Scanlon's view develops and partially diverges from John Rawls's argument that utilitarianism does not take seriously the distinction between persons. John Rawls, *A Theory of Justice, Revised Edition* (Cambridge: Belknap Press, 1999), pp. 24–25. For Rawls, the principles of justice are objects of agreement in the original position, whereas for Scanlon, principles are those that cannot be reasonably rejected, according to each person's actual perspective. Iwao Hirose, *Moral Aggregation* (Oxford: Oxford University Press, 2014), pp. 64–88.

[103] T. M. Scanlon, "Contractualism and Justification," working paper, http://www.law.nyu.edu/sites/default/files/upload_documents/Scanlon%20Contractualism%20and%20Justification.pdf.

[104] Douglas Amy, "Why Policy Analysis and Ethics Are Incompatible," *Journal of Policy Analysis and Management* 3 (1984), 573–91, pp. 576–77.

The strong quantification argument treats a quantitative tool, such as cost-benefit analysis, as a value system that weighs trade-offs by aggregating preferences, as measured by each person's willingness to pay.[105] From the perspective of a decision procedure, there is nothing inherent problematic in doing so; cost-benefit analysis has features that give it plausibility as a value system.[106] It is person-centered, due to its structure around individual preferences, and it has some claim to be impartial due to its weighing each person's costs and benefits equally in the calculus.[107] A strongly quantitative approach may even respect rights as side constraints by excluding some options from quantitative consideration, as I will discuss in section 2.5.

However, the *plausibility* of cost-benefit analysis as a value system is not the issue at hand. To justify cost-benefit analysis as a standalone decision procedure, defenders of the strong quantification argument must go beyond arguing that cost-benefit analysis is plausible. They must justify limiting values to *only* cost-benefit considerations. If two or more value systems are reasonable and feasible, then implementing one without justification would be arbitrary. Supporters of alternative values are entitled to reasons to justify why their value systems are not implemented.[108] In the celebration party, Viktor is entitled to a justification explaining why his objection should not carry weight in the decision.

This argument only serves to set the terms of the debate. Very few, if any, scholars defend the strong quantification argument directly, and fewer still argue that all non-quantifiable values are unreasonable. Rather, defenders of cost-benefit analysis will typically admit that ethics, equity, or rights considerations matter in some cases, but defend cost-benefit analysis on feasibility grounds.[109] These defenders argue that quantification through cost-benefit analysis or a related procedure is more reliable, more transparent, less expensive to implement, or necessary to make prudential trade-offs—it is more feasible.[110] To evaluate this feasibility argument, it is necessary to look at the virtues and vices of quantification as a decision procedure before considering how alternative decision procedures might compare.

### 2.4 Virtues and Vices of Quantification

This section aims to demonstrate that a justifiable public decision procedure should answer four primary questions. (1) Which are the relevant goals and objectives? (2) How much of each goal or objective is ideal under the circumstances? (3) How do these goals and objectives relate? (4) Who decides how these questions are answered? These questions give us a framework to examine the virtues and vices of quantification as an input to public decisions by evaluating how well it answers these questions.

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[105] Julian Le Grand, "Equity versus Efficiency: The Elusive Trade-Off," *Ethics* 100 (1990), 554–68, p. 565.

[106] One example of a defense of cost-benefit analysis on the basis of its plausibility as a value system is offered by Matthew Adler and Eric Posner, who defend cost-benefit analysis as an approximation of well-being, which "plausibly provides the decisive moral consideration between" two potential projects. "Rethinking Cost-Benefit Analysis," *Yale Law Journal* 109 (1999), 165–247, p. 215.

[107] Matthew D. Adler, *Well-Being and Fair Distribution: Beyond Cost-Benefit Analysis* (Oxford: Oxford University Press, 2012), pp. 6–7.

[108] See Rawls, *Theory of Justice, Revised*, §87, esp. p. 508 (explaining the relevant concept of justification). On the importance of reasoning, see David M. Estlund, "Who's Afraid of Deliberative Democracy? On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence," *Texas Law Review* 71 (1993), 1437–77, pp. 1442–44, 1463; Richardson, *Democratic Autonomy*, pp. 73–84.

[109] For an overview of the conventional defenses to cost-benefit analysis, see Adler and Posner, "Rethinking Cost-Benefit Analysis," pp. 187–94.

[110] See Adler and Posner, "Rethinking Cost-Benefit Analysis," pp. 217–18, 225; Cass R. Sunstein, "The Limits of Quantification," *California Law Review* 102 (2014), 1369–405, p. 1391.

### 2.4.1 Which Are the Relevant Goals and Objectives?

The most basic question to ask about a decision procedure inquires what we are trying to achieve through the decision—the goals and objectives against which we can evaluate the decision. On one level, the objective of a celebration party is clear. The group seeks a mutually acceptable location that can best host the festivities. On another level, it is clear from experience that coworkers will often disagree about the relevant criteria.[111] A much touted feature[112] of preference-based quantitative tools is that they allow individuals to value goods and services for whatever reasons they prefer,[113] a quality sometimes called "citizen sovereignty."[114] Citizen sovereignty works under the theory that no one knows better than individuals what is good for them and that preferences, expressed in the quantitative tool, adequately express what is good for them.[115] The only role for the state is to create a mechanism to allow citizens to express preferences.[116] The group also need not agree on the relevant objectives. When the workers rate various venues on a scale of one to five, they are not required to reach a consensus as to the qualities that should play into the evaluation. Some workers may rate venues on the quality of the food, others on their proximity to the office, and others on specific objections like Viktor's.

Preference-based quantification has the virtue of allowing each individual to choose her own criteria and contribute information to the decision procedure, but it potentially falls short in three ways that may give us pause. First, it potentially introduces considerations that are inappropriate for the decision at hand.[117] I will call this the *Bad-Faith Objection*. Consider if a worker Angela rated Luigi's as a five because she co-owns Luigi's and would stand to profit from the party if it is held there. We might think that Angela answers the survey in bad faith because she does not give her assessment of the best restaurant for the group; she answers the best restaurant for her. In other words, she bases her rating on personal preference, rather than her perception of the common good.[118]

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[111] See Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996), pp. 18–26 (explaining sources of moral disagreement).

[112] See Daniel Hausman, Michael McPherson, and Debra Satz, *Economic Analysis, Moral Philosophy, and Public Policy*, 3rd ed. (Cambridge: Cambridge University Press, 2017), pp. 59, 131; Eric A. Posner and Cass R. Sunstein, "Moral Commitments in Cost-Benefit Analysis," *Virginia Law Review* 103 (2017), 1809–60, p. 1824; c.f. T. M. Scanlon, "Preference and Urgency," *Journal of Philosophy* 72 (1975), 655–69, pp. 657–58.

[113] Estlund, "Who's Afraid of Deliberative Democracy?," pp. 1440–41 (explaining the diversity of aims available in a preference-based approach).

[114] Jon Elster, *Sour Grapes* (Cambridge: Cambridge University Press, 1983), p. 33. The epistemic aspects of this argument feature prominently in John Stuart Mill's defense of utilitarianism. "[T]he sole evidence it is possible to produce that anything is desirable, is that people do actually desire it." *Utilitarianism* (Oxford: Oxford University Press, 1998 [1861]), ch. 4.

[115] A commitment to preference satisfaction follows from either a constitutive or an evidential relationship between preference and well-being. This section takes the evidential view, which is the more charitable interpretation. Hausman, McPherson, and Satz, *Economic Analysis*, pp. 127–38.

[116] Elster, *Sour Grapes*, p. 33.

[117] Elster calls these preferences that are objectionable based on content, as opposed to preferences that are objectionable based on non-autonomous desires, which fit into my third category. Elster, *Sour Grapes*, p. 22.

[118] See Charles W. Anderson, "The Place of Principles in Policy Analysis," *American Political Science Review* 73 (1979), 711–23, p. 718 (on the need for the concept of the public interest and the inability to justify a policy on personal gain).

Contrast Angela's purely self-regarding preferences against Viktor's objection. In one sense, Viktor's objection is also self-regarding, and a hasty reading may infer that his argument is also vulnerable to the bad-faith objection. However, Viktor's argument is consistent with the purpose of planning the celebration party in a way that Angela's is not. If the purpose of the survey is to find a mutually acceptable venue, and Viktor's unease with Luigi's would prevent him from coming, then his objection is relevant to the decision at hand.

This distinction highlights an ambiguity when non-quantitative factors are dismissed for failing to be "impartial." Matthew Adler, an advocate for quantitative approaches, argues for a minimum impartiality requirement in a moral decision procedure; "the criterion for ranking outcomes as morally better or worse must not refer to particular individuals …. For example, a criterion which says that outcome x is better than outcome y iff x is better for the well-being of Jim would hardly be suitable as the outcome-ranking component of a *moral* decision procedure."[119] This impartiality requirement is a similar starting point as adopted by Brian Barry, who defines an impartial conception of the good as one that does not attribute "more weight to the interests and concerns of the agent or of those connected to him in some way (his family, his ethnic group, or his fellow-countrymen, for example) than to those of others."[120]

Both Viktor's and Angela's claims seem to violate this impartiality requirement in their initial form.[121] However, Viktor's objection can be restated in an impartial form without losing its reason-giving force. If Viktor would argue that *any* worker should not be forced to attend a party where a strong conflict would make him too uncomfortable to attend, then his objection is impartial in the relevant sense. In contrast, the fact that one individual stands to profit from Luigi's has no reason-giving force if it is abstracted from the fact that Angela would personally benefit.[122] I agree with Adler that equity claims must be impartial, but this only restricts equity claims to those that the individual would maintain even if she were not the beneficiary. Equity claims are held on principle, not on individual gain, and they are not vulnerable to the bad-faith objection. Viktor offers a plausible equity claim, where Angela does not.

Contrasts between considerations such as Angela's and Viktor's have led prominent political philosophers to argue that the proper subject of evaluation in public decisions is the *public* or *common good*.[123] These philosopher's approaches differ as to the method that they limit the debate to public reasons or preferences, and the contours of those limitations frequently invoke democratic premises that I have set aside here.[124] However, the basic objection to quantification is analogous: quantitative tools potentially give individuals too much freedom to determine the criteria of evaluation if they include factors that are inconsistent with the public goal of a mutually acceptable decision.[125] Decision procedures should be designed with an eye to bringing only these public preferences or reasons into public deliberation.[126]

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[119] Adler, *Well-Being and Fair Distribution*, p. 23.

[120] Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), p. 20.

[121] Amy Gutmann and Dennis Thompson distinguish "generality," which means that moral arguments apply to everyone who is similarly situated in the relevant respects, from "impartiality," which adds to generality that citizens must also suppress partial perspectives when making policies and laws. Gutmann and Thompson, *Democracy and Disagreement*, pp. 13, 54. Under those definitions, both Adler's argument and my response apply only to generality.

[122] Circumstances would be different if, for example, Angela planned to offer a discount to the group. That would be a benefit to the group, and it would be impartial and reason-giving in the relevant sense.

[123] Jürgen Habermas, *Communication and the Evolution of Society*, trans. Thomas McCarthy (Boston: Beacon Press, 1979), pp. 183–88; Jon Elster, "The Market and the Forum: Three Varieties of Political Theory," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge: MIT Press, 1997 [1986]), 3–33, pp. 11–12; Joshua Cohen, "Deliberation and Democratic Legitimacy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1989]), 16–37, pp. 18, 26; Estlund, "Who's Afraid of Deliberative Democracy?," p. 1476; John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997), 765–807, p. 767.

[124] See Cohen, "Procedure and Substance," pp. 161–64.

The second concerning feature of quantification as preference-based identification of objectives has been championed by Henry Richardson. He argues that cost-benefit analysis leaves individuals no room to exercise practical intelligence, which would allow them to reconsider their aims in light of deliberation. Because quantitative tools work from a set of *given* preferences, where individuals are assumed to fully understand their own views before deliberation occurs, it does not give individuals the opportunity to reconsider their views in light of new evidence and alternative perspectives. This practical intelligence may generate new solutions, specify goals, or reevaluate which goals really matter.[127] "As Dewey most clearly recognized, an intelligent approach to practical problems, whether individual or public ones, requires above all a flexible willingness to remake one's aims in light of new information."[128] In the celebration party, a worker may begin by preferring a venue solely based on the quality of the food and its proximity, but come to realize after deliberation with others that menu variety is also an important characteristic in a mutually acceptable venue. This challenges citizen sovereignty by arguing that the best understanding of objectives is emergent, rather than a combination of pre-deliberation preferences.[129]

A third type of concern has been championed by Jon Elster, Amartya Sen, Martha Nussbaum, and the field of behavioral economics. This concern challenges the idea that individuals in fact express what is best for them through their preferences. Two separate categories of reasons are cited to doubt preferences. First, individuals may form their preferences as an adaptation to unfavorable circumstances, such that the extent of desire reflects what they can expect. Where a person has suffered a life of deprivation or abuse, she may not express desire for change as a survival strategy.[130] This makes self-expressed preferences a dubious basis for some social decisions because these preferences seem inappropriate for normative reasons.[131] Second, individuals may make choices they would not make if they better understood the costs, benefits, and risks of the given choice.[132] This questions preferences not on their normative standing, but instead on cognitive limitations of the individual. The key claim in both cases is that in specific, identifiable circumstances, individuals systematically fail to express their enlightened self-interest.

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[125] Jane Mansbridge, et al., challenge the idea that all considerations entered into deliberation must be voiced in terms of the common good and use "fair," instead of "impartial," to describe appropriate considerations. However, their account shares the use of the common good as a filter on mutual justification, making it consistent with the concern identified here. Self-interested claims are appropriate for deliberation so long as it would be maintained if another person were the beneficiary. Jane Mansbridge, James Bohman, Simone Chambers, David Estlund, Andreas Føllesdal, Archon Fung, Cristina Lafont, Bernard Manin, and José Luis Martí, "The Place of Self-Interest and the Role of Power in Deliberative Democracy," *Journal of Political Philosophy* 18 (2010), 64–100, pp. 76–78; see also Joshua Cohen and Joel Rogers, "Power and Reason," in *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, ed. Archon Fung and Erik Olin Wright (London: Verso Press, 2003), 237–55, p. 249.

[126] See, e.g., Jon Elster's argument that deliberation will cause individuals to self-censor to offer only appropriate reasons in a public deliberation. Elster, *Sour Grapes*, pp. 35–37.

[127] Henry S. Richardson, "The Stupidity of the Cost-Benefit Standard," *Journal of Legal Studies* 29 (2000), 971–1003, pp. 990–91; see also Cohen, "Deliberation and Democratic Legitimacy," pp. 26–27.

[128] Richardson, *Democratic Autonomy*, p. 121; see also Hilary Putnam, "A Reconsideration of Deweyan Democracy," *Southern California Law Review* 63 (1990), 1671–97, pp. 1675–76.

[129] Richardson, *Democratic Autonomy*, pp. 65–66.

[130] Elster, *Sour Grapes*, pp. 110–41; Amartya Sen, *On Ethics and Economics* (Malden: Blackwell Publishing, 1987), pp. 45–46; Martha C. Nussbaum, "Symposium on Amartya Sen's Philosophy: 5 Adaptive Preferences and Women's Options," *Economics and Philosophy* 17 (2001), 67–88, p. 70.

[131] Where a theory reflects on the basic structure of social institutions, preferences are normatively inappropriate for the deeper reason that they cannot be treated as exogenous to the institutional structure itself. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 11–12, 68; Cohen, "Deliberation and Democratic Legitimacy," pp. 31–32.

Quantitative tools then have the virtue of flexibly allowing individuals to initially determine the values that enter the analysis, including information from disparate sources without predetermining the content of that information. That virtue gives quantitative tools a claim to reflect the goals and objectives of the relevant group as they understand them. However, three potential objections arise. First, the flexibility may allow individuals to introduce inappropriate considerations into public procedures. Second, the initial flexibility is followed by a rigid aggregation that precludes some elements of practical intelligence. Third, in certain circumstances, there may be reason to believe that individual preferences do not reflect individual best interest.

### 2.4.2 How Much of Each Goal or Objective is Ideal under the Circumstances?

It is one thing to decide in the abstract which outcomes or policies would make for a good society and quite another to determine how much of each objective should be pursued under tight resource constraints that preclude satisfying all objectives at once. Perhaps the primary virtue of quantitative tools as an input to public decisions is that they give a basis for weighing one objective against another. As argued by Cass Sunstein, "When regulators quantify and monetize relevant goods, the goal is to promote sensible trade-offs …."[133] This theme is further emphasized by Bueno de Mesquita in his address,[134]

> Quantification forces us to clearly define questions and concepts. It provides the opportunity for serious evaluation of policies and comparison of alternatives. It compels us to confront trade-offs. It replaces speculation and sentiment with rigor and precision. It creates a framework of contestability—when costs, benefits, and values are quantified and compared, the terms of the debate and standards of evidence are clear.

Oscar's survey demonstrates these virtues, though its simplicity lacks some of the rigor and precision of more complex quantification. The survey allows Oscar to confront trade-offs between the valuations of each coworker and aggregate to resolve those conflicts. Coworkers will likely disagree on the best venue, but the aggregate score has some claim to represent the will of the group. As Bueno de Mesquita describes, the terms of the debate and standards of evidence are clear when Oscar uses the survey.[135] Oscar justifies his decision relative to the results of the survey and the aggregative procedure.

A more complex quantitative tool could give more finely grained information about the relevant values. For example, Oscar could ask his coworkers to evaluate the venues in various categories, then aggregate them using a weighted average to reflect the relative importance of those categories.[136] Again, Bueno de Mesquita would be correct that this tool creates a framework of contestability to compare alternatives.

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[132] See, e.g., Cass R. Sunstein, "Preferences and Politics," *Philosophy & Public Affairs* 20 (1991), 3–34, pp. 10–11; Daniel Kahneman, *Thinking Fast and Slow* (New York: Farrar, Straus & Giroux, 2011).

[133] Sunstein, "The Limits of Quantification," p. 1379.

[134] Bueno de Mesquita, "The Perils of Quantification," p. 1.

[135] See Gutmann and Thompson, *Why Deliberative Democracy?*, p. 16.

In a democracy, these virtues are valuable not only for their instrumental qualities, but also because they promote accountability, transparency, and consistency.[137] These features result in a characteristic connection between quantitative tools and representative government.[138] In his history of quantification in public decisions, Theodore Porter identifies quantification as a social technology valued to show skill, diligence, and impersonality of the analysts who produce it—what Porter calls "the accounting ideal."[139] "It is, on the whole, external pressure that has led to the increasing importance of calculation in administration and politics. Those whose authority is suspect, and who are obliged to deal with an involved and suspicious public, are much more likely to make their decisions by the numbers …."[140] A critical component of the legitimacy of a public decision maker, and the analysts who work for her, is to convince and justify the decision to relevant stakeholders. To do so, it is important for public officials to show that they are detached from the process, demonstrating that the judgment is not arbitrary or based on debatable judgments personal to them.[141] In a word, they push to show their objectivity, where "objectivity" entails a standardized process detached from the person who made it.[142]

Porter contrasts the standardization of decisions through quantification with the ability to exercise personal judgment in areas of public importance, a privilege he calls the hallmark prerogative of the elite.[143] Discretionary judgments lack transparency that is critical for public scrutiny, as public scrutiny requires that the public is able to demand reasons from public officials.[144] Quantification enables such scrutiny at least in part by giving the public the ability to see how trade-offs in values are made and to contest those trade-offs in relevant procedures.

In our main example, it is easy to see these effects. Oscar sends out a survey precisely to avoid imposing his personal judgment on the group. The survey results give him a basis for saying that the group made the decision together, along with evidence to show how conflicts among values were resolved. This is precisely the wisdom behind Bueno de Mesquita's quip that began this article. Analysts are utilitarians because they quantify. Public officials emphasize quantification because it detaches them from the process and gives them impersonal reasons to justify their decisions.[145] Utilitarianism and other forms of consequentialism follow because they are far easier to approximate through quantification.[146]

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[136] The relative importance of the categories could, for example, be decided in a separate procedure, such as a prior agreement, or according to their value in a market. In recent work, Adler recommends a related approach by arguing for choice by social welfare function. Adler, *Well-Being and Fair Distribution*.

[137] Bueno de Mesquita, "The Perils of Quantification," p. 1; Sunstein, "Limits of Quantification," p. 1379; Posner and Sunstein, "Moral Commitments," p. 1822.

[138] Theodore M. Porter, "Objectivity as Standardization: The Rhetoric of Impersonality in Measurement, Statistics, and Cost-Benefit Analysis," in *Rethinking Objectivity*, ed. Allan Megill (Durham: Duke University Press, 1994), 197–237, p. 206.

[139] Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995), pp. 50–51.

[140] Porter, "Objectivity as Standardization," pp. 206–07.

[141] Porter, *Trust in Numbers*, p. 96.

[142] The conception of objectivity is distinct from absolute objectivity in the philosophical sense, which indicates "arriving at criteria for judging claims to have represented things as they really are." Allan Megill, "Introduction: Four Senses of Objectivity," in his *Rethinking Objectivity* (Durham: Duke University Press, 1994), 1–20, pp. 2–3.

[143] Porter, *Trust in Numbers*, p. 117.

[144] Philip Pettit, "Deliberative Democracy and the Discursive Dilemma," *Philosophical Issues* 11 (2001), 268–99, pp. 281–82, 288.

[145] See §4.4.

[146] See Bueno de Mesquita, "The Perils of Quantification," p. 4.

## Qualified Defense of Cost-Benefit Analysis

Similar concerns have caused theorists such as Thomas Schelling to link impersonality with analytical ethics.[147] Asked to reflect on the interplay between ethics and economics, Schelling defined "the ethics of policy as what we try to bear on *those issues in which we do not have a personal stake*."[148] Schelling is concerned precisely with deciding how much of each value is appropriate when trade-offs are salient and pressing. He argues that public analysts should strive to be neutral, vicarious, impartial, and judicious.[149] The main claim for economics, he argues, is that it often helps diagnose misplaced identification of an ethical issue. "Economics is often like a broker or mediator in a bargaining process, good at promoting 'integrative bargaining.' Integrative bargaining is searching for superior trades, finding ways to bring to the bargaining table those things that matter more to the beneficiary of a concession than to the party making the concession."[150]

On one hand, it is easy to be uncomfortable about Schelling's promotion of impartiality when economics is clearly a value-laden discipline.[151] Economists evaluate superior trades according to a willingness-to-pay standard that can be challenged along several well-known dimensions.[152] On the other hand, there is real insight in the argument that quantification through willingness to pay contributes by searching for potentially superior trades. An example can help shed light on using these superior trades to inform a public decision, without necessarily imposing willingness to pay as a normative standard on that decision in an objectionable way.[153]

**The Noise Ordinance:** Suppose a small town of Pareto has three citizens: Elinor, a music executive who makes $500,000 per year; Vilfredo, a teacher who makes $30,000; and Bob, a construction worker who also makes $30,000. Pareto currently has a noise ban on loud music on weeknights from midnight to eight am, and it is considering extending the ban to cover nine pm to midnight.

The crucial question for this paper is how to design a procedure to make decisions like the one faced in Pareto. One procedural option is immediately placing the ordinance up for a vote. If this is done, Vilfredo and Bob have indicated they would vote for the extended ban because they want quiet before their early-morning jobs, while Elinor would vote against it because she values listening to loud music after work. Thus, a vote would extend the ban.

A second potential procedure would seek more information, asking not only how each citizen would vote, but also how much he or she prefers each option. Designing such a procedure would involve strong assumptions about interpersonal comparability of preferences, but supposing those difficulties can be met, the results would show that Vilfredo and Bob strongly disfavor music in the evening hours, while Elinor would indicate that it is not terribly important to her. Thus, the second procedure would also extend the ban.

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[147] Thomas C. Schelling, *Choice and Consequence: Perspectives of an Errant Economist* (Cambridge: Harvard University Press, 1984), pp. 1–26.

[148] Schelling, *Choice and Consequence*, p. 3.

[149] For the role of an impartial spectator in utilitarian thought, see Rawls, *Theory of Justice, Revised*, pp. 19–24 (§5).

[150] Schelling, *Choice and Consequence*, p. 18.

[151] For background on the value judgments involved in the economic analysis of public policies, see Hausman, McPherson, and Satz, *Economic Analysis, Moral Philosophy, and Public Policy*.

[152] Amartya K. Sen, "Rational Fools: A Critique of the Behavioral Foundations of Economic Theory," *Philosophy and Public Affairs* 6 (1977), 317–44, p. 342.

[153] This example was adapted from Robert Frank, *The Darwin Economy: Liberty, Competition, and the Common Good* (Princeton: Princeton University Press, 2011), pp. 100–04.

A third procedure would quantify their preferences about the ordinance through willingness to pay, the standard unit of analysis in economics. Setting aside the difficulties of strategy-proofing to ensure that each citizen truthfully reveals his or her willingness to pay,[154] this analysis would find that Elinor is willing to pay $5000 (1 percent of her income) to prevent the ban. Vilfredo and Bob each require $1500 (5% of each income) to vote against the ban.[155] Even though Elinor would indicate that she cares less about the ordinance in a survey, she is willing to pay more because she has much more ability to pay.

The willingness-to-pay analysis would demonstrate that another, potentially mutually acceptable alternative had been obscured in the first two decision procedures. Pareto could (at least theoretically) redesign the ordinance in the following ways. The ban will be extended, but any resident can buy a permit for $4000 to exempt herself from the ban. Pareto then would distribute any permit proceeds evenly among all citizens who do not purchase a permit. Under this alternative design, Elinor would purchase a permit (because the permit price is below her willingness to pay), play her loud music, and Vilfredo and Bob would receive $2000 each.[156]

While Vilfredo and Bob have to suffer through Elinor's music in the alternative design generated by the third procedure, each receives $2000 for the trouble, more than he demanded. Vilfredo and Bob can use that increased wealth to purchase other important things they value or to take time off of work, and they have indicated through willingness-to-pay information that they value these things more than the inconvenience of the music. Elinor must pay $4000, but she ends up better off than if the ban were implemented, judged by her own standards.[157]

As with the transmitter-room example, the focus here is not to decide whether the town of Pareto is morally required to adopt the new alternative. Despite the Pareto improvement entailed by the new alternative,[158] objections could remain based on a conviction that public policies should be insulated from the influence of money, for instance.[159] Rather, the example demonstrates the potential ability of quantification to provide *new information* by identifying alternatives that are potentially mutually beneficial to all parties. The possibility that such improvements exist gives Elinor an objection based on insufficient information to the first and second procedures, where she would be banned from listening to music, because it is possible that a mutually acceptable option could have left all parties better off. In the first and second procedures, residents are left ignorant of this additional option. Without quantifying, it is possible that stakeholders such as Elinor will be denied important goods for no reason at all, and this possibility gives the residents a prima facie demand for the information generated by quantitative tools such as cost-benefit analysis.

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[154] See Elster, "The Market and the Forum," p. 6.

[155] There will be a discrepancy between the willingness to pay and the willingness to accept, corresponding to the distinction between compensating and equivalent variation. This example abstracts away from that distinction as irrelevant for this purpose in theory, though not necessarily in practice. See Elizabeth Hoffman and Matthew L. Spitzer, "Willingness to Pay vs. Willingness to Accept: Legal and Economic Implications," *Washington University Law Quarterly* 71 (1993), 59–114.

[156] This kind of compensation is rarely achieved in practice, both because there is rarely political will to do so and because information constraints limit the ability of the state to identify winners and losers. Sen, *On Ethics and Economics*, pp. 36–37.

[157] Following the familiar logic of the Coase Theorem, the transfers could be reversed if property rights were distributed differently, so that Vilfredo and Bob collectively *pay* $4000 to Elinor to reach the same outcome in terms of efficiency. Ronald H. Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (1960), 1–44.

[158] A Pareto improvement occurs when at least one party gains and no party loses. Under the noise ordinance example, all parties gain according to their willingness to pay.

[159] Prominent arguments for moral limits of markets, even where Pareto improvements exist under a willingness-to-pay standard, include: Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge: Harvard University Press, 1993); Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford: Oxford University Press, 2010); Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Farrar, Strauss and Giroux, 2012).

The noise ordinance example highlights an important distinction between using willingness to pay to gather information and using it as a normative standard. The example is designed with features that severely undermine cost-benefit analysis as a separable normative standard.[160] There is good reason to believe that differences in willingness to pay among the three residents is strongly influenced by their respective abilities to pay, a fact that would impeach its use as a normative standard. For example, distributing police services among rich and poor communities based on willingness to pay would be dubious because willingness to pay inherently favors richer communities and there are good reasons to distribute important goods like policing more equally than willingness to pay would suggest. This "great defect" in willingness to pay has caused even defenders of cost-benefit analysis to recommend its use "except where wealth differences between those who gain from the project and those who lose are substantial enough."[161]

In the noise ordinance example, willingness to pay is not used as a normative standard or a "currency" for distributive justice,[162] but rather as an information source to utilize the tremendous informational properties of the pricing mechanism. If the third alternative is accepted, it would be justified relative to its mutual acceptability to the three residents, not relative to aggregate costs and benefits. Costs and benefits are merely information used in policy design. Thus, to reject that decision procedure, we need to offer reasons why mutual acceptability is inappropriate, not evidence that ability to pay influenced the decision. Put differently, we need to argue that ability to pay affects the agency of the individuals to engage in mutually acceptable transactions, not that it influences their valuation.[163]

This argument takes a middle ground in the debate over quantification. The rejection of the strong quantification argument precludes cost-benefit analysis only as an overarching decision procedure, not as an informational input. The noise ordinance example demonstrates that the use of quantitative tools is prima facie necessary to justify public decisions that deny important goods to those governed by those decisions because it has informational virtues that other procedures lack. Unless such an analysis is infeasible, stakeholders like Vilfredo ought to be assured that options for mutually acceptable compromise have been investigated and confronted. Quantification is key in that investigating role, a role that even critics of cost-benefit analysis can acknowledge.[164]

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[160] Hausman, McPherson, and Satz provide a clear discussion of the objections to cost-benefit analysis as a separable normative standard. *Economic Analysis, Moral Philosophy, and Public Policy*, pp. 158–70.

[161] Adler and Posner, "Rethinking Cost-Benefit Analysis," p. 238 (italics removed).

[162] See, e.g., G. A. Cohen, "On the Currency of Egalitarian Justice," *Ethics* 99 (1989), 906–44.

[163] This effectively treats the wealth of individuals as a fixed background condition, an assumption that will be appropriate only where the public decisions themselves do not significantly affect those conditions and where substantive concerns of justice do not demand a particular distribution of the good in question.

[164] See Richardson, "The Stupidity of the Cost-Benefit Standard," pp. 973–75; Amartya Sen, "The Discipline of Cost-Benefit Analysis," *Journal of Legal Studies* 29 (2000), 931–52, p. 948; Martha Nussbaum, "The Costs of Tragedy: Some Moral Limits of Cost-Benefit Analysis," *Journal of Legal Studies* 29 (2000), 1005–36, p. 1030.

### 2.4.3 How Do these Goals and Objectives Relate?

The third question asks how the relevant goals or objectives relate to each other. In prose, this question seems deceptively similar to the second question, which asks how much of each goal is ideal. In formal analysis, these questions are clearly separable, and it is important to understand the distinction. The relation of each objective determines the constraints and the weights in a social welfare function, whereas how much is determined by optimizing that social welfare function. In short, the relation of objectives defines the equation to be solved; whereas how much of each objective follows from the solution to that equation. The ideal amount of each objective is determined by the efficient realization of objectives according to their appropriate weights, constraints, and priority.[165]

The question here is which objectives have priority. A couple of simple examples can show why this is an important question, even outside the context of a social welfare function. Suppose I am evaluating a term paper by one of my students. Among the relevant values in grading are the quality of the argument and integrity in the writing process, notably the absence of plagiarism. How do these values relate? Clearly, they do not relate on terms of simple aggregation. If I rated each paper from zero to twenty on quality and from zero to five on integrity, then the aggregated total would be meaningless. A twenty might be a student who honestly engaged with the material and missed a couple key points or a student who simply printed off a published paper on the subject and signed her own name to the top. This absurd result follows because integrity has priority over quality, and the proper evaluation procedure must acknowledge that priority.

A second example is the relation between due process and effectiveness, both objectives in a successful criminal justice system. Where the accused has been denied due process, the court ought not weigh the value of these rights against the value of effectively convicting the guilty. Due process appropriately has priority.[166]

A justified decision procedure must reflect or reveal these priority relations between the goals and objectives of the decision.[167] As explained by Samuel Scheffler, both utilitarianism and strong quantification have a built-in advantage deciding priority relations because their underlying normative convictions give them a dominant end to determine the relative standing of different objectives.[168] The consequentialist prioritizes objectives relative to their ability to provide well-being, satisfy preferences, or increase the ratio of benefits to costs. For example, if we believe, as Sunstein has asserted in recent work, that social welfare is the "guiding" or "master concept," then social-welfare evaluations can guide the priority of objectives.[169] On the other hand, if we reject a dominant-end view, we are drawn toward a more pluralistic conception of values and must determine the relative standing of those values.[170]

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[165] This distinction was emphasized most clearly by Julian Le Grand, who argued that "efficiency can be defined only in relation to the ability of forms of social and economic organization to attain their primary objectives …." "Equity versus Efficiency," p. 560.

[166] I have explored this priority relationship in detail in other work. See §4.3.

[167] Rawls's original position is an example of a decision procedure that reflects priority relations as a "device of representation." See John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge: Belknap Press, 2001), p. 18.

[168] Samuel Scheffler, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions* (Oxford: Oxford University Press, 1994), pp. 26–32.

[169] Sunstein, "Limits of Quantification," p. 1378; Cass R. Sunstein, *Why Nudge: The Politics of Libertarian Paternalism* (New Haven: Yale University Press, 2014), pp. 18, 142, 164.

[170] Scheffler, *Rejection of Consequentialism*, p. 28.

As mentioned above, defenders of quantification rarely, if ever, defend the strong quantification argument. Bueno de Mesquita calls such positions "crass utilitarianism." However, defenders of cost-benefit or economic reasoning do tend to take a particular position on the relation of values that reflects an underlying normative commitment.[171] Observe how Bueno de Mesquita transitions from an argument that quantification is necessary to an argument that objectives relate to each other in a particular way.[172]

> Quantification is essential to rigorous policy analysis. So because we are committed to making good policy decisions, we are committed to quantification.
>
> Now, once we are committed to quantification, some form of consequentialism is really the only game in town. After all, what is there to quantify but consequences? But a quantitative consequentialism is, in principle, a flexible kind of framework. It need not be crassly utilitarian. We can put a value on various non-material factors such as rights, duties, responsibility, dignity, or what have you. Moreover, once you know the quantitative effects of a policy on people's welfares, you can introduce all sorts of equity considerations into policy evaluation. To take an example, we could, after quantifying all the effects, define the best policy as the one that maximizes total utility, subject to the constraint that no two individuals' utilities differ by more than, say, ten percent.

The example that ends Bueno de Mesquita's claim is clear. *If* the best policy is properly defined as maximizing total utility subject to a constraint that no two individuals' utilities differ by more than ten percent, then a first-year economics graduate student could approximate that standard with a social welfare function. However, once we step out of a dominant-end conception of the good, we must justify the priority relations among values, and it is unclear what would justify adopting such an equity standard. It is also less clear how that example relates to his claim that we can put a value on rights, duties, responsibility, and dignity.

Allow me to try to reconstruct several of the implicit assumptions in Bueno de Mesquita's argument. Recall that Bueno de Mesquita emphasized the rigor that is imposed when analysts are forced to quantify their analysis and confront trade-offs. In the previous sections, I have argued that these virtues promote accountability, transparency, and consistency in democratic decisions and that they generate information that a justifiable decision procedure ought to include. Thus, I have argued, with Bueno de Mesquita, that there are good reasons for analysts to quantify.

Here, Bueno de Mesquita infers from the claim that analysts should quantify (at all) to the claim that analysts should quantify rights, duties, responsibility, and dignity. However, he has not explained how such an approach would be justified or how such an approach would be executed. Of course, if we lived in a world where all citizens are egalitarian consequentialists, believing that equity is merely a weighted or constrained aggregate of individual utilities, then such analysis would certainly be possible.[173] In absence of that prior agreement, what justifies limiting equity considerations to that form?

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[171] Sunstein makes a similar move. "It seems plain that the willingness-to-pay numbers should not be decisive when we are deciding whether and how to promote distributive goals. Note, however, that even if we insist on these points, we will have to assign *some* value to the protection of dignity; it is not possible to escape such assignment." Sunstein, "Limits of Quantification," p. 1377.

[172] Bueno de Mesquita, "Perils of Quantification," p. 4.

To illustrate further, consider applying such an equity standard to the celebration party. Suppose that Oscar adopted Decision Procedure 3, such that he selects the venue with the highest aggregate rating, subject to the constraint that no venue should have a difference in rating greater than one.

**Decision Procedure 3** *(quantification with equity constraints)*: (1) Select ten plausible venues; (2) Survey coworkers, who rate from 1 to 5; (3) Eliminate any venues where ratings differ >1; (4) Aggregate the remaining results; (5) Select the highest composite score.

This procedure would eliminate Luigi's because Viktor's low rating diverges too far from the ratings of his coworkers. However, suppose two venues have the following ratings:

**Venue 1**: {5, 5, 5, 5, 5, 5, 5, 3}
**Venue 2**: {3, 3, 3, 3, 3, 3, 3, 3}

Decision Procedure 3 would select Venue 2 over Venue 1 because Venue 1 has a difference in ratings greater than one. However, every worker is at least as bad off at Venue 2, compared to Venue 1, and all but one are worse off. This procedure is subject to a "leveling down" objection, where equality is achieved merely by making some parties worse off. The leveling down objection has been offered by prominent philosophers as a reason for rejecting egalitarianism in favor of prioritarianism, which focuses attention not on disparities, but rather on improving the condition of the worst off.[174] There are, I believe, a number of good reasons why disparities in outcomes do matter in many contexts, but that is beyond the scope here. Critically, it is clear even to defenders of egalitarianism that the leveling down objection requires reasons to justify the importance of equality beyond the mere fact of disparate outcomes.[175] Bueno de Mesquita offers no reason to justify his formulation, despite the possibility of leveling down.

Bueno de Mesquita's proposed equity constraint is also potentially objectionable in cases beyond pure leveling down. Suppose two venues have these ratings:

**Venue 1**: {5, 5, 5, 5, 5, 5, 5, 3}
**Venue 3**: {3, 3, 3, 3, 3, 3, 3, 4}

Comparing Venue 3 to Venue 1, one worker is better off, according to her self-reported ratings, and no two workers have a disparity greater than one. Nonetheless, it is unclear how Oscar could justify the selection of Venue 3 over Venue 1 when seven of eight workers prefer Venue 1 or even what form that justification would take.

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[173] Aggregation of weighted utility functions was first introduced by Abram Bergson and promoted by Paul Samuelson as a means to make quantification via social welfare functions more practical. Mark Blaug, "The Fundamental Theorems of Modern Welfare Economics, Historically Contemplated," *History of Political Economy* 39 (2007), 185–207, p. 195. Amartya Sen challenges weighting on alternative grounds, arguing that a linear format with fixed weights is inappropriate for large policy changes. "The Discipline of Cost-Benefit Analysis," pp. 938–39.

[174] Derek Parfit, "Equality or Priority," in *The Ideal of Equality*, ed. Michael Clayton and Andrew Williams (New York: Palgrave Macmillan, 2000), 81–125; Harry Frankfurt, "Equality as a Moral Ideal," *Ethics* 98 (1987), 21–43.

[175] T. M. Scanlon, *Why Does Inequality Matter?* (Oxford: Oxford University Press, 2018), pp. 3–10.

The difficulty in these examples is not specific to the numbers involved. Rather, it shows the difficulty incorporating *justifiable* conceptions of equity into aggregative decision procedures. Bueno de Mesquita's argument presumes that such a conception can be formed, justified, and then quantified, but given the limitations, why quantify equity? Decision procedures must account for the fact that people will reasonably disagree on the ideal conception of distributional equity.[176] His argument requires another reason-giving premise to justify limiting equity considerations to those that are amenable to quantification. Namely, he must argue that the virtues of quantification—the flexibility in including the values of individuals, the accountability, transparency, and consistency engendered by a rigorous consideration of trade-offs in a contestable framework, and the informational gains generated by identifying potentially superior trades—justify reshaping the normative considerations to ensure that they fit into a quantifiable decision procedure.

Consider again the transmitter room example, where saving Jones from excruciating pain would require interrupting the World Cup broadcast. When Scanlon argues that it would be morally impermissible to continue the broadcast in these circumstances, he does not argue from an aggregative premise or impose an absolute constraint on actions. Rather, Scanlon argues for the principle, "if one can save a person from serious pain and injury at the cost of inconveniencing others or interfering with their amusement, then one must do so no matter how numerous these others may be."[177] Notice that Scanlon's principle concerns the *relation* between two categories of values, where Jones suffers a serious pain and injury and the others suffer only an inconvenience or interference with their amusement. It does not say that an action is wrong when it would inflict a serious pain and injury on others—that principle would be far easier to quantify in the form of a constraint—but instead relates two relevant categories of harms and draws a normative judgment.

The relation of values creates what John Rawls called the "priority problem," which asks us to give an account of the relative weights of competing principles, such as a principle that values aggregate utility and one that values distributional equality.[178] Neither the utilitarian nor an advocate of the strong quantification argument faces the priority problem because aggregate utility and cost-benefit considerations, respectively, act as an ultimate standard to systematize our judgments on principles as means to that ultimate goal.[179] Once we step outside those frameworks by introducing distribution, the priority problem roars back into focus, and we must justify the assignment of weights.

The priority problem is far from trivial. As Rawls argues, "The assignment of weights is an essential and not a minor part of a conception of justice. If we cannot explain how these weights are to be determined by reasonable ethical criteria, the means of rational discussion have come to an end."[180] However, as the comparison of Venue 1, Venue 2, and Venue 3 show, the notion of weighing aggregate utility against distributional concerns does not immediately clarify our ethical judgments. Scanlon's principle in the transmitter room example takes an alternative form, as do other prominent approaches to equitable decision making.[181] It asks us to place costs and benefits into categories before deciding whether aggregation is relevant. These principles will not be easily imported into a social welfare function.

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[176] Joshua Cohen, "Moral Pluralism and Political Consensus," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1993]), 38–60, pp. 52–55; Rawls, *Political Liberalism*, pp. 36–37.

[177] Scanlon, *What We Owe to Each Other*, p. 235.

[178] Rawls, *Theory of Justice, Revised*, pp. 36–40 (§8).

[179] Rawls, *Theory of Justice, Revised*, p. 36.

[180] Rawls, *Theory of Justice, Revised*, p. 37.

Bueno de Mesquita's argument implies that decision makers are justified in imposing quantifiable equity rules on public decisions. However, he does not confront the fact that such a rule may distort normative objections like Scanlon's. For that argument to be successful, it must be true that the virtues of quantification justify limiting how goals and objectives relate and that the virtues found in quantification cannot be achieved by other means that less severely restrict the relation between goals and objectives. I investigate this possibility in sections 2.6 and 2.7, arguing that deliberative procedures allow considerations of contextual equity, while retaining important virtues of quantifiable procedures.

### 2.4.4 Who Decides How these Questions Are Answered?

Before analyzing alternatives to quantification, it is important to emphasize a fourth question that must be answered in a justified public decision procedure: who decides? An important aspect of citizen sovereignty—considered in section 2.4.1—is the agency that it gives to those governed by a decision. To answer which objectives, we considered the *epistemic* value of citizen sovereignty. Namely, no one knows better the content of her preferences than the individual herself. Here, it is important to emphasize the *agency* value of citizen sovereignty.

One reason why Oscar is inclined to conduct a survey and aggregate the results is that he does not feel justified in imposing his perspective on the group. The aggregate survey results give Oscar a reason to say that his decision represents the will of the group, and when he is asked to justify his choice of Luigi's, Oscar may reference the survey as evidence. This desire for impersonal justification underscored Porter's historical analysis of quantification in representative democracy. Because democratic public officials were insecure in their authority—a consistent theme in the policy analysis literature[182]—they sought impersonality through quantification.[183]

In a democracy, agency is not merely a matter of expediency for tenuous public officials. Democratic decisions are not only justified by their tendency to promote good outcomes, but also by the fact that they are justified mechanisms of collective self-government.[184] Democratic agency should remain in the hands of the governed. In short, it matters who decides in a democracy.[185]

Quantification has laudable virtues with respect to agency in answering the first two questions. As discussed, quantitative tools often allow individuals the flexibility to evaluate options according to their own values, then the tools weigh trade-offs according to those self-assessed preferences. It is notable that philosophers, such as Debra Satz, who argue for moral limitations on the scope of markets, emphasize areas where there is weak agency, significant harm to others, or extreme harm to the individual.[186] These are areas where there is cause to question the agency of the individual. Thus, these are areas to question the justice of market outcomes dependent on that agency.

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[181] See, e.g., Nussbaum, "Costs of Tragedy," p. 1033. "[D]epriving children of their education is not just very, very costly but exacts a cost of a distinctive kind …."

[182] Arnold J. Meltsner, *Policy Analysis in the Bureaucracy* (Berkeley: University of California Press, 1976), pp. 11–12.

[183] Porter, "Objectivity as Standardization," pp. 206–07.

[184] Scanlon, *Why Does Inequality Matter?*, pp. 77–79; see also William H. Riker, *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice* (San Francisco: W. H. Freeman & Co., 1982), pp. 6–8; Richardson, *Democratic Autonomy*, p. 51; Joshua Cohen, "Procedure and Substance," p. 154.

[185] Following my scope limiting reliance on democratic assumptions in this paper, discussed in section 2.1, I do not argue here what is necessary for a decision to qualify as self-government. Democratic agency is referenced here only to emphasize the importance of the agency question.

Preference-based quantification also has drawbacks with regard to agency considerations. As many have emphasized, not least Sunstein in early work, preferences are hardly fully autonomous where they are the product of the information, laws, and social pressures.[187] Sunstein argues, "The notion of autonomy should refer instead to decisions reached with a full and vivid awareness of available opportunities with reference to all relevant information, and without illegitimate or excessive constraints on the process of preference formation."[188] Circumstances that fail to meet these conditions should not be described as autonomous. This leaves room for deliberation to improve on decision procedures by better situating individuals to judge what is best for them.

When it comes to answering the third question—how do goals relate—Bueno de Mesquita follows many economists in emphasizing the ability of quantification to include considerations that broadly fit under the category of equity.[189] By emphasizing the ability to quantify various equitable concepts, Bueno de Mesquita underscores that quantification does not preclude equity considerations entirely. This emphasis is common; it underlies the apparent importance of the second fundamental theorem of welfare economics.[190] The second welfare theorem shows that under certain conditions, notably costless lump-sum transfers of incomes or endowments, every Pareto-optimal allocation of resources is an equilibrium of a perfectly competitive market. In clearer language, every efficient distribution can be achieved by a perfectly competitive market, including those with small inequalities among individuals.

While economists would agree that costless transfers of income are impossible in practice, textbooks tout that the second welfare theorem "offers a strong conceptual affirmation of the use of competitive markets, even for dealing with distributional concerns."[191] The idea here is not that competitive markets *determine* distributional concerns—that is a version of the strong quantification argument—but that competitive markets *do not preclude* distributional concerns. In other words, markets do not restrict agency with regard to equity considerations. Therefore, this idea suggests that there can be a division of labor, where economists handle efficiency considerations, and equity can be considered by others, then implemented to determine transfers of income.[192] Under this argument, agency to determine those transfers of income remains outside the economic framework.

This line of argument limits agency in important ways, even as it retains flexibility in redistributing incomes. Outside of economics, equity or fairness claims rarely take the shape of quantifiable redistribution principles, as I described in section 2.4.3. Even if quantifiable principles could be defined, fundamental information problems limit the ability of governments to implement them.[193] Neither the transmitter room nor the celebration party feature objections that simplify into applicable distributional principles. To preclude these equity claims without justification would be objectionable on grounds of agency because it limits the type of equity claims that may be considered by the group.

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[186] Satz, *Why Some Things Should Not Be for Sale*, pp. 94–99.

[187] Cohen, "Deliberation and Democratic Legitimacy," pp. 27–28; Sunstein, "Preferences and Politics," pp. 11–14.

[188] Sunstein, "Preferences and Politics," p. 11.

[189] See Zerbe, "Ethical Benefit Cost Analysis," pp. 80–81 (arguing that criticisms of cost-benefit analysis are based on the outdated view that "moral sentiments, ethical considerations, and distributional consequences are not considered).

[190] See Amartya Sen, "The Moral Standing of the Market," *Social Philosophy & Policy* 2 (1985), 1–19, pp. 10–11.

[191] Andreu Mas-Colell, Michael D. Whinston, and Jerry R. Green, *Microeconomic Theory* (Oxford: Oxford University Press, 1995), p. 556; Blaug, "The Fundamental Theorems," p. 199.

[192] This is a common view that serves as a purpose for cost-benefit analysis. Adler and Posner, "Rethinking Cost-Benefit Analysis," pp. 185–86.

### 2.5 Rights and Quantification

I have argued for a role for quantification to help identify objectives and weigh trade-offs among objectives by gathering information and seeking mutually beneficial trades. This quantitative approach has virtues of initial flexibility, accountability, transparency, and consistency, and it places agency in the hands of the governed with respect to important aspects of public decisions. As seen in the noise ordinance example, the epistemic virtues of quantitative tools make it unjustifiable to exclude quantification entirely from a public decision procedure. However, quantification also has vices, which may allow inappropriate considerations into public procedures, preclude important elements of practical intelligence, depend on preferences that inaccurately reflect self-interest, or place unjustifiable limitations on equity considerations that challenge the agency of the governed on important questions of justice. The question for this section is whether adding rights to a decision procedure—in addition to quantification—addresses these challenges. For example, Nussbaum argues for the addition of capabilities—an approach closely allied to rights—to quantitative tools without also including deliberation.[194] I will argue that including rights does improve a decision procedure, but including rights alone does not fully address the shortcomings identified in quantitative approaches.

#### Claim Rights

Even in an example as simple as the celebration party, it is not difficult to envision how rights can justifiably limit both quantitative tools and the scope for deliberation. For example, suppose that the workers rated a Hooters restaurant as the most preferred venue on aggregate. Because of the sexually charged atmosphere at Hooters, this choice may constitute or contribute to a hostile work environment under Title VII of the Civil Rights Act of 1964, which prevents discrimination on the basis of sex. Holding a work celebration in this venue could give an employee a claim right, enforceable in a court of law, and that right should trump the preferences of her coworkers. Given this right, it may be appropriate for Oscar to exclude this restaurant as an option from his initial survey or, potentially, to overrule the results of an open-ended survey where Hooters was selected as the most preferred option.

On Scanlon's influential account, a rights claim involves three elements.[195] (1) A claim that certain interests are of great importance. (2) A claim that the powers and duties of agents, in order to be justifiable, must be defined relative to these important interests. (3) A claim that these constraints on the justifiable powers and duties of agents are feasible. My goal here is not to defend this conception of rights against competing conceptions, but rather to use it to reveal the normative anatomy of a rights claim and reveal how rights contribute to a justifiable decision procedure.

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[193] Sen, "Moral Standing of the Market," pp. 12–13.

[194] Nussbaum, "Costs of Tragedy," p. 1024.

[195] T. M. Scanlon, "Rights and Interests," in *Arguments for a Better World: Essays in Honor of Amartya Sen: Volume 1: Ethics, Welfare, and Measurement*, ed. Kaushik Basu and Ravi Kanbur (Oxford: Oxford University Press, 2008), 68–79, pp. 69–70; T. M. Scanlon, "Why Not Base Free Speech on Autonomy or Democracy?," *Virginia Law Review* 97 (2011), 541–48, p. 541. Scanlon associates his view with those of Joseph Raz and Judith Thomson, though they differ in the details. Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 166; Judith Jarvis Thomson, *The Realm of Rights* (Cambridge: Harvard University Press, 1990), p. 41.

We can see each element of Scanlon's conception of a right where a person is given a claim right in the presence of a hostile work environment. Women, and other members of protected classes, have an important interest in a respectful and equal work environment, free from discrimination. A democracy, in turn, has interests in ensuring that all people are able to work in conditions of respect and equality, free from discrimination, and in remedying and correcting hostile workplace cultures. In *Meritor Savings Bank v. Vinson*, the Supreme Court held that these interests are implicated when discrimination based on sex has created a hostile or abusive work environment.[196] To respond to these important interests, employers may be required to train employees, such as Oscar, to identify and anticipate circumstances that would constitute a hostile work environment. Large employers may be required to form a human resources department to identify and address these issues, in an effort to ensure that responses are robust, informed, and consistent. In each of these responses, the powers and duties of agents are defined relative to the important interests identified. Individuals then are given a justiciable claim right to ensure that these powers and duties were discharged appropriately to protect their interests.

The third element of a right—a claim that the constraints on the powers and duties of agents are feasible—will be critical to the analysis here. In the case of a hostile-work-environment claim, several important facts make it feasible for employers and their agents to be required to take proactive steps to prevent a hostile work environment. Title VII arose out of long and well-publicized history of discrimination in the workplace on the basis of race, color, religion, sex, or national origin. In light of this history and the importance of the interests involved, it is reasonable to hold employers responsible for recognizing discrimination on these protected bases and for taking steps to prevent it. Employers know or should know this history.

Furthermore, for hostile-work-environment sexual harassment to be actionable, "it must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."[197] Thus, in isolation, holding a work party at Hooters is unlikely to sustain a cause of action, but it could make up one component of a pervasive pattern of behavior that the claimant and a reasonable person would find hostile or abusive.[198] Requiring a pervasive pattern again makes it reasonable to say that an employer should have known about the behavior and taken active steps to prevent it.

Title VII requires the powers and duties of employers and their agents to be defined relative to these important interests. In his capacity as an agent of his employer planning the celebration party, Oscar should be aware of the potential for sexually charged environments to create a hostile work environment and should take proactive steps to protect against that threat.

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[196] "The phrase 'terms conditions, or privileges of employment' evinces a congressional intent *to strike at the entire spectrum of disparate treatment of men and women in employment*." Meritor Savings Bank v. Vinson, 477 U.S. 57, p. 65 (1986) (internal quotations omitted).

[197] Meritor, 477 U.S. at p. 67 (internal quotations omitted).

[198] See Harris v. Forklift Systems, Inc., 510 U.S. 17, pp. 21–22 (1993).

As a result, most attorneys would advise Oscar to omit Hooters from the initial survey or to exclude that result from the final tally.[199]

Compare this analysis to Viktor's objection in the celebration party. I have argued that a group has an important interest devising a decision procedure capable of discovering and evaluating claims like Viktor's. This interest is indicated when the workers arrive at the party and wish they would have known about Viktor's objection beforehand. I have also argued that quantitative tools cannot incorporate equity claims based on a relation among values, such as the one made by Viktor or by Jones in the transmitter room example. These arguments speak to the first two conditions for rights. The hitch is the third condition. Any justiciable claim right would be infeasible for claims such as Viktor's.

**Decision Procedure 4** *(quantification with a claim right)*: (1) Select ten plausible venues; (2) Survey coworkers, who rate from 1 to 5; (3) Aggregate the results; (4) Select the highest composite score; (5) Adjudicate the claim rights of any workers who object.

Suppose that we hold Oscar responsible for excluding venues where any worker has a significant personal objection by allowing that worker to sue. This would hold Oscar to the same standard that I suggested ought to be applied for a hostile work environment. Two differences generate difficulties. First, unlike a discrimination claim, no historical pattern or general marker indicates when an employee may have a personal conflict with a particular venue. Hooters is well-known to produce a sexually charged environment, but personal claims are not of the same kind. Thus, any court would rightly hesitate to hold that Oscar should have known the duress the decision caused Viktor. Second, courts would struggle to evaluate whether Viktor is reasonable in objecting on the basis of a personal conflict. In applying the hostile-work-environment standard, the Court required pervasive conduct, such that a reasonable person would find the environment hostile or abusive. This relatively high standard indicates that the Court does not want Title VII to be "a general civility code" that prohibits "all verbal or physical harassment in the workplace."[200] A similar reasonable-person standard is unworkable where the urgency of the objection depends on the particulars of the relationship, rather than pervasive sexual harassment. Under Scanlon's anatomy of a right, plausible arguments can be made for the first two elements of a right, but not the third because the limits entailed by a claim right are infeasible for personal objections, such as Viktor's.

### Veto Rights

A second potential decision procedure would express a right through a veto, rather than a justiciable claim right. Suppose that Oscar includes the same steps as Decision Procedure 1—selecting ten potential venues, surveying his coworkers, and aggregating the results—but in Decision Procedure 5, he allows every worker to veto any venue. This would give Viktor the opportunity to express his objection, and it would prevent the regrettable outcome that followed Decision Procedure 1 by allowing Viktor to veto Luigi's.

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[199] See George Khoury, "Proposed Lunch Meeting at Hooters Leads to Retaliation Lawsuit," Free Enterprise: The FindLaw Small Business Blog, https://blogs.findlaw.com/free_enterprise/2017/02/proposed-lunch-meeting-at-hooters-leads-to-retaliation-lawsuit.html.

[200] Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, p. 80 (1998).

**Decision Procedure 5** *(quantification with a veto right)*: (1) Select ten plausible venues; (2) Survey coworkers, who either veto or rate from 1 to 5; (3) Aggregate the results; (4) Select the highest composite score among venues without a veto.

The veto solves the first issue with Decision Procedure 4 through decentralization. Because each worker is responsible for exercising a veto, Oscar need not devise a mechanism to learn about potential objections. However, three reasons prevent a veto from being feasible for many practical public decisions. First, a veto exacerbates the bad-faith objection, where we are concerned that individuals will express preferences that are inconsistent with the goal of finding a mutually acceptable decision. A veto increases the influence that each individual can exert over the ranking, but it does not ask Viktor or his coworkers to justify prioritizing objections over the aggregate preferences of the group. As a result, it gives the coworkers greater reason to worry that the veto is being used in bad faith. Recall that the example is agnostic whether the group will in fact accept Viktor's objection. A veto does not distinguish claims and thus exacerbates the bad-faith objection by increasing the influence of any potential bad-faith actor.

Second, a veto is unsustainable at large scale. While a small group planning a celebration party may be able to grant vetoes to each group member, a large public decision would grind to a halt if each person were granted a veto right. If 100,000 people are granted a veto, it is safe to assume that every option will be vetoed. Third, a veto is potentially deeply suboptimal in terms of social welfare. Suppose that a survey returns the following results:

**Venue 4**: {5, 4, 5, 4, 5, 4, 5, Veto}
**Venue 5**: {4, 5, 4, 5, 4, 5, Veto, 4}
**Venue 6**: {2, 2, 2, 2, 2, 2, 2, 2}

Decision Procedure 5 will select Venue 6 because it is the only venue without a veto, despite the fact that every worker would have preferred another venue that all but one of her coworkers would have also preferred to Venue 6. As justification for this priority of values, the workers must accept only the existence of a veto, meaning that one individual believed that her objection should trump the potential social welfare gains entailed by that venue. As with strong quantification, the group has reason to object that a veto fails to give it agency to determine the priority of relationships among objectives. A veto gives individual objections lexical priority over social welfare considerations, but this lexical priority seems appropriate only for particularly important interests.[201] A veto does not isolate instances of particularly important interests.

In the presence of a hostile work environment, rights appropriately limit the scope of quantification and deliberation. However, the scope of this limitation is necessarily constrained by the feasibility of granting a right either through a justiciable claim right or through an individual veto. Courts and groups will be hesitant to grant rights for personal objections because of the potential for those claims to be abused by bad-faith actors, because of the inability of agents to predict the presence of personal objections, and because these rights do not grant agency to the group to determine the priority relations among objectives.

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[201] Lexical ordering requires satisfying one condition before considering another. Rawls, *Theory of Justice, Revised*, pp. 37–38.

Because theorists have often looked at rights as the only potential constraint on quantification, they have taken scope limitations on rights, such as those just listed, to be arguments to return to quantification. Sunstein makes this connection explicit,[202]

> In some contexts, these [rights] claims may be correct; consider, as a possible candidate, the prohibition of torture. But in the cases at issue here, the claims are not helpful. To be sure, it is not unintelligible to say that rights are involved in these cases. We are dealing, among other things, with life, bodily integrity, and discrimination. But even in those contexts, trade-offs are inevitable, and some kind of monetary valuation is inevitable as well.

Sunstein emphasizes the need for making practical trade-offs, a feature that is missing from veto rights and only imposed by the courts for claim rights. I agree with Sunstein that the practical scope for rights is limited, but I disagree that this foists decision procedures back on the vices of quantification. Deliberation plays a key role in making trade-offs and prioritizing objectives in areas where quantification and rights are insufficient.

## 2.6 The Role of Deliberation

As observed by noted economist Knut Wicksell, economists approach issues of public equity with the impression of a "philosophy of enlightened and benevolent despotism," resembling "a running commentary on the famous rule 'Everything for the people, nothing by the people.'" This approach asks us to imagine "an enlightened and benevolent absolute ruler" imbued with "the sense of equity of our modern educated classes," and ask ourselves how she would evaluate public decisions.[203] In practice, this approach envisions a limited number of policy makers engaged in calculated choices according to a list of specified objectives, a perspective that has been called "decisionism" by some political theorists. The decisionist ideal would give a decision maker a "grand model that would combine all the partial perspectives into one general criterion of good policy—a weighted average, as it were, of equity, effectiveness, legality, and any other standard."[204]

The demands of decisionism have often been conflated with the demands of practical feasibility in the literature. In other words, theorists have conflated the ability of a decision procedure to allow *an isolated individual* to reach a decision or recommendation with the ability of *a decision procedure* to reach a decision or recommendation.[205] For example, in the name of practical feasibility, Adler limits his task to making "substantial progress in crafting tools that real decisionmakers … can employ in deciding what they morally ought to do."[206] This decisionist perspective has the effect of assuming that feasible approaches can be offered as advice to a single decision maker and that procedural considerations have no role in the decision. It encourages an algorithmic approach, which assumes that all aspects of the decision must be calculable by an isolated decision maker, whether it is a regulator, a policy maker, or a policy analyst making a recommendation.

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[202] Sunstein, "Limits of Quantification," p. 1391.

[203] Knut Wicksell, "A New Principle of Just Taxation," trans. J. M. Buchanan, in *Classics in the Theory of Public Finance*, ed. Richard A. Musgrave and Alan T. Peacock (London: Macmillan, 1958), 72–118, pp. 82–83. For a modern example of this approach applied to equity in practical public decisions, see David Weimer and Aidan Vining's leading text on policy analysis. *Policy Analysis*, 5th ed. (Upper Saddle River: Pearson, 2011), pp. 39–52.

[204] Giandomenico Majone, *Evidence, Argument, and Persuasion in the Policy Process* (New Haven: Yale University Press, 1989), pp. 9, 12–20.

[205] In discussing the problem of commensurability, even informed critics of quantitative methods Jonathan Wolff and Dirk Haubrich state, "Once attributes of well-being have been valued in the way discussed above, policy makers have to compound these attributes into a single aggregated standard so as to decide who in a society should be given scarce resources." "Economism and Its Limits," in *The Oxford Handbook of Public Policy*, ed. Michael Moran, Martin Rein, and Robert E. Goodin (Oxford: Oxford University Press, 2008), 746–70, p. 756.

In contrast to this perspective, consider again Decision Procedure 2, which I have set out to defend in this article:

**Decision Procedure 2** *(quantification with deliberation)*: (1) Select ten plausible venues; (2) Survey coworkers, who rate from 1 to 5; (3) Aggregate the results; (4) Publicly ask for objections to highest rated venue; (5) Deliberate any objections offered and select.

Decision Procedure 2 tasks Oscar with facilitating deliberation among his coworkers to consider Viktor's objection. This deliberative step is not a tool for a decision maker to employ on her own; it puts the decision to the judgment of a group. This design places lower informational demands on quantitative tools by separating out some judgments for procedural resolution. It thereby avoids what Sen calls the "despotic quest for complete orderings" of preferences that has led to the neglect of many costs that are challenging to quantify.[207]

I will call this deliberative step an "irreducibly procedural" element because its force depends on the deliberation of dispersed parties evaluated by procedural means. If the coworkers accept the force of Viktor's objection, then they will vote for a venue other than Luigi's. If they do not accept the force, then they will vote for Luigi's. The result cannot be discovered without the deliberative procedure.

## Virtues of Deliberative Procedures

While deliberative procedures are foreign to economics or social choice theory, where decisionism reigns, they are ubiquitous in our democratic system. Elections, legislation, and the trial system are each irreducibly procedural. Consider a criminal conviction. To reach a criminal conviction, there is an irreducible role for the jury deliberating and rendering a verdict on the guilt or innocence of the defendant. This role cannot be reduced to an independent evaluation of the evidence. In a manner of speaking, it is natural to ignore the procedural element and say that a defendant was convicted "because" he confessed to the crime or "because" his fingerprints were found at the scene of the crime. This manner of speaking is imprecise. In a jury trial, a defendant is convicted when the jury renders a verdict finding him guilty, and this verdict is justified when due process is respected and the jurors find that the evidence showed his guilt beyond a reasonable doubt.[208] We may expect that a confession or fingerprints will play a significant or decisive role in jury deliberations, but concluding without a trial that the defendant should be convicted based on that evidence improperly disregards the procedural role that the jury deliberations play in the trial.

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[206] Adler, *Well-Being and Fair Distribution*, pp. 14–16.

[207] Sen, "Discipline of Cost-Benefit Analysis," p. 941.

[208] Alternative resolutions to a trial are also procedural in nature. See Randolph N. Jonakait, *The American Jury System* (New Haven: Yale University Press, 2003), pp. 2–6.

The key question for this article is what reasons we have to design a decision procedure with irreducibly procedural elements, such as the deliberative step in Decision Procedure 2. To answer this question, I will consider the jury system more carefully to shed light on the virtues of deliberative procedures in public decision making, then apply that analysis to broader public decision procedures. As analyzed by Randolph Jonakait in his admirable treatise on the American jury system, four categories of reasons justify the use of a jury to render verdicts in trials.[209] In applying his analysis to broader deliberative procedures, I will emphasize the final two.

1. *Juries serve as a check on abuses of power*

The designers of the American system were united on the critical importance of juries as a check on power. "Americans [gave] two rights preeminent importance. If the rights to representation and to trial by jury were left to operate in full force, they would shelter nearly all the other rights and liberties of the people."[210] On this point, even Thomas Jefferson and Alexander Hamilton—ever vociferous philosophical opponents—were in resounding agreement,[211] and the Supreme Court has since affirmed the value of trial by jury on these grounds.[212] Representation and juries each provide procedural checks on power, giving representatives of the people an input to render judgment on the appropriateness of public action. "Only authority checked by procedural rules was 'lawful'" for the designers of the American system.[213]

2. *Juries determine disputed facts*

The second category of reasons argues that juries will be more accurate fact finders based on the epistemic virtues of group decision making. I will bracket further discussion of this category because it opens disputed questions of social epistemology that will be specific to the particular deliberative procedure used—the jury system. For my purposes, it is enough to say that the instrumental accuracy of procedural elements will depend on epistemic virtues and vices specific to those procedures. I will reconsider epistemic objections in section 2.8.

3. *Juries incorporate community values*

The third reason for using juries is their ability to incorporate community values into a decision. Juries do not only determine facts; they also interpret abstract legal concepts that incorporate community values, such as "negligence." "Negligence refers to whether [a defendant] has taken the care of a reasonable person, whether by act or omission, in order to avoid the harms that might foreseeably flow from his actions."[214] Determining whether a defendant has been negligent requires more than determination of facts; it also requires determining whether the conduct meets "the care of a reasonable person" in that context. Jonakait offers the example of a defendant driving ten miles under the speed limit under foggy conditions in heavy traffic.[215] Does this conduct meet the care of a reasonable person? The law does not provide the judge with an algorithm to evaluate the various contextual considerations. Rather, the law provides a deliberative procedure—asking a jury to weigh the considerations after being informed about the specifics of the context and render a verdict.

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[209] Jonakait, *American Jury System*, pp. 18–86.

[210] Jack N. Rakove, *Original Meaning: Politics and Ideas in the Making of the Constitution* (New York: Vintage Books, 1997), p. 293.

[211] Jonakait, *American Jury System*, pp. 29–30.

[212] Duncan v. Louisiana, 391 U.S. 145, pp. 155–56 (1968).

[213] John Philip Reid, *Constitutional History of the American Revolution: The Authority of Rights* (Madison: University of Wisconsin Press, 1986), p. 50.

[214] Richard Epstein, *Torts* (Gaithersburg: Aspen Business and Law, 1999), p. 69.

[215] Jonakait, *American Jury System*, p. 65.

As affirmed by the Supreme Court in *Railroad Co. v. Stout*, even in cases where the underlying facts are not in dispute, the question of negligence is properly left to the jury. "Twelve men of the average community … sit together, consult, apply their separate experience of the affairs of life to the facts proven and draw a unanimous conclusion. This average judgment thus given is the great effort of the law to obtain. It is assumed that the twelve men know more of the common affairs of life than does one man …."[216] The jury represents the community, both symbolically and actually, and brings the values of the community into the judgment, rather than imposing the values of the judicial class.[217] This is a matter of preference, not a second-best option,[218] and as Alexis de Tocqueville emphasized, it guarantees the stability of the law by resting on the values of the people.[219]

### 4. *Juries encourage acceptance of the verdict*

The fourth reason is that juries encourage acceptance of disputed verdicts. A primary function of the judicial system is to provide an orderly and peaceful way to settle disputes. To achieve this function, the system must assuage the frustration that stakeholders inevitably suffer when they lose a case or feel that a verdict is unjust. When the decision is given by a single judge, discontent centers on that person. Frustrated stakeholders can attribute the decision to the bias, prejudice, or stupidity of the judge, who is a fixture of the court. In contrast, the jury is ephemeral, a collection of twelve amateurs drawn from the community and unique to that case. Frustration with a jury system can only attach to the process of jury selection, and it does not stick to a single judge or even judges in general, who may be seen to share similar biases, prejudices, and blind spots.[220]

Thus, trial by jury helps to maintain the credibility and authority of the court.[221] Zechariah Chafee, Jr., discussing a California injunction that would have submitted actions against organized labor to bench trials without a jury, argued, "In a just trial, the responsibility is distributed. It does not all fall on the judge. The accused is convicted by men from the street, not very different from him except in their freedom from crime. The jury takes up the slack, as it were. In a [bench trial], there is nothing to take up the slack."[222]

Crucially, this effect applies whether or not the trial reaches the correct decision. Resentment and frustration are inevitable, even where a dispassionate weighing of the evidence would confirm the result in a bench trial. It is the strain on the judiciary of deciding difficult cases from a position of fragile legitimacy that Chafee and Jonakait emphasize, not that decisions may be wrong. By giving frustrated stakeholders the chance to be heard by a group of their peers convened exclusively for that purpose, the jury system assuages resentment, whether it is warranted or not. Juries contribute to the stability and acceptance of the court system by dispersing the focus of frustrated stakeholders.

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[216] Railroad Co. v. Stout, 84 U.S. 657, p. 664 (1873).

[217] Gary Goodpaster, "On the Theory of American Adversary Criminal Trial," *Journal of Criminal Law and Criminology* 78 (1987), 118–54, p. 146.

[218] Harry Kalven, Jr., "The Jury, the Law and the Personal Injury Damage Award," *Ohio State Law Journal* 19 (1958), 158–78, p. 161.

[219] Alexis de Tocqueville, *Democracy in America* (New York: Vintage Books, 1945 [1835 & 1840]), p. 294.

[220] Jonakait, *American Jury System*, pp. 75–81.

[221] Matthew Deady, "Trial by Jury," *American Law Review* 17 (1883), 398–410, p. 399.

[222] Zechariah Chafee, Jr., *Free Speech in the United States* (Cambridge: Harvard University Press, 1941), pp. 341–42.

### Deliberative Procedures in Public Decisions

The purpose of analyzing the jury system in detail is to emphasize the virtues generated by adding deliberative procedures to public decisions. The deliberative elements of the jury system show four virtues. The first two virtues—acting as a check on power and harnessing the wisdom of the crowd—are familiar concerns,[223] but I emphasize here the importance of the final two virtues when making public decisions under contested systems of equity and competing values, precisely the conditions under which advocates of cost-benefit analysis call for quantification. These virtues have been less emphasized in the literature.[224]

Decision Procedure 2 adds a procedural element in the form of a deliberative step, which asks Oscar's coworkers to deliberate Viktor's objection and decide whether it should carry weight in the final analysis. This asks the workers to deliberate and render judgment on a question of equity and takes the judgment of the group to be decisive on that question. This contextual equity judgment shares many features with negligence in a civil trial. At an abstract level, there is wide agreement that equity should factor into public decisions alongside efficiency, effectiveness, legality, and other practical considerations. This agreement is demonstrated in the readiness of Bueno de Mesquita, Sunstein, Adler, and Posner to acknowledge that some equitable constraints should limit quantification. It also explains why few, if any, scholars defend the strong quantification argument.

However, like negligence, equity is both contextual and debatable at a finer level of definition. Principles that seem universally justifiable in some contexts would seriously jeopardize the stability of the system if they were applied in other contexts. Compare the following two examples:

**Lake Pollution**: Lakeside County has developed a serious water pollution problem, prompting calls for public action to clean it up. County analysts run a cost-benefit analysis, comparing cleanup costs against the health and recreation benefits that a cleaner lake would provide, and find that the benefits greatly outweigh the costs. The only debated issue is who should pay for it. Further analysis demonstrates that 80 percent of pollution runoff flowed from local mines, while 20 percent came from local homes and businesses. Under a principle of "polluter pays," the county covers 80 percent of the costs through a tax on mining, while the remaining 20 percent is drawn from general county revenues.

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[223] See, e.g., David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2007); Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton: Princeton University Press, 2012) (for arguments relating to the wisdom of the crowd).

[224] A good point of comparison is Archon Fung and Erik Olin Wright, "Thinking about Empowered Participatory Governance," in their *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (London: Verso Press, 2003), 3–44, pp. 25–29. Fung and Wright consider the ability of deliberation to achieve more effective problem-solving based on harnessing local information, deeper consideration of key issues, shorter feedback times, and diffuse decision making. They also consider the character of democratic participation to be an independent desideratum. They do not consider the argument here: deliberation can consider a different kind of claim—contextual equity claims—which cannot be considered by other decision procedures.

**Noisy Airplanes**: After a sleepless overnight flight, an analyst at the Federal Aviation Administration decides there is a serious noise pollution problem on airplanes. Through "noise pollution," crying babies cause a significant loss in welfare to every other passenger on the plane. Using surveys and other methods of valuation, the analyst estimates the amount that each passenger would be willing to pay for peace and quiet on flights. Under the principle of "polluter pays"—using analogous reasoning to the lake pollution analysis—he recommends a policy where families must pay a per-passenger fee for each minute of crying, to be collected by the airline and distributed as a refund to other passengers.

In noisy airplanes, the analyst's imposition of fines on young families is precisely the kind of public action that Tocqueville warned would threaten the stability of the system by contravening the community values of the nation. However, without a contextual judgment, it seems to follow from a faithful application of the same principle underlying the lake pollution example, which follows a typical application of market-failure analysis to justify a policy intervention. In each case, an external cost is imposed on the surrounding population for the benefit of the "polluter." In each case, the surrounding population would be willing to pay to reduce that cost. In each case, the source of the "pollution" is made to pay to correct the external harm. However, I submit that the lake pollution case is likely to be uncontroversial, while the noisy airplanes case would cause a popular uproar.

The critical question then is how to separate these two examples through a consistent decision procedure. Put differently, the question is how a decision procedure can include the contextual equity judgment that leads many to question the wisdom of the fine in the noisy airplanes example without undermining the consistency of that decision procedure. Recall from section 2.4.1 that I argued in response to the bad-faith objection that equity claims must be impartial in the sense of being claims the individual would maintain even if she were not the beneficiary. Here, we must consider why Lakeside mining companies cannot object that policy makers are failing to be impartial by using a "polluter pays" principle if they do not apply that principle when the "polluters" are more sympathetic. Unequal application of law and policy based on the identity of the perpetrator smacks of arbitrariness, and that apparent arbitrariness demands a justification to distinguish the cases.

Bueno de Mesquita considers similar issues when he criticizes the "Summers Memo," a memo from Larry Summers's time as chief economist at the World Bank, but he does not provide a consistent resolution of those issues. The Summers Memo questions why more toxic pollution is not shipped to low-income countries, offering economic reasons why such an arrangement would be desirable.[225] Bueno de Mesquita uses the Summers Memo to correctly argue that welfare-economic logic alone "can lead to ruthless and absurd policy conclusions."[226] However, he does not offer what is sought here—a decision procedure that can be applied consistently and impartially to separate cases where welfare-economic logic is absurd from cases where welfare-economic logic constitutes a valid justification for public action.

A deliberative procedure can fill this gap in the justificatory structure by giving a venue for contextual equity to be considered. When a negligence evaluation is submitted to a jury, consistency is achieved through procedural means. Each party in a trial is entitled to present its case to the jury and is entitled to a jury of peers selected and instructed under carefully designed rules. The jury then considers whether the defendant met the standard of care of a reasonable person—an inherently contextual evaluation. Similarly, when Oscar applies Decision Procedure 2, he provides coworkers with information, omits alternatives that would violate relevant rights, and asks them to evaluate whether Viktor's objection should carry weight in the context it is offered. Decision Procedure 2 has procedural consistency, and it can answer the priority problem by allowing the procedurally designated group to deliberate the importance of objectives in context.

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[225] Bueno de Mesquita, "Perils of Quantification," pp. 6–8; see also Satz, *Why Some Things Should Not Be for Sale*, pp. 82–84, 109–10; Hausman, McPherson, and Satz, *Economic Analysis*, pp. 19–31.

[226] Bueno de Mesquita, "Perils of Quantification," p. 7.

Where procedures place the responsibility for deliberation with a group, they have additional virtues in terms of acceptance of the verdict. As with a jury, placing these inherently disputable judgments in the hands of a group takes up the slack of those disputed judgments and maintains the credibility and authority of the policy maker, regulator, or analyst.[227] A deliberative step disperses responsibility for the judgment onto the workers, rather than centering on Oscar. Where deliberative procedures are applied in a democracy, the submission of disputable judgments to the evaluation of the people is precisely the bargain on which democracies are premised.

Consider again the desire for impersonality that Porter called "the accounting ideal" in his history of quantification in public decisions.[228] Those whose authority is suspect make decisions by the numbers to emphasize that the decision is not arbitrary or based on personal judgment.[229] Group deliberative procedures have analogous effects by taking particular elements away from a single decision maker and submitting them to a group. By dispersing responsibility to a group, deliberative procedures take up the slack to maintain the authority and credibility of public decision makers.

### 2.7 Contextual Equity Judgments and Deliberative-Democratic Theory

The celebration party diverges from many of the examples offered in the deliberative democracy literature in that it highlights a non-transformational way that deliberation contributes to improving public decisions. Following foundational work by Habermas, Elster, and Cohen, the deliberative democracy literature has focused on areas where the deliberative process shapes preferences in light of the common good.[230] Citing concerns described in section 2.4.1, Elster moves away from quantitative approaches by denying that aggregation of prepolitical preferences is a suitable basis for public choice. Rather than merely aggregating preferences, his broad theory of collective rationality is aimed at *transformation* of preferences through public and rational discussion. Only when private and idiosyncratic preferences have been shaped and purged in public discussion may the rational desires of the group emerge. Elster's theory works under two premises. First, some reasons—namely, those contrary to the common good—cannot be maintained in public deliberation. Citizens will censor themselves to offer reasons in terms of the common good. Second, over time, those engaged in public debate will come to be swayed by considerations about the common good. These premises jointly serve to bring public discussion toward the common good.[231]

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[227] This dispersion effect is supplementary to Gutmann and Thompson's argument that hard choices are more acceptable when they have been deliberated on the merits. *Why Deliberative Democracy?*, p. 10.

[228] Porter, *Trust in Numbers*, pp. 50–51.

[229] Porter, "Objectivity as Standardization," pp. 206–07.

[230] See Cohen, "Deliberation and Democratic Legitimacy," pp. 25–28.

Cohen offers a related account that similarly takes the shaping of preferences as a virtue of deliberation. For Cohen, the discovery that an individual can offer no reasons persuasive to others will lead her to shape her preferences toward the common good. Like Elster, the interests, aims, and ideals that constitute the common good are those that survive deliberation. Institutions should be designed to make this deliberation possible.[232]

Many have interpreted these accounts to say that deliberation is the appropriate basis for public decisions because the process of deliberation permanently transforms preferences toward the common good. For instance, a prominent example in the literature considers a deliberation over when to hold a faculty seminar, where deliberation draws the attention of a predominantly male faculty to the costs imposed on professors with childcare responsibilities by evening meeting times and thus transforms their preferences toward more mutually acceptable meeting times.[233] Another example sees deliberation over transportation options draw attention to accessibility issues or stigmatization that would otherwise go unacknowledged by able-bodied policy makers.[234] In these examples, deliberators learn from each other through shared perspectives and shared information[235] and transform their perspective toward the common good.[236]

Contextual equity judgments need not be as transformational as those examples suggest. In the celebration party, Viktor's coworkers need not change perspective on their ideal venue for a group celebration. Rather, by hearing Viktor's objection, the coworkers learn of circumstances, *specific to this decision*, that may change their preferences *about this decision only*. When Decision Procedure 2 gives Viktor a platform, he informs his coworkers of his objection and the circumstances that surround it, giving this particular decision new context. His coworkers are asked to weigh the possibility of making an exception after considering Viktor's circumstances. If they were to choose a venue for another celebration party in a year, there would be no reason to approach the decision with different preferences. Unlike the faculty seminar, where the deliberators learn a generalizable fact about young families that should change their perspective permanently, the coworkers learn about Viktor's exceptional circumstances.

I call these non-transformational changes "contextual equity" judgments because the fairness judgments are limited to the context of the decision. The key distinction between contextual equity and the transformational effects contemplated by other deliberative literature is that contextual equity considerations are specific to the circumstances and would not change future evaluations of the same kind.[237] Contextual equity is a source of collective information about the specifics of the decision and the claims that other parties have in those circumstances. They are the fourth part of the four-place relation that forms a reason, as introduced in section

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[231] Elster, *Sour Grapes*, pp. 34–37; Elster, "Market and the Forum," pp. 10–13; see also Sunstein, "Preferences and Politics," p. 16.

[232] Cohen, "Deliberation and Democratic Legitimacy," pp. 26–27.

[233] See, e.g., Mansbridge, et al., "The Place of Self-Interest," pp. 78–79.

[234] Richardson, *Democratic Autonomy*, pp. 107–10.

[235] Robert E. Goodin and Simon J. Niemeyer, "When Does Deliberation Begin? Internal Reflection versus Public Discussion in Deliberative Democracy," *Political Studies* 51 (2003), 627–49, p. 635 (emphasizing the importance of shared information in changing perspectives).

[236] See Mansbridge, et al., "The Place of Self-Interest," pp. 78–79 (discussing transformation of preferences).

[237] It is important to emphasize that contextual equity and transformational effects are mutually reinforcing reasons to adopt deliberative procedures.

2.1—the conditions under which a fact counts in favor of a particular actor taking a particular action.

As discussed in section 2.4.1, the fact that contextual equity judgments are circumstantial does not mean that they are not impartial. An equity claim is impartial so long as the claimant would maintain the claim even if she had no relation to the beneficiary. Equity claims are held on principle, not on the basis of personal gain or special relations. Thus, if the relevant circumstances are identical, an equity claim will apply equally to a stranger and a friend. This counterfactual definition presents a clear epistemological challenge to ensure that purported equity claims are not presented in bad faith, and the requirement of each to publicly state and defend her claims in deliberation serves as an accountability check on these claims.[238]

Contextual equity considerations show that we must be careful not to overemphasize the importance of the transformational argument to the value of deliberation. For example, Jane Mansbridge, et al., may overstate the significance of transformational effects when they argue, "Many normative theorists have emphasized the power of deliberation to transform individual participants' perceptions and even identities in the direction of the common good. Deliberation would have no point if it did not produce change in the views of at least some participants…."[239] The latter statement is correct, but changes in some participants' views about a particular decision does not depend on a transformation of perception or identity. It may simply provide contextual information about a single decision that a member would have considered if she knew about it. In the celebration party, there is no reason to believe that Viktor's objection will transform perceptions or identities permanently, nor do his coworkers necessarily have any reason to be more sensitive to concerns like Viktor's in the future.

Rather, it is sufficient to say that deliberation improves the decision because it allows the workers to consider contextual equity judgments that cannot be incorporated into quantitative procedures. Thus, contextual equity is a strong reason for the inclusion of deliberation into all public decision procedures.

### 2.8 Weighing Deliberation against Quantification

I have argued that deliberative procedures have virtues through their ability to include community values in a procedurally consistent way that encourages acceptance of disputed judgments. Those virtues address the vices of quantification in that they provide a method to judge the priority relations among objectives in a way that respects the agency of the members. It is precisely the fact that deliberative procedures so clearly respect the agency of the members that gives them the ability to garner acceptance on these disputable value judgments.

However, as highlighted in section 2.4, quantification has notable virtues in identifying relevant objectives and weighing trade-offs among those objectives. We should hesitate to disregard those virtues without assurance that the replacement decision procedure either retains or outweighs those virtues. For example, suppose Oscar used Decision Procedure 6, which would eliminate quantification in favor of a predominantly deliberative approach. He selects ten venues and asks his coworkers to deliberate any objections among themselves.

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[238] See Cohen, "Deliberation and Democratic Legitimacy," pp. 26–27.

[239] Mansbridge, et al., "The Place of Self-Interest," p. 78.

**Decision Procedure 6** *(predominantly deliberation)*: (1) Select ten plausible venues; (2) Publicly ask for objections to any venue; (3) Ask the group to deliberate all venues and select.

Following the same logic of my limited defense of cost-benefit analysis, this procedure is unjustifiable absent stringent feasibility concerns because it fails to adequately inform deliberation. As Sunstein and Bueno de Mesquita emphasize, quantification creates a framework of contestability to compare trade-offs. The group has an interest in quickly and definitively determining which options are favored by more people and by how much.[240] Decision Procedure 6 fails to inform the group of these relevant preferences, which they have reason to demand from a decision procedure. Deliberation is supplemental to quantitative work; it does not replace it entirely.

A major point of contention between the deliberative approach that I defend and an approach that is welfare-based and quantitative is the form that moral objections take in the evaluation. Bueno de Mesquita, Posner, and Sunstein each defend the place of moral commitments in policy decisions, but they demand those commitments take quantitative form. In a recent article, Posner and Sunstein argue,[241]

> It is true that moral commitments often signal values that are not adequately captured by private willingness to pay. . . . But in response, we emphasize that people's welfare may well be affected and even profoundly affected by the realization or frustration of their moral commitments, as demonstrated by willingness to pay. If people lose welfare because of the suffering or death of others—refugees, people in other countries, their own children, rape victims, dolphins, members of future generations—their loss ought to be counted.

On a certain logic, this passage makes sense. *If we are committed to make a decision through a welfare calculus*, then including all harms as welfare effects seems necessary.[242] As Posner and Sunstein argue, "If an agency ignores the resulting number, *and thus treats people's concerns as valueless*, there is a strong argument that it is acting arbitrarily…."[243] It is certainly arbitrary for an agency to treat people's concerns as valueless, but it is not true that we are forced to choose between quantifying our concern for rape victims or ignoring it entirely. A welfare calculus is not necessary. Deliberative procedures establish a forum for claims to be heard, then ask a group to deliberate the importance of those claims in the relevant context. Oscar has no need to quantify Viktor's objection before asking his coworkers to deliberate its merit. The workers take Viktor's objection in the form Viktor offers it, then deliberate whether it should outweigh quantifiable concerns. Thus, Posner and Sunstein present a false dichotomy.

Posner and Sunstein's restriction does have virtues. It maintains commensurability of values, so that welfare effects may be weighed in a transparent manner, encouraging accountability and consistency, as argued in section 2.4.2. However, two responses are available to the defender of deliberation. First, the cost of commensurability is too high if it entails reducing a person's moral objection to suffering by refugees and rape victims to welfare effects. Second, transparency, accountability, and consistency can be achieved through alternative means in procedural approaches. When an individual regulator imposes a judgment, she achieves accountability only through the transparency of her methods. When a jury reaches a judgment, transparency is achieved through a public hearing, while consistency and accountability are achieved through procedural means in the selection of the jury and the enforcement of due process.

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[240] Mansbridge, et al., make a similar point about the virtues of voting as an informational device, a point that is stronger for complex quantification due to the informational virtues of the pricing mechanism, as argued in §2.4.2. Mansbridge, et al., "The Place of Self-Interest," p. 85.

[241] Posner and Sunstein, "Moral Commitments," p. 1813.

[242] See Elster, *Sour Grapes*, p. 34.

[243] Posner and Sunstein, "Moral Commitments," p. 1813 (emphasis added).

To make this discussion more concrete, consider the alternative ways that these approaches would evaluate the following project:

**Oahe Dam**: The United States Army Corps of Engineers has been tasked with evaluating a dam project on the Missouri River north of Pierre, South Dakota. The dam would provide flood control, downstream navigability, hydroelectric power, and water for irrigation, drinking, and recreation. It would also flood hundreds of thousands of acres of land on the Cheyenne River and Standing Rock Indian Reservations, creating the fourth-largest reservoir in the United States. This land is known to contain archaeological sites important to the tribes, and it lies in the fertile floodplains of the river, giving it unique arability. Any land flooded by the dam would trigger compensation under eminent domain law, though the proper level of compensation is a subject of great dispute.

The relevant question for this paper asks how the Corps should reach a recommendation concerning the Oahe Dam. Immediately, it should be clear that most of the benefits and costs on the project are straightforward to estimate. These estimates allow the Corps to evaluate whether the economic benefits of power, navigability, irrigation, recreation, and flood control will outweigh the construction and compensation costs of the dam project. If these projected benefits do not outweigh the projected costs, then the dam will not be justified.

At stake here is the treatment of the cultural artifacts and traditions to be destroyed or disrupted by the dam. Speaking of the Oahe Dam and the later Dakota Access Pipeline, LaDonna Brave Bull Allard described these costs.[244]

> Again, it is the U.S. Army Corps that is allowing these sites to be destroyed.
>
> The U.S. government is wiping out our most important cultural and spiritual areas. And as it erases our footprint from the world, it erases us as a people. These sites must be protected, or our world will end, it is that simple. Our young people have a right to know who they are. They have a right to language, to culture, to tradition. The way they learn these things is through connection to our lands and our history.

Allard invokes rights claims that are difficult to deny in the abstract. Tribal members do have important interests in the protection of their language, culture, and traditions, and those interests certainly ought to shape the powers and duties of the Corps. However, those abstract right claims fail to give definitive guidance here for the feasibility reasons cited in section 2.5. The Corps must evaluate how much those interests are threatened by the dam project and weigh those objections against the interests that others have in the goods produced by the dam.

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[244] LaDonna Brave Bull Allard, "Why the Founder of Standing Rock Sioux Camp Can't Forget the Whitestone Massacre," *YES! Magazine* (Sept. 3, 2016).

Posner and Sunstein's argument suggests that, at minimum, the Corps should include the willingness to pay of the tribes and others to preserve these cultural artifacts and traditions. This approach would ensure that these values play some role in the analysis, and it would maintain the cost-benefit structure of the analysis, which generates virtues of transparency, accountability, and consistency, as described in section 2.4. However, even if we set aside the difficulties inherent in quantifying cultural values, this approach would include those cultural values in a transparently insufficient manner.[245] In this scenario, tribes confront a public agency reducing their cultural values to a crude estimate in dollar terms. Notice that Allard specifically identifies the Corps as the actor allowing their cultural areas to be destroyed. There is expressive significance when a public agency undermines important values of its people. This significance is recalled by Allard more than half a century after the Oahe Dam was completed. This is precisely the opposite of the acceptance of controversial verdicts that deliberative procedures can achieve.

Nonetheless, controversial judgments must be made. The deliberative approach advocated here makes these judgments in procedural ways, using group judgment to access community values and disperse the responsibility for the judgment. These deliberative procedures would assign a group the responsibility to weigh values, as a jury weighs negligence. While this paper is intentionally indefinite as to the specific deliberative body, one example would be a mini-public, which would randomly select a small group of community members to be informed by experts and stakeholders before deliberating a particular policy issue.[246]

Rather than reducing cultural values to willingness to pay, a deliberative approach would gather evidence to inform the deliberative body about the relevant context without necessarily quantifying. Tribal members and other stakeholders would be given the opportunity to voice their objections to the dam project. These claims need not be taken at face value. For example, archaeologists and anthropologists can put artifacts and ruins threatened by the dam into context, gathering evidence of their place in the cultural practices and history of the tribes. The value of these artifacts and practices would be left to the deliberative body.

These deliberative procedures achieve transparency, accountability, and consistency through a public decision procedure that consistently follows due process and embodies the values embedded in a careful institutional design. They are procedurally consistent toward the goal of applying community values to important questions of contextual equity in public decisions.

## 2.9 Conclusion

This article set out to bridge the gap between the deliberative-democracy literature and the practical public-policy literature, where welfare-economic quantitative approaches continue to be dominant. To do so, I examined the virtues and vices of quantitative decision procedures and identified specific weaknesses and specific kinds of contextual equity claims that cannot be considered by purely quantitative procedures. This argument does not entail abandoning quantification entirely. Rather, I have defended a decision procedure that gives quantification, rights, and deliberation complementary roles. The key takeaway is that deliberation must be part of a justifiable public decision procedure.

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[245] See Nussbaum, "Costs of Tragedy," pp. 1033–34.

[246] See Robert E. Goodin and John S. Dryzek, "Making Use of Mini-Publics," in *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn*, ed. Robert E. Goodin (Oxford: Oxford University Press, 2008), 11–37.

Most important in my defense of deliberation is the ability to consider contextual equity judgments, which weigh fairness claims specific to a particular context. These contextual equity claims need not be transformational, and they need not change perspectives or identities in dramatic ways. Instead, the ability of a decision procedure to consider these equity claims enables them to make better, more mutually acceptable decisions. Thus, practical theorists cannot restrict their analysis to considerations that can be quantified and weighed by an isolated analyst before making a recommendation. A critical component of justifiable public decisions is deliberation to weigh important considerations of equity.

# Chapter 3

# Values in Science and Democracy

## 3.1 Introduction

In a "Using Democratic Values in Science," Andrew Schroeder asks an important question for the application of scientific results to public decisions: "when scientists should make use of values, which (or whose) values should they use?"[247] Following recent literature, Schroeder considers it as established that science cannot be entirely value-free, but when values play some role in the scientific process, three views remain possible: (1) scientists should use objectively correct values; (2) scientists should use whichever values they prefer, so long as they are reasonable; and (3) scientists should use appropriate democratic values, that is, the values held or endorsed by the public or its representatives.[248] He sees the largest role for the third—the *democratic view*—but even if we set aside feasibility concerns that have animated recent discussions,[249] Schroeder identifies a deeper concern in the application of democratic values in science:[250]

> In requiring scientists to guide certain aspects of their work by democratic values, we will sometimes in effect ask that they support political causes they may personally oppose and bar them from fully advocating for their preferred policy measures. We are, then, depriving scientists of important political rights possessed by the general public.

Schroeder is concerned about choices within the scientific process where scientists face alternative presentations that would be equally honest, accurate, objective, transparent, and clear, but adopting either presentation would promote one policy vision and one set of values. Under his account, the democratic view demands that scientists resolve these conflicts in favor of publicly favored political views, rather than privileging their own interests. This prioritization of public values over personal values puts the scientists in an uncomfortable ethical position.[251]

Schroeder identifies two arguments as promising to defend constraining scientists in this way.[252] First, while imposing this burden does restrict important political rights of speech and advocacy, it is done to expand the political rights of others. Under this view, the loss of political freedom to scientists is more than balanced by the gain to the public as a whole. Second, a consequentialist may defend these restrictions on grounds that they promote trust in science, and increased trust in science may justify imposing significant burdens on scientists.[253]

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[247] Andrew S. Schroeder, "Using Democratic Values in Science: An Objection and (Partial) Response," *Philosophy of Science* 84 (2017), 1044–54, p. 1044.

[248] Schroeder, "Using Democratic Values in Science," p. 1045.

[249] See Heather Douglas, *Science, Policy, and the Value-Free Ideal* (Pittsburgh: University of Pittsburgh Press, 2009); Philip Kitcher, *Science in a Democratic Society* (Amherst: Prometheus Books, 2011); John Dupré, "Toward a Political Philosophy of Science," in *The Philosophy of Philip Kitcher*, ed. Mark Couch and Jessica Pfeifer (Oxford: Oxford University Press, 2017), 182–200.

[250] Schroeder, "Using Democratic Values in Science," p. 1046.

[251] Schroeder, "Using Democratic Values in Science," p. 1048.

[252] Schroeder, "Using Democratic Values in Science," pp. 1052–53.

In this paper, I would like to take up the issues proposed by Schroeder, offering an alternative interpretation of the democratic view of values in science that identifies different ethical problems. Where Schroeder presents the democratic view as the incorporation of perceived public opinion into the actions of scientists, I suggest a view where democratic values shape the role that scientists should play in democracy. This view incorporates democratic values in a different way, using the normative demands of democracy to ground ethical constraints on scientists and on experts acting in an analytical capacity. Adopting a deliberative conception of democracy, I will argue that (1) science must remain a reliable and widely shared method of inquiry among diverse citizens, who approach contentious policy issues with divergent values and perspectives, and (2) analysts must provide the necessary information for citizens and policy makers to autonomously evaluate policies based on scientific evidence. These demands entail constraints on the values that scientists may justifiably incorporate into their methods and entail rules on analysts to preserve the value of democratic deliberation.

### 3.2 Two Examples

Schroeder draws on two examples to draw out the implications of his view. The first, which I will call *Discordant Experts*, relies on Heather Douglas's analysis of inductive risk in science.[254] In Douglas's seminal example, three research teams evaluated the same slides showing the livers of female rats that had been introduced to dioxin, a potential carcinogen. Each research team separated the slides into three categories—benign, malignant, and total tumorous. The difficulties arose when the three teams categorized the results in strikingly different ways. Despite looking at the same underlying slides, the three teams of experts reached significantly different conclusions. These divergent results demonstrate the role of values, even internal to the scientific process of similarly qualified research teams. Researchers had some latitude to be cautious or aggressive in their diagnosis of cancerous results.

Douglas argues that the choice of cautious or aggressive diagnosis has predictable effects on policy.[255] Cautious diagnosis increases false negatives and decreases false positives, reducing the number of slides identified as tumorous and lessening ensuing dioxin regulation. Aggressive diagnosis increases false positives and decreases false negatives, increasing ensuing regulation. Building on Douglas, Schroeder interprets the democratic view as demanding these value judgments (between cautious and aggressive diagnosis) to follow the apparent will of the people. However, in doing so, scientists may be asked to impose values they do not share. By imposing democratic conclusions about these values on these judgments, Schroeder argues, "we are asking scientists to characterize policy-relevant material in a way that may promote an outcome they strongly disfavor."[256]

Schroeder's second example, which I will call *Environmental Impacts*, asks us to consider an economist conducting an environmental-impact assessment of a proposed construction project.[257]

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[253] See Kevin Elliott, *Is a Little Pollution Good for You?: Incorporating Societal Values in Environmental Research* (Oxford: Oxford University Press, 2011), pp. 133–36.

[254] Heather Douglas, "Inductive Risk and Values in Science," *Philosophy of Science* 67 (2000), 559–79, pp. 569–72.

[255] Douglas, "Inductive Risk and Values in Science," p. 571.

[256] Schroeder, "Using Democratic Values in Science," p. 1047.

[257] Schroeder, "Using Democratic Values in Science," p. 1048.

While the economist is deeply committed to the preservation of natural spaces, by hypothesis, she knows that the public is strongly committed to economic development, even at a cost to the environment. In these circumstances, Schroeder argues, the democratic view would require her to emphasize economic consequences while describing ecological costs much less prominently. This presentation frustrates her preferences by foregrounding effects that she thinks are of secondary importance.

In both of these examples, scientists are presumed to act honestly and are forbidden from misleading the public. Nonetheless, through framing effects or prioritization of certain types of errors over others, the actions of the scientists will predictably promote policy outcomes that they disfavor.[258] Schroeder worries that the democratic view violates these scientists' political rights of speech and advocacy by forcing them to impose values in ways they would reasonably dispute.[259]

I would like to suggest two distinctions to help clarify the ethical issues that arise in these examples and to identify the necessary components of an account of democratic values in science.

### 3.3 Evidence and Reasons

To understand the connection between science and democracy, we need to understand the connection between evidence and reasons, where I will argue that science properly aims for the production of knowledge through reliable evidence, and democracy aims for reasoned deliberation among free and equal citizens. To do so, I will build on a distinction between data, information, and evidence introduced by Giandomenico Majone.[260]

Data are the raw materials of events that happen in the world, which can be either found or manufactured. For example, answers to a standardized test are data, as are survey answers or rat-liver samples mounted on slides. Data represent initial choices about the problems and questions taken to be relevant and the appropriate measures to solve those problems or answer those questions.[261] Standardized-test results partially depend on the questions asked. Rat-liver-slide production depends on the decision to make cancers of the liver in female rats central to setting acceptable levels for dioxins.[262]

Information is the refinement of data to give it meaning. Information is produced when data are used to compile categorized totals, calculate averages, or fit a curve. For example, standardized-test answers can be combined to give results in meaningful categories, such as math and writing scores; survey answers may be sorted by demographics; and rat-liver slides may be categorized into those with and without benign or malignant tumors. Raw data is transformed into information when it is given "meaning" by sorting into relevant categories.

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[258] See Matthew Nisbet and Chris Mooney, "Framing Science," *Science* 316 (2007), 56; Richard Thaler and Cass Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New Haven: Yale University Press, 2008); George Lakoff, "Why It Matters How We Frame the Environment," *Environmental Communication* 4 (2010), 70–81.

[259] Schroeder, "Using Democratic Values in Science," p. 1052.

[260] Giandomenico Majone, *Evidence, Argument, and Persuasion in the Policy Process* (New Haven: Yale University Press, 1989), pp. 46–52; Eugene Bardach, *A Practical Guide for Policy Analysis: The Eightfold Path to Effective Problem Solving*, 4th ed. (Los Angeles: CQ Press, 2012), pp. 11–12.

[261] Kitcher, *Science in a Democratic Society*, p. 35; Julie Zahle, "Values and Data Collection in Social Research," *Philosophy of Science* 85 (2018), 144–63, p. 148.

[262] William F. Greenlee, Melvin E. Andersen, and George W. Lucier, "A Perspective on Biologically-Based Approaches to Dioxin Risk Assessment," *Risk Analysis* 11 (1991), 565–68, p. 567; Douglas, "Inductive Risk and Values in Science," p. 569.

Evidence, under this classification, is information used to test whether a particular fact or belief is true. For example, standardized-test scores may be used to evaluate whether a particular student has good quantitative skills. Rat-liver slides may be used as evidence to test whether dioxin is carcinogenic. The reliability of evidence depends on judgments about the collection of the data, the appropriateness of the information to the problem at hand, and the reliability of the underlying theory or methodology, and we can expect expert opinion to differ on each of these judgments.[263] For example, we may doubt the reliability of a standardized test as an indicator of overall quantitative skills if we believe that the questions asked are biased toward only a subset of the relevant quantitative skills, or we may doubt the reliability of tests on rat livers as an indicator of carcinogenic effects in humans if we believe that rat outcomes have no relation to human outcomes. These are value judgments internal to the production of expert knowledge.[264]

Schroeder's examples stretch the question of democratic values in science beyond values in the *production* of scientific knowledge to the *application* of scientific knowledge. Studies of potentially carcinogenic chemical compounds occur in the shadow of costly regulation of those compounds, and environmental-impact statements are generated with the specific purpose of informing a particular proposed public action. To consider these policy applications and their relationship to modern democratic theory, we need to introduce the concept of a reason.

A reason, in the standard normative sense, is a fact that counts in favor of an action or a policy.[265] Thus, a reason is a normative concept that combines facts and values to support a particular agent taking a particular action or policy. For example, the fact that a student has good quantitative skills is a reason for a program to admit her. This reason follows both from evidence that she does, in fact, have good quantitative skills and from a value holding that students with good quantitative skills make strong candidates. Similarly, the fact that dioxin is carcinogenic is a reason to regulate its use both because evidence suggests it's carcinogenic and because we hold a value that the state should regulate carcinogenic compounds.

A reason is a four-place relation, $R(p, x, c, a)$.[266] A reason is a fact $p$ for an agent $x$ to take action $a$ under conditions $c$. Thus, the fact that dioxin is a carcinogen may be a reason for an agency to regulate emissions of dioxin under some conditions but not others. For example, where consumers and citizens cannot be expected to know or understand the effects of dioxin on their health, we might see carcinogenic effects as a reason for an agency to regulate it; whereas, under conditions where consumers and citizens can be expected to know and understand the effects of dioxin, we may see carcinogenic effects as a reason for private bargaining, rather than agency regulation.[267] Carcinogenic effects have obvious reason-giving force due to their impact on human health, but it remains to specify which agents (i.e. public agencies or private individuals) should respond to that reason-giving force, which actions they should take, and under which conditions. Reasons are normative concepts that are specific to particular agents, actions, and conditions.

Once reasons are introduced to the framework, we can see that there are five areas where values may enter the application of scientific knowledge to policy.[268] (1) The selection of data—

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[263] Douglas, *Science, Policy, and the Value-Free Ideal*, p. 155; Kitcher, *Science in a Democratic Society*, pp. 58–59.

[264] Douglas, "Inductive Risk and Values in Science," p. 565; Kitcher, *Science in a Democratic Society*, pp. 31–36.

[265] T. M. Scanlon, *What We Owe to Each Other* (Cambridge: Belknap Press, 1998), p. 17.

[266] T. M. Scanlon, *Being Realistic about Reasons* (Oxford: Oxford University Press, 2014), p. 31.

[267] See Ronald H. Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (1960), 1–44.

[268] For an alternative, though not necessarily mutually exclusive, account, see Helen E. Longino, *Science as Social Knowledge: Values and Objectivity in Scientific Inquiry* (Princeton: Princeton University Press, 1990), p. 86.

e.g., reasonable experts may disagree whether data should be collected on rat livers or on a different animal or a different body part. (2) The categorization of information—e.g., reasonable experts may disagree on the classification of particular tumors, as seen in Douglas.[269] (3) The strength of the evidence and the quality of the methodology—e.g., reasonable experts may disagree as to whether cancer in rats is a good indicator of cancer in humans. (4) The existence of reasons—e.g., reasonable citizens may disagree whether particular carcinogenic effects give a government agency reason to regulate it. (5) The weight of reasons—e.g., reasonable citizens may disagree whether the economic costs of a particular regulation should outweigh its benefits in decreased health risks. This identifies five areas of interaction between values and the public knowledge that underlies sound policy. In all areas of complex policy problems, we may expect reasonable people to disagree both in the content and the weights of reasons.[270] An account of values in science must account for both the contextual nature of reasons and the reasonable disagreement that we must expect diverse citizens to hold about those reasons.

### 3.4 Scientist and Analyst

The second distinction I would like to draw is between a scientist, such as an academic economist, and an analyst evaluating some particular change in policy. An economist is a type of social scientist who justifiably approaches a question from a scientific perspective, focusing on open questions in the literature to advance collective understanding on the scientific frontier. Like any scientist, an economist looks to generate *generalizable* evidence about the subject in question.

For instance, suppose one state changes its minimum wage, such that only one part of a multi-state metropolitan sees a mandated wage increase among low-wage employers. An economist considering that wage change may focus on changes in employment at fast-food restaurants in that metropolitan area because those restaurants have unique characteristics that allow her identify and isolate the effect of that policy change on employment.[271] The economist focuses on one industry because there are *scientific* reasons to do so—the policy change creates quasi-experimental conditions in a relevant industry to reliably speak to an open question in the economics literature. Notice that these scientific values impact the selection of data—selecting fast-food restaurants, rather than another industry—the categorization of information—collecting information on the intensive and extensive employment margins to speak to that section of the literature—and the methodology to evaluate evidence—the choices in data and information follow from the identification strategy contemplated by the economists. These shared scientific assumptions allow evidence to develop within a particular research program—labor economics—to advance understanding within it. In the long run, this and related economic work cumulatively informs policy, but in the short run, those uses are incidental to the scientific purpose of the study.

An analyst, in contrast, works as a professional charged with analyzing all of the impacts of a particular policy change to inform and prepare public deliberation of that decision. For an analyst, the goal is to gain *specific* evidence about the policy in question, and long-run contributions to scientific understanding are of secondary interest. In evaluating the same change in minimum wage, an analyst would not be justified in collecting data on only a single industry simply because the effects are easier to identify in that industry. Her first duty should be to evaluate all impacts of the policy change within the state, not to add to cumulative scientific knowledge.

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[269] Douglas, "Inductive Risk and Values in Science."

[270] Joshua Cohen, "Reflections on Deliberative Democracy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009), 326–47, pp. 330–31.

[271] David Card and Alan Krueger, "Minimum Wages and Unemployment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania," *American Economic Review* 84 (1994), 772–93.

Science is a research institution that can play the long game by accumulating small pieces of well-founded evidence, which eventually coheres into a reliable source of knowledge that can inform policy and technology. Policy analysis is not a research institution; it is a democratic institution. Analysts are one step in a democratic division of labor that ideally leads to free and reasoned agreement among equals.[272] In a democratic institution, as I will understand it here, the common good is paramount because a public actor must justify its actions to the citizenry in terms of reasons.[273] This duty of public justification means that the analyst must comprehensively consider the impacts of the policy in question to identify relevant reasons, rather than focus all of her efforts and resources on one particularly well-identified piece of information. This contrasts from the scientist, who justifiably limits her inquiry where scientific reasons make it appropriate to do so.[274]

Scientists and analysts should be distinguished by the role they play in their respective institutions. It is, of course, to be expected that the same people will play different roles over their lives and even in different capacities at the same time. An economist may work in the capacity as a scientist doing general research funded by her university and in the capacity of an analyst when she works as a consultant on a particular public project. These alternative roles entail different ethical responsibilities, analogous to the different responsibilities and privileges that a police officer has when she is on the job and when she is off-duty or a lawyer when she transfers from government work to private practice. One goal of the values in science literature must be to identify the varying ethical duties that are assigned to a scientist and an analyst, respectively, and to give scientists some guidance about how to act in practical circumstances.

### 3.5 Science and Democracy as Institutions

Distinguishing a scientist from an analyst allows us to contemplate the related roles that science and democracy play as institutions, where the duties of each will follow from the proper justification of that institution.[275] However we understand science, its justification will have to consider that science is an institution that is (1) built on trust and (2) shared among communities that differ in terms of culture, values, and contexts.

Trust is critical because no scientist can possibly verify all of the building blocks of her knowledge. As described by John Hardwig:[276]

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[272] Kitcher, *Science in a Democratic Society*, p. 21. Under pragmatist conceptions of democracy that take experimentation as central, scientific understanding serves the purpose of applying practical intelligence to public problems. John Dewey, "Creative Democracy," in *The Later Works of John Dewey, 1925–1953, vol. 14, Essays*, ed. Jo Ann Boydston (Carbondale: Southern Illinois University Press, 1981), 224–30; Hilary Putnam, "A Reconsideration of Deweyan Democracy," *Southern California Law Review* 63 (1990), 1671–97; Elizabeth Anderson, "The Epistemology of Democracy," *Episteme* 3 (2006), 8–22. Nonetheless, science and analysis remain distinct roles with distinct purposes, requiring an epistemic division of labor. Alfred Moore, "Deliberative Democracy and Science," in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren (Oxford: Oxford University Press, 2018), 640–54, p. 641.

[273] Cohen, "Reflections on Deliberative Democracy," p. 330.

[274] C.f. Roger A. Pielke, Jr., *The Honest Broker: Making Sense of Science in Policy and Politics* (Cambridge: Cambridge University Press, 2007), p. 35.

[275] John Rawls, *A Theory of Justice, Revised Edition* (Cambridge: Belknap Press, 1999), pp. 47–52 (§10).

[276] John Hardwig, "The Role of Trust in Knowledge," *Journal of Philosophy* 88 (1991), 693–708, p. 697.

> It is the testimony of one scientist or mathematician to another that connects the bits of evidence gathered by different researchers into a unified whole that can justify a conclusion. By accepting each others' testimony, individual researchers are united into a team that may have what no individual member of the team has: sufficient evidence to justify their mutual conclusion.

The introduction of individualized value judgments has the potential to breakdown the atmosphere of trust that allows the mutual process of justification described by Hardwig. If one researcher cannot trust that her results would be consistent with results in previous experiments because those researchers hold divergent value judgments on critical issues, then she will have to rerun those experiments, inhibiting scientific progress even within a single paradigm or research program. This effect entails that science ought to standardize methods, at least within a particular research area, in a way that reaches across diverse cultures, values, and contexts. This demand has been linked to "procedural objectivity," where procedures are "objective" in the sense that they are standardized, so that they reach the same result regardless of who completes them.[277] The need for procedural objectivity suggests that science may introduce values into its methods only tentatively and with respect for the fact that standardized methods are a precondition for certain kinds of scientific progress within a paradigm or research program.

In contrast, an adequate account of science in democracy will need to account for the contextual nature of reasons and value judgments. Under the deliberative conception of democracy detailed in the next section, democracy focuses on public justification, where citizens offer reasons to justify policies that have serious consequences for their fellow citizens. The contextual nature of reasons shows that Schroeder is too abstract when he suggests in discussing *Environmental Impacts* that the public may be "strongly committed to economic development" in such a way that an analyst should change her method to bake those value judgments into her presentation.[278] How can the analyst be sure that the public will prioritize economic impacts over environmental impacts in this particular context? Reasons are too contextual for a citizen to accept that the public is strongly committed to economic development before the public has actually deliberated the issue. Prejudging values makes bad public justification.

A second constraint implied by democratic values is the need for public actors to act with equal concern.[279] The issuance of an environmental-impact statement in *Environmental Impacts* is a public action by an agency that must, as a matter of democratic legitimacy, represent the interests of its citizens in preparing deliberation over policy. It lays the informational foundation where citizens can later make value judgments about reasons. As with any public action, an impact statement must be conducted with equal concern for each of its citizens. Equal concern demands that a public agency offers a service equally among equally situated citizens if it offers a service at all. For example, if the state paves public roads, then it should pave all roads in all equally situated neighborhoods. Paving roads only in rich neighborhoods would be unacceptable. For the purpose of values in science, equal concern applies to analysis. If a public agency hires analysts to publicly evaluate a policy, then that analysis must equally prepare the members of the relevant body to deliberate the merits of a project. The analyst should not prejudge what the public will decide and manipulate her analysis or her presentation accordingly. In *Environmental Impacts*, Schroeder's proposal of stacking the deck in favor of development gives conservation-minded citizens a legitimate complaint that the analysis violates equal concern.

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[277] Allan Megill, "Introduction: Four Senses of Objectivity," in his *Rethinking Objectivity* (Durham: Duke University Press, 1994), 1–20, pp. 10–11; Heather Douglas, "The Irreducible Complexity of Objectivity.," *Synthese* 138 (2004), 453–73, p. 462.

[278] Schroeder, "Using Democratic Values in Science," p. 1048.

[279] T. M. Scanlon, *Why Does Inequality Matter?* (Oxford: Oxford University Press, 2018), pp. 11–25.

An objection to my equal-concern argument might say that it underestimates the inevitability of framing effects in analysis. This objection would say that equal concern is impossible because any presentation of the information and evidence relevant to a particular policy action will privilege some information or evidence by listing it first or by giving it more emphasis. As a strict matter, this objection is true, but it is true in the same way that it is true that judges cannot be perfectly impartial. The presence of framing effects does not entail that we should embrace framing as a tool for advocacy, in the way Schroeder seems to suggest in discussing *Environmental Impacts*.[280] Rather, we could design procedures, training, and ethical rules meant to make analysis as neutral as possible. This is what is done for judges. In a strict sense, it is impossible for judges to be impartial, but we rightly put in place procedures, training, and ethical rules to ensure that judges apply the law in as impartial a manner as possible. Framing effects do present complex trade-offs in the design of ethical analysis, but the proper response is to minimize those effects, not to embrace them as tools of advocacy for the perceived mood of the public.[281]

## 3.6 Science in Democracy

Discussions of values in science have naturally focused on the impossibility of value-free objectivity. These discussions are critical, but as we consider the interaction of scientific values and normative democratic institutions, any satisfactory approach must also account for the role that science and scientific knowledge plays in democracy.[282] Where the philosophy of science literature has thus far largely focused on democracy as an input into science, a full account must simultaneously consider science as an input to democracy.

The role of science in democracy will depend on the specifics of the democratic account adopted. Here, I will consider a deliberative account of democracy, which is among the leading accounts of democracy in modern political theory.[283] In a deliberative democracy, the core of legitimate political decision-making is the public deliberation of free and equal citizens. Deliberation involves publicly giving and demanding reasons to justify public decisions, policies, or laws, and successful deliberation depends on finding sound reasons to convince diverse citizens who evaluate policy decisions from divergent perspectives.[284]

Scientific results enter democratic deliberation as a means to ensure reciprocity among citizens.[285] "When moral reasoning invokes empirical claims, reciprocity requires that they be consistent with relatively reliable methods of inquiry. Such methods are our best hope for carrying on discussion on mutually acceptable terms."[286] These empirical facts, established by reliable methods and made publicly available, provide a common basis for citizens to evaluate policies, evaluate the reasonableness of others' positions, deliberate the merits of those reasons, and see that policies are justified by the reasons given.[287]

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[280] Schroeder, "Using Democratic Values in Science," p. 1048.

[281] Carl F. Cranor, "Some Moral Issues in Risk Assessment," *Ethics* 101 (1990), 123–43, pp. 138–39, Elliott, *Is a Little Pollution Good for You?*, pp. 67–68.

[282] See Philip Kitcher, *Science, Truth, and Democracy* (Oxford: Oxford University Press, 2001); Kitcher, *Science in a Democratic Society*; Pielke, *The Honest Broker*.

[283] See generally Cohen, "Reflections on Deliberative Democracy."

[284] James Bohman, "Deliberative Democracy and the Epistemic Benefits of Diversity," *Episteme* 3 (2006), 175–90, p. 177.

[285] Mark B. Brown, "Expertise and Deliberative Democracy," in *Deliberative Democracy: Issues and Cases*, ed. Stephen Elstub and Peter McLaverty (Edinburgh: Edinburgh Press, 2014), 50–68, pp. 51–58.

[286] Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996), p. 56.

Scientific results enter democratic theory as necessary elements to normatively valuable relations of freedom and equality among citizens. Without scientific results based on reliable and widely shared methods of inquiry, citizens cannot ensure that policies are justified in mutually acceptable terms and that their fellow citizens are engaged in good faith. Science then is part of the institutional structure that enables a society to achieve democratic deliberation on free and equal terms.[288] Within a deliberative theory of democracy, science is an institution akin to public education—normatively valuable in its own right but also constitutive of normatively valuable relations of freedom and equality in a democracy by giving the people the ability to reason together.

Legitimacy in a deliberative democracy is based on justifying policy in terms of mutually acceptable reasons. While much of the political theory literature has been concerned with the mutual acceptability aspect of this formulation, no less important is the identification of reasons—facts that count in favor of public action in particular circumstances. Science helps establish the relevant facts and the circumstances where they are applicable, while deliberation determines whether those facts speak in favor or against a certain public action. Incorporating values into science in the wrong way threatens to undermine the constitutive role that science plays in democracy by jeopardizing its status as a reliable and widely shared method of inquiry. If citizens believe that reasonably disputable value judgments have been baked into the very method by which scientific results have been reached, then they may be able to reasonably reject public reasoning and public justification on the basis of that science. This would prevent the relations of reciprocal freedom and equality that deliberative theorists hold to be normatively valuable.

### 3.7 Democracy and Science

As I see it, an adequate account of values in science must simultaneously answer (1) how scientists should incorporate values into the scientific method and (2) maintain science's status as a reliable and widely shared method of inquiry among citizens who hold divergent values and perspectives. Approaches from the values-in-science literature that bake in value judgments from particular times and places into the scientific method constitute a significant danger to the second necessary feature—status as a widely shared method of inquiry. The values-in-science literature is correct to highlight the many places where values inevitably play into the internal workings of science, but fixing that problem by incorporating reasonably disputable value judgments fails to respect the role for the people and their elected representatives in a democracy.

Suppose a legislature is deciding whether to regulate dioxin based on the experiments performed in the *Discordant Experts* example. Neither side disputes that dioxin is likely a carcinogen at high concentrations, and the debate has focused on setting a maximum allowable level of dioxin as an industrial byproduct. Based on a democratic view of the kind considered by Schroeder, the scientists formulating the underlying dioxin research incorporate values that weigh false negatives as more concerning than false positives. This value prioritization is intended to acknowledge the high value that public opinion places on health risks by adopting an aggressive approach to tumor diagnosis that predictably overstates the carcinogenicity of dioxin. Those who oppose regulation are quick to—correctly—point out that tumor estimates will be biased upwards due to the value judgments incorporated by the scientists, and estimates vary about the net effect of the bias.

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[287] Rawls, *Theory of Justice, Revised*, pp. 479–80. For a recent discussion of the appropriateness of science as public reason, see Cristóbal Bellolio, "The Quinean Assumption. The Case for Science as Public Reason," *Social Epistemology* 33 (2019), 183–92.

[288] Amy Gutmann and Dennis Thompson, "Reflections on Deliberative Democracy: When Theory Meets Practice," in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren (Oxford: Oxford University Press, 2018), 900–12, pp. 902–03.

We can immediately see in this hypothetical that the legislature will be frustrated in its ability to make independent value judgments about the appropriate level of dioxin regulation. Because values have already been incorporated into the scientific process itself in a way that will be opaque to non-experts, legislators have no ability to reconsider those judgments or determine if they were aggressive enough to represent the judgment of the people. No unbiased information can educate alternative value choices by the legislature, who have no basis to separate the effects of aggressive diagnosis. In short, the legislature will be limited in its ability to deliberate the policy, where deliberation aims to weigh the reasons relevant to a decision with a view to making a decision based on that weighing.[289] The impact is the same if it is an agency, rather than the legislature, who is making a judgment about dioxin. A deliberative democracy expects the agency, the legislature, or some citizen panel to deliberate toward a representative value judgment on the basis of scientific research, and that judgment will be undermined by any value-based bias that is incorporated directly into the research.

The challenge then for any theorist hoping to merge a deliberative conception of democracy with a realistic account of values in science is to acknowledge that science is not value-free and that value judgments could influence regulation, while simultaneously contemplating the roles that we want various parties to play in a democracy. I will not venture a full answer to this challenge here, but I would like to close by highlighting the parallels between the democratic account sketched here and a prominent recommendation in the values-in-science literature, the informed-consent model.

## 3.8 Informed Consent and Democracy

In *Is a Little Pollution Good for You?*, Kevin Elliott argues that scientists need what he calls an "ethics of expertise" to avoid railroading their own values into societal decision-making processes.[290] An ethics of expertise imposes rules on experts—where Elliott has in mind those who I would call "analysts" here—for the purpose of providing information to citizens and policy makers. Elliott highlights three key features of an ethics of expertise: (1) enabling citizens and policy makers to understand the implications of research; (2) helping them to challenge disputable findings; and (3) highlighting crucial value judgments that merit additional scrutiny and reflection.[291] These are features echo a democratic account in that they are features a democracy must preserve for citizens and policy makers to deliberate policies and hold institutions accountable for justifiable policies.

Elliott suggests that the concept of informed consent, prominent in biomedical ethics, may provide a set of criteria and guidelines to ground an ethics of expertise.[292] A model of informed consent has two features necessary for autonomous decision making: "(1) *liberty* (independence from controlling influence) and (2) *agency* (capacity for intentional action)."[293] An informed-consent standard is intended to prevent the analyst from smuggling controversial value judgments into their work in a way that undercuts the autonomy of the rightful decision maker. Individuals must be given not only the information they request, but all information needed to make a reasonable decision.[294] In both biomedical ethics and an ethics of expertise, rules are designed to help recipients of information engage in intentional actions that accord with their values.[295]

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[289] Cohen, "Reflections on Deliberative Democracy," p. 329.

[290] Elliott, *Is a Little Pollution Good for You?*, pp. 132–55.

[291] Elliott, *Is a Little Pollution Good for You?*, p. 133.

[292] Elliott, *Is a Little Pollution Good for You?*, p. 136.

Schroeder correctly identifies where Elliott's informed-consent view falls short as an account of the ethics of expertise.[296] Elliott relies on T. M. Scanlon's Principle of Helpfulness, which requires individuals to provide information that would greatly help another individual when providing that information comes at little sacrifice.[297] Schroeder is correct to argue that this principle is far too weak to ground a prima facie ethical duty for experts working in an analytical role because it is often wrong to characterize analytical duties as involving little sacrifice. To adequately inform the public on contentious issues where scientific facts are relevant, analysts often must translate esoteric information, weigh tradeoffs in identifying relevant information, and devote significant time to the process. These are costly in terms of time and potentially run counter to the interests of the analyst. Thus, any adequate account of ethical analysis cannot rest on a "little sacrifice" principle.

Nonetheless, the motivation underlying Elliott's view is correct. In considering the content of ethical analysis, it is appropriate to consider what is necessary to preserve and enable autonomous value judgment by those who are affected by the decisions. This is strongly analogous to the motivation underlying institutional reflection in a deliberative democracy.[298] This grounding is based in the normative value of allowing the people to deliberate the policy as free and equal citizens. Under this view, democratic values inform the procedures of science and analysis through institutional design, not directly through applying the will of the people. In the language of the earlier sections, science provides the evidence so that the people may weigh the reasons. While informed consent must be adapted to this use, the preservation of private autonomy within that account does provide a strong analogy for the preservation of political autonomy within the deliberative democratic view.

### 3.9 Conclusion

This paper built on an important question introduced by Andrew Schroeder: when scientists should make use of values, which values should they use? In particular, I have investigated the democratic view, which holds that democratic values should play a role in science. By introducing two important distinctions—distinguishing evidence from reasons and scientists from analysts—I have challenged the idea that the democratic view entails an approach where scientists and analysts seek to predict public opinion on values and incorporate it into their work.

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[293] Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 5th ed. (New York: Oxford University Press, 2001), p. 58.

[294] Mike W. Martin and Roland Schinzinger, *Ethics in Engineering*, 4th ed (New York: McGraw-Hill, 2005), p. 93.

[295] Elliott, *Is a Little Pollution Good for You?*, p. 138.

[296] Schroeder, "Using Democratic Values in Science," p. 1049.

[297] Scanlon, *What We Owe to Each Other*, p. 224; Elliott, *Is a Little Pollution Good for You?*, p. 139.

[298] See Joshua Cohen, "Deliberation and Democratic Legitimacy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1989]), 16–37, p. 29.

Rather, democratic values should be incorporated through the design of institutions and the ethical rules that attach to the people who play roles in those institutions.

Any adequate account of values in science in democratic societies must simultaneously (1) acknowledge the role of values in science and (2) maintain science's status as a reliable and widely shared method of inquiry among citizens who hold divergent values and perspectives. This second condition is challenged when citizens and policy makers cannot separate scientific evidence from controversial value judgments. If we value democracy as reasoned rule by the people and their elected representatives—as a deliberative account of democracy does—then analysts must enable the people to deliberate policy by rethinking value judgments and holding their institutions accountable for policies representing the common good. Mutually acceptable public inquiry is constitutive of normatively valuable democratic rule.

I have not ventured to detail all of the demands that democracy places on science and analysis in this paper. Rather, I have defended necessary features such a view must have and sketched the contours that those demands might place on scientists and analysts. A full account would detail the demands that analysts must face to adequately prepare citizens and policy makers to deliberate important value judgments involved in public reasoning, as well as the restrictions that scientists must face to remain a reliable and widely shared method of inquiry. The key takeaway from this paper is that those standards must be defined relative to the normative value of democracy as an institutional structure, not merely as a conduit for public opinion on morally relevant policy issues.

# Chapter 4

## Ethics and Neutrality in Policy Analysis

### 4.1 Introduction

In a recent article, Stanford political scientist Francis Fukuyama argues that public policy education is ripe for an overhaul.[299] Fukuyama claims that policy education focuses too much on analysis—which he defines as the use of social science tools to find optimal policy—and too little on educating leaders who can accomplish policy goals in practice. Skilled policy analysis using tools such as econometrics, cost-benefit analysis, decision analysis, and program evaluation, Fukuyama argues, is valuable but insufficient where the "optimal policies" have no hope of being enacted. Thus, policy education should focus more heavily on producing "change-makers," who see analysis as one small component of a broader set of skills.

Under Fukuyama's account, change-makers would focus on three areas to supplement a reduced focus on analysis: problem development,[300] solutions development,[301] and implementation. These elements will be familiar to policy scholars, but the focus here is implementation:[302]

> The third and perhaps most important set of skills has to do with implementation. This begins necessarily with stakeholder analysis: that is, mapping of actors who are concerned with the particular policy problem, either as supporters of a solution, or opponents who want to maintain the status quo. From an analysis of the power and interests of the different stakeholders, one can begin to build coalitions of proponents, and think about strategies for expanding the coalition and neutralizing those who are opposed. A reformer needs to think about where resources can be obtained, and, very critically, how to communicate one's goals to the stakeholder audiences involved.

This is eminently reasonable advice for coalition-building around a policy vision, but it stands to ask who should receive this coalition-building advice. Would this training be equally suited for an elected politician, an appointed agency head, or an analyst working for an interest group that politically unites like-minded voters? Are these political positions better suited to "expand a coalition" or "neutralize opponents"? It seems odd that advice to explicitly political positions would mirror advice to policy analysts, who often hold unelected, bureaucratic positions.

These observations question the role and appropriateness of unelected officials exercising discretion within a democratic division of labor. Fukuyama takes one version of what Arthur Applbaum has called a "political realist" position, which holds that the job of a public official, whether elected or unelected, is to press a substantive agenda as skillfully as she can.[303] Under the political realist position, the legitimate exercise of discretion is reduced to a strategic question of power and influence. Political realism is contrasted with the "obedient servant" view, which holds that one's own beliefs about the good are never reasons for action for an unelected official. Rather, the unelected official should strive to be a "faceless, nameless bureaucrat," who obeys orders and acts as a vessel for the will of her superiors. Under the obedient servant view, discretion is a vice.[304] Where the political realist does what she can, the obedient servant does what she is told.

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[299] Francis Fukuyama, "What's Wrong with Public Policy Education," *The American Interest* (August 1, 2018).

[300] For Fukuyama, problem development defines a problem of sufficiently narrow scope to be solved; understands the local context of history, culture, and politics; and starts with a concrete issue that others believe to be a problem.

[301] For Fukuyama, solutions development generates data, comes up with a theory of change, and offers plausible options to solve the problems under this theory of change.

[302] Fukuyama, "What's Wrong with Public Policy Education."

This article seeks a middle ground between political realism and obedient servitude through the introduction of professional ethics in policy analysis. As the obedient servant view emphasizes, there are strong reasons for unelected analysts to be interchangeable in the policy making process. These reasons entail that unelected analysts must remain neutral with respect to moral, religious, and ideological views. However, the obedient servant view goes too far. Neutrality should not entail that analysts are mere servants to the whim of their superiors or mere technocrats who focus only on "objective" evidence.

The goal of this article is to defend an enforceable code of ethics as a mechanism of institutional design. By enforcing an ethical code, policy analysis can insert values into analysis to push back against superiors without jeopardizing the neutrality of the individual analyst—a result democracies have good reason to avoid. Political realists err when they argue that analysts should insert personal values into an analysis, but this error is properly remedied by introduced *shared* values in a code of ethics, not the individual values of the analyst. Under this framework, neutrality does not mean that analysis remains purely technical or subject to the whims of the agency. Rather, in the same way that rules of professional conduct make lawyers officers of the court with duties to the legal system as well as the client, ethical rules should limit the conduct of all analysts according to values in a democratic system.

After limiting the scope to agency analysis, the article begins in section 4.2 by arguing that unelected analysts must remain neutral in areas where there is reasonable disagreement about optimal policy. Even in cases such as a carbon tax, Fukuyama's example of an optimal policy, analysts must maintain neutrality for reasons of institutional efficiency. Section 4.3 distinguishes two types of obligations—comprehensive and institutional—and argues agency analysts ought to prioritize institutional obligations over comprehensive obligations where considerations of basic rights and justice are not at stake. Section 4.4 defines neutrality as comprehensive, explaining how the duties of an analyst relates to her role in a self-governing democracy; in particular, comprehensive neutrality is offered as an alternative to a technocratic vision of an analyst. Section 4.5 explains how comprehensive neutrality helps to respond to objections against the obedient servant view of neutrality. Finally, section 4.6 emphasizes that ethics must be enforced as a professional code, not instilled as an ethos or virtue of good stewardship, before concluding in section 4.7.

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[303] Arthur Isak Applbaum, "Democratic Legitimacy and Official Discretion," *Philosophy & Public Affairs* 21 (1992), 240–74, pp. 248–49.

[304] Dennis Thompson calls this view the "ethic of neutrality." "The Possibility of Administrative Ethics," *Public Administration Review* 45 (1985), 555–61, p. 556. Section 4.5 distinguishes Thompson's neutrality from the comprehensive view of neutrality.

### Focus on Agency Analysis

The scope of this article's argument is limited to a particular group of policy analysts. Policy analysts—a group that encompasses those trained and engaged in the evaluation of public issues—take many roles in and around government, and the extent of their obligations will depend on the precise role taken. The arguments in this article apply to "agency analysts," who are unelected, unappointed analysts within a public agency.[305] Examples include analysts in the Environmental Protection Agency or budget directors at state, county or city levels of government.

Agency analysts are distinguished from two groups. "Political analysts" work in explicitly political roles within the government. For example, a political analyst may work in a legislator's office with the understanding that the analyst will carry out the legislator's political mandate. "Non-governmental analysts" work outside government but seek to influence public policy. Non-governmental analysts work in interest groups, think tanks, and non-profit organizations to influence public policy toward a particular vision of the public good.

These are ideal types defined to determine accompanying duties of each type. Two points should be emphasized here. First, the duty of neutrality, as detailed here, *only directly applies to agency analysts*. Lesser duties apply to political analysts and non-governmental analysts, but those have to be spelled out in later work. Second, the boundaries of these ideal types can be blurred. For example, a consultancy firm might effectively play the role of an agency analyst if it is hired by a government to analyze policy. These complications are not surprising; professional ethics in fields such as law focus on identifying the proper client and the duties that follow. These complications show the need for a professional code of ethics to weigh trade-offs and assign proper duties, consonant with the argument here.

## 4.2 Agency Analysts Must Remain Neutral

### "Optimal Policies"

To motivate his argument, Fukuyama asks us to consider what he calls an optimal policy with no chance of implementation unless analysts change their approach—a carbon tax:[306]

> The world is littered with optimal policies. . . . Take for example a carbon tax, which a wide range of economists and policy analysts will tell you is the most efficient way to abate carbon emissions, reduce fossil fuel dependence, and achieve a host of other desired objectives. A carbon tax has been a nonstarter for years due to the protestations of a range of interest groups . . . . Implementing a carbon tax would require a complex strategy bringing together a coalition of groups that are willing to support it, figuring out how to neutralize the die-hard opponents, and convincing those on the fence that the policy would be a good, or at least a tolerable, thing.

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[305] "Unappointed" means the agency analyst lacks a political appointment and confirmation through a democratic procedure. Within the United States Federal Government, political appointees include presidential appointments with or without senate confirmation.

[306] Fukuyama, "What's Wrong with Public Policy Education."

It is important to see how a carbon tax is an "optimal policy." A carbon tax is one of several policies that can achieve carbon abatement at least cost to economic efficiency. This finding is rooted in economic analysis that is widely accepted as reliable and applicable by the relevant scholarly community. Thus, a competent analyst will not challenge it on these bases. However, instrumental optimality does not foreclose on the possibility of reasonable disagreement. First, as Fukuyama describes, carbon abatement is not a universally accepted policy objective; several political constituencies oppose substantial sacrifices in short-term productive efficiency for carbon abatement.[307] Second, some constituencies hold an ideological preference against centralized determination and enforcement through a tax. These libertarian objectors could agree that carbon abatement is a worthy objective and agree with the economic analysis, but disfavor a carbon tax because risk for abuse outweighs efficient carbon abatement. The optimality argument then ought to be stated: if one agrees that carbon abatement is a worthwhile policy objective and that government ought to enforce that abatement, then a carbon tax is optimal. These caveats complicate Fukuyama's characterization because a carbon tax is not optimal in the best-possible-policy sense, but instead, it is instrumentally optimal at achieving reasonably disputable values.[308]

## An Efficiency Argument for Neutral Agency Analysis

Suppose that an agency analyst—working in an unelected, unappointed capacity for an environmental agency—pursues an implementation strategy as described by Fukuyama to gather a coalition behind a carbon tax. She strategically gathers support, neutralizes opposition, and communicates goals. If successful, these strategies would increase the likelihood that a carbon tax will be implemented. This agency analyst would be acting as a change-maker to bring about policy that she reasonably believes is in the public interest.

Now imagine that a libertarian-leaning administration is elected. Naturally, that administration will replace most politically appointed administrators of the agency. This is normal turnover—new administrations make their own political appointments. However, if that administration sees that our agency analyst gathering coalitions to promote a policy it opposes, the administration would be politically foolish not to replace her with another analyst friendlier to its views on a carbon tax.

"Friendlier to its views on a carbon tax" does not entail that the administration will appoint an analyst who misrepresents the economic analysis underlying a carbon tax. This would violate a duty to advance competent analysis, and those analysts should be sanctioned, not accommodated, but those concerns are set aside here. Rather, the administration could appoint an analyst who disagrees with the two caveats that we attached to carbon tax as optimal policy.

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[307] Identifying these disagreements as partially based on reasonable disagreements in values does not foreclose on the possibility that some of these interest groups may claim to disagree in bad faith. As argued by John Rawls, "In noting these six sources [of reasonable disagreement] … we do not, of course, deny that prejudice and bias, self- and group interest, blindness and willfulness, play their all too familiar part in political life. But these sources of unreasonable disagreement stand in marked contrast to those compatible with everyone being fully reasonable." *Political Liberalism* (New York: Columbia University Press, 1993), p. 58.

[308] "Decisions about critical public policies rarely, if ever, require knowledge only of the technically most efficient means to ends that can be taken as given because they are self-evidently right or universally accepted." Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), pp. 66–69; see also Giandomenico Majone, *Evidence, Argument, and Persuasion in the Policy Process* (New Haven: Yale University Press, 1989), pp. 9–11; Henry Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002), pp. 114–18.

Thus, the analyst could disagree that carbon abatement is a worthy policy objective or that the government ought to enforce carbon abatement. For my purposes, these are values on which citizens can reasonably differ.

The political incentive to replace unfriendly agency analysts presents a strong efficiency argument for requiring agency analysts to remain neutral.[309] If agency analysts act as politicized or ideological change-agents, there will be increased turnover generated by incentives to replace ideologically unfriendly analysts. This would drain government agencies of technical expertise necessary for effective governance.[310] At its extremes, this effect could cause political parties unpopular with analysts to turn against agency analysis entirely, a consequence that would further sap resources for effective governance. These effects give analysts an "institutional obligation" to remain neutral as a matter of efficient institutional design, spelled out as follows:

**Institutional obligation**: *Agency analysts have an obligation to remain neutral with respect to moral, religious, and ideological values.*

Neutrality entails that agency analysts do not exercise independent judgment on comprehensive values. This article distinguishes two ways that neutrality can be achieved. The obedient servant view achieves neutrality by asking analysts to obey the will of their superiors or resign.[311] Comprehensive neutrality achieves neutrality by incorporating values into a mutually applicable code of ethics. Analysts do not exercise independent judgment, but they are also not asked to merely obey their superiors.

Defining the demands of the institutional obligation of neutrality will be our task going forward. Section 4.3 will introduce the concept of an institutional obligation and argue that institutional obligations should generally take priority over comprehensive obligations. Section 4.4 will define comprehensive neutrality in a sense that can avoid the force of the efficiency argument, while simultaneously avoiding the obedient servant view.

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[309] The efficiency argument is a special case of a broader fairness argument for requiring that agency analysts remain politically neutral. Under the fairness argument, the agency analyst should remain neutral so that the system is justifiable to its citizens. Political fairness is achieved if (1) institutions are justified, (2) institutions function in the way that their justification requires, and (3) institutions are legitimate mechanisms of collective self-government. T. M. Scanlon, *Why Does Inequality Matter?* (Oxford: Oxford University Press, 2018), pp. 76–78. Agency analysts who pursue their own vision of good policy create unequal opportunity for political influence, which falls short of the value of political equality necessary in legitimate mechanisms of collective self-governance. See Joshua Cohen, "Money, Politics, Political Equality," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [2001]), 268–302, pp. 271, 277. The efficiency argument takes stronger empirical assumptions than a fairness argument by postulating that those who are treated unfairly gain political power and replace analysts unfriendly to their ideology. However, it takes weaker normative assumptions by asserting that unfairness will limit institutional functionality, offering an alternative basis for normative support. Because circumstances often obtain where the efficiency argument applies, the argument here rests on that basis to minimize its normative assumptions. However, protection of persistent minority positions may require the fairness argument in other contexts.

[310] The efficiency argument may be spelled out as follows: (1) By acting as change-makers, analysts influence policy decisions toward preferred policies. (2) Influencing policy incentivizes political opponents of preferred policies to replace change-making analysts. (3) Political opponents will sometimes have the power to replace analysts. (4) From (2) and (3), political opponents will replace change-making analysts, creating inefficient turnover. (5) Thus, analysts acting as change-makers create inefficient turnover.

[311] Thompson, "Possibility of Administrative Ethics," p. 556.

## 4.3 Institutional Obligations and Professional Ethics

### Institutional Obligations vs. Comprehensive Obligations

Institutional obligations are ubiquitous within democratic governance, but they are often so deeply ingrained that it is worthwhile to distinguish institutional obligations from a second category of "comprehensive obligations."[312]

Suppose someone tells you, "Vote for the school levy; we owe it to the kids." What is she saying? Clearly, she is giving you political advice—guidance on your vote—but she is also giving you a reason for that advice. You should vote for the school levy because you *owe it* to local students. You have an obligation that you fulfill by voting to increase funding for local schools. This sort of obligation is not a legal obligation, and you remain free to vote either way without fear of punishment, but she argues that you have a normative or moral obligation to vote in one way.

The school levy shows the comprehensive sense of obligation. Under comprehensive obligations, the best action follows from a proper understanding of moral, religious, or ideological views. If you adopted your interlocutor's views on morality, religion, and ideology, then you would agree that voting for the school levy is appropriate. It is the comprehensive sense of obligation that applies when a person tells us how to vote, where to donate money, or whether to tell a white lie to maintain a polite relationship.

Now suppose that someone tells you, "As a government official, you are obligated to refuse any gift that might be perceived as a bribe." This advice is also guidance on behavior, and it also involves an obligation. You should not accept the gift because government officials cannot do so. However, unlike comprehensive obligations, these obligations are generally accompanied by legal obligations to refuse the bribe, and it would be proper to punish or impeach an official who knowingly accepts a bribe.

The bribery example shows the institutional sense of obligation.[313] Under the institutional sense, obligations fall on persons who hold institutional roles because those obligations are necessary for the institution to fulfill its purpose.[314] Democracies punish government officials for accepting bribes not only because officials would not accept bribes in an ideal world, but also because representative democracy cannot function where government officials permissibly accept bribes. It defeats the purpose of representative institutions if an official sells votes to the highest bidder. We cannot have an effective representative democracy unless we outlaw bribery, and this means that we promote democracy when we disallow bribery.

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[312] This language and concept derives from John Rawls's political conception of justice. Rawls, *Political Liberalism*, pp. 11–15.

[313] Institutional obligations comprise the first two conditions of philosopher T. M. Scanlon's account of procedural fairness, as applied to political institutions. Political institutions are justified both by the good effects they generate when they are filled by qualified individuals and by the fact that those who exercise these powers have procedural legitimacy demanded by mechanisms of collective self-governance. Scanlon, *Why Does Inequality Matter?*, pp. 76–78.

[314] Strong parallels exist between institutional obligations and second-order reasons, as defined by Joseph Raz and applied to this literature by Applbaum. Applbaum, "Democratic Legitimacy and Official Discretion," pp. 250–52. A second-order reason is a reason to act for a reason or refrain from acting for a reason, where here, an institutional obligation is a reason to refrain from acting for comprehensive reasons. Joseph Raz, *Practical Reason and Norms* (Oxford: Oxford University Press, 1975), p. 39. This article uses the language of institutional obligations to emphasize that these obligations are necessary for democratic institutions to be justifiable.

It is the institutional sense of obligation that we invoke when we argue that a teacher should not favor one student, that a police officer should not selectively enforce the law, or that a lawyer should zealously represent an apparently guilty defendant at trial, an example considered shortly.[315] These are obligations we impose on individuals who play important roles within institutions, and we impose those obligations not only because barred actors would not meet our ideal standards in a moral, religious, or ideological sense, but also because those obligations are necessary for the institution to fulfill its intended purpose.

With this distinction on the table, revisit the obligation to vote for the school levy. Because this is an obligation in the comprehensive sense, a democracy does not punish a voter if she fails to live up to a comprehensive obligation to vote for the school levy. Democracies do not punish voters when they fail to vote as a good utilitarian, a good Catholic, or a good progressive would vote. Imposing such punishments would fail to respect the voter as a free individual capable of making her own judgments according to her conception of the good.[316] Voting against a school levy does not fail a voter's institutional responsibilities. So long as she considers the issue carefully, votes according to her considered opinion, and avoids fraud, she will have responsibly filled her institutional role.[317] Selecting the "best" policy is not required.

To function in a stable and just democratic system, citizens must accept that reasonable people will disagree about matters of morality, religion, and ideology. These differences are an inevitable consequence of giving citizens the freedom to evaluate issues themselves, and we resolve these differences through democratic procedures. Comprehensive obligations are not enforced but left to persuasion and deliberation according to the institutions and rights establishing the system.[318] Democracies have legitimate institutions not when they achieve some particular view of ideal policy, but rather when they resolve disagreements in a legitimate way, decided by vote or by representative institutions that follow from a vote.

In contrast, institutional obligations are not left up to a vote. We do not and should not vote whether some instance of bribery should be overlooked in the way that we vote whether to pass a school levy or change taxes. Prohibitions against bribery are properly enshrined in the law because they are necessary for well-functioning democratic institutions. These institutional obligations sustain the system itself.

### Priority of Institutional Obligations

Distinguishing comprehensive and institutional obligations will not necessarily convince an analyst to abandon advocacy for preferred policies. Consider an agency analyst who believes that the facts about climate change necessitate carbon abatement and that carbon tax is the best way to achieve that abatement. She may admit that there are good reasons for agency analysts to be neutral, but believe that a carbon tax is *very important*, and there is no time for niceties about neutrality. This analyst objects that her obligation to encourage implementation of carbon abatement policies should outweigh her obligation to maintain neutrality. To answer this objection, this section argues that institutional obligations ought to take priority where they conflict with comprehensive obligations. Thus, an agency analyst who faces conflicting obligations between an institutional obligation to be neutral and a comprehensive obligation to promote her vision of good policy should prioritize neutrality.

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[315] See Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), pp. 13–19 (on the demands of impartiality in institutional roles within common-sense moral thinking).

[316] Rawls, *Political Liberalism*, pp. 58–66.

[317] Rawls argued that voters also have a duty of civility to vote reasonably, an argument I will not take up here. John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997), 765–807; c.f. David Thunder, "A Rawlsian Argument Against the Duty of Civility," *American Journal of Political Science* 50 (2006), 676–90.

[318] Joshua Cohen, "Deliberation and Democratic Legitimacy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1989]), 16–37; Richardson, *Democratic Autonomy*, pp. 143–61.

The priority of institutional obligations may be seen through an analogy to law. Consider a defense attorney who strongly believes her client is guilty of murder and holds a comprehensive view that society would be better off if he were convicted. Over the course of a trial, the defense attorney will encounter countless instances where she could allow her belief that her client is guilty to influence her actions. She could cross-examine a witness less forcefully, omit an objection, or change her tone when she addresses the jury. Each action would make the outcome she believes is best—a conviction—more likely to occur.

These actions would fall short of the attorney's ethical obligation to defend her client, grounded in the Sixth Amendment. The rules of professional conduct impose on attorneys an institutional obligation to zealously advocate the client's interests whether the attorney believes he is guilty or innocent, and that obligation takes priority over her comprehensive obligations.[319] As articulated by Justice Byron White, a defense attorney "must be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we also insist that he defend his client whether he is innocent or guilty."[320] The institutional obligation takes priority.

While zealous advocacy is an institutional obligation fit for an adversarial system—where neutrality is fit for a non-adversarial system—the defense-attorney example provides a strong analogy for the agency analyst because the prioritization of institutional obligations is grounded similar values. As a result, it is worth considering in detail why legal ethics imposes an uncomfortable duty to zealously defend an apparently guilty client. As analyzed by John Kaplan, three types of reasons underlie this obligation:[321]

### 1. *Fact-Finding within an Adversarial System*

In an adversarial system based on trial by jury, criminal defense attorneys play a critical role presenting facts sympathetic to the defendant's position. While the police and prosecution share an interest in avoiding the conviction of the innocent, their role prosecuting the case means they will generally not present facts sympathetic to the defendant. It is the role of the defense attorney to present these facts at trial to ensure that the jury is properly prepared to weigh evidence and judge guilt. This role ensures that all facts are available to the jury.

### 2. *Ensuring Due Process*

A defense attorney also serves as a check to ensure that due process is met and that the arms of the state comply with the rules and laws that bind their actions. This function places the defense attorney in the role of regulating state action by pressing objections where rights may have been violated. While these objections may help a guilty client go free in one case, the obligation to press these claims casts a shadow of oversight over all cases to ensure that rights are systematically upheld.

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[319] Under the comment to Rule 1.3 of the American Bar Association's Model Rules of Professional Conduct, "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause."

[320] United States v. Wade, 388 U.S. 218, pp. 256–57 (1967).

[321] John Kaplan, "Defending Guilty People," *University of Bridgeport Law Review* 7 (1986), 223–55, pp. 224–35.

3. *Symbolic Statement of Due Process*

Finally, public defense is a symbolic statement about society and its choice of institutions. By requiring that every defendant receives sufficient representation, society shows the value it places on equality and due process rights, giving every defendant a fair trial. While there are disparities in the quality of defense attorneys, these pale in comparison to disparities between defendants in their ability to defend themselves. A commitment to zealous defense by a publicly provided attorney, shows that all defendants, regardless of their means, have rights that will be enforced by the state.

These three functions define the role that a defense attorney plays in a fair criminal justice system. If a defense attorney allows her belief about her client's guilt to influence her actions, she would act as judge or jury, not as the attorney. She would fail to ensure due process is respected, and if her actions were apparent, she would fail as a symbolic representation of equal rights under the law. Thus, the law institutionalizes ethical obligations requiring her to play the role of the defense attorney so that those functions are met and rights are protected. Even if her personal, comprehensive views tempt her to weakly defend an apparently guilty client, ethical rules prioritize the standard of zealous defense.

## Institutional Obligations of an Agency Analyst

The priority of neutrality in agency analysis can be analyzed in an analogous framework. Agency analysts should be limited by rules of professional responsibility that reflect the functions those analysts play in a legitimate system. Like the defense attorney, those restrictions entail that an agency analyst should not do everything in her power to pursue her comprehensive vision of good policy, and the reasons for these institutional limitations fit into three analogous categories.

1. *Fact-Finding in a Democratic System*

The primary function of an agency analyst is to use analytical tools to better inform policy decisions.[322] Agency analysts are one component of an epistemic division of labor that translates complex scholarship and utilizes analytical tools to better understand the impacts of public policies.[323] Like a defense attorney, whose role is understood relative to the obligation to prepare a jury to render findings of fact, the agency analyst should be understood relative to the obligation to prepare citizens and policymakers to evaluate public policies.

Agency analysts enable citizens of a democracy to govern themselves. Like jurors considering legal evidence, citizens and policymakers lack technical knowledge to judge which policy alternative is most effective. This lack of knowledge is a matter of necessity.[324] Even if policymakers had the technical expertise, they would lack the time to sufficiently analyze the many problems they face.[325] Agency analysts provide evidence to allow citizens and policymakers to make reasoned judgments of specific policies, much as attorneys jointly provide evidence to allow a jury to make findings of fact to determine guilt.

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[322] This is a wider version of analysis than is taken by those who limit analysis to purely quantifiable or technical considerations, as will be explored in sections 4.4 and 4.5.

[323] Thomas Christiano, "Rational Deliberation among Experts and Citizens," in *Deliberative Systems: Deliberative Democracy at the Large Scale*, ed. John Parkinson and Jane Mansbridge (Cambridge: Cambridge University Press, 2012), 27–51, pp. 27, 29.

[324] See §5.1.

Analysts can achieve this role if ethical rules define professional standards to determine how agency analysts should prepare citizens and policymakers to vote, similar to the rules of professional conduct that constrain lawyers' actions and mandate zealous defense. This approach grounds the role of analysis in the value of self-government, where a self-governing democracy is valuable not simply because it achieves effective policy but also because it is the reasoned deliberation of the people.[326] Consider two potential standards for adequately preparing citizens and policymakers to vote.

The first standard would follow the political realist position, directing the analyst to do anything to increase the likelihood the best policy will pass. This standard focuses entirely on the instrumental success in bringing about the best policy—an impulse that animates Fukuyama's emphasis on implementation and that is widely shared in the policy literature.[327] The difficulty is that reasonable people disagree on the best policy, and those who disagree have good reason to question why unelected actors exert arbitrary control within a democracy.[328] Building coalitions, neutralizing opponents, and constructing narratives are methods through which an actor exerts *political* influence to bring public opinion closer to her comprehensive vision of the public good. It is a natural temptation, but one that a neutral analyst must resist if analysts are to play a role in a self-governing democracy. As Alexander Meiklejohn powerfully voiced decades ago as a justification for First Amendment protections,[329]

> We are experts in the knowledge and manipulation of measurable forces, whether physical or psychological. We invent and run machines of ever new amazing power and intricacy. And we are tempted by that achievement to see if we can manipulate men with the same skill and ingenuity. But the manipulation of men is the destruction of self-government. Our skill, therefore, threatens our wisdom.

The goal of self-government seeks a democratic society of equals, where citizens and their duly elected representatives—not unelected analysts—weigh the critical policy questions of the day.[330] To achieve this goal, the standard of the agency analyst must rest on preparing those parties to decide. A self-governing democracy must achieve more than effective policy; it is deciding together what is valuable. While the goal of achieving good policy supported by the best evidence remains central—just as the goal of a trial remains administering justice supported by the best understanding of the evidence—that goal comes with an institutional constraint that requires policy to be achieved through the voters. "The final aim … is the voting of wise decisions.

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[325] Arnold J. Meltsner, "Bureaucratic Policy Analysts," *Policy Analysis* 1 (1975), 115–31, p. 120.

[326] Cohen, "Deliberation and Democratic Legitimacy," p. 24.

[327] Arnold J. Meltsner, *Policy Analysis in the Bureaucracy* (Berkeley: University of California Press, 1976), pp. 36–47; Carl V. Patton, David S. Sawicki, and Jennifer J. Clark, *Basic Methods of Policy Analysis and Planning*, 3rd ed. (Upper Saddle River: Pearson, 2013), p. 25; David L. Weimer and Aidan R. Vining, *Policy Analysis: Concepts and Practice*, 5th ed. (Upper Saddle River: Pearson, 2011), pp. 40–44.

[328] Richardson, *Democratic Autonomy*, pp. 51–52, 88–90.

[329] Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York: Harper, 1948), p. 8.

[330] Cohen, "Deliberation and Democratic Legitimacy," p. 21; Rawls, *Political Liberalism*, 213–16; Richardson, *Democratic Autonomy*, p. 72.

The voters, therefore, must be made as wise as possible."[331] To fulfill a fact-finding role in a *democratic* system, analysts must follow a standard based in the duty to inform citizens and policymakers.

### 2. *Ensuring Policy Justification*

Like criminal defense attorneys, agency analysts hold the government's feet to the fire. Where defense attorneys ensure that the government complies with its legal obligations, agency analysts ensure that policy is grounded in reason and effective in implementation. Aaron Wildavsky, a seminal figure in the policy literature, called such a role "speaking truth to power."[332] Analysts check the claims of policymakers, to ensure they are grounded in accepted facts and reliable scholarship, and of other analysts, to ensure their work meets the standards of the profession.[333]

To play this role, analysts must have not only specialized training, but also an ethical or professional commitment to truth-seeking and a willingness to be judged by the professional community.[334] These are essential elements that define a profession capable of gaining the public trust.[335] The key feature is that analysts must be given standards against which they can evaluate the quality of their work, fellow analysts' work, and the justifications offered by public officials. These standards would not place analysts in authority over policy makers. Rather, they create dual systems of oversight, where analysts are simultaneously responsible to serve the client and to follow professional standards of conduct, similar to a defense attorney acting as an advocate and as an officer of the court. By holding the work to independent standards, analysts make policy justification transparent and accountability possible.[336]

### 3. *Symbolic Statement of Democratic Legitimacy*

Silent voices and silent perspectives challenge the ability of the people to see their government as a product of collective authorship. As Robert Post argues in defending free expression on similar democratic grounds, "Democracy involves far more than a method of decision making; at root democracy refers to the value of authorship. Democracy refers to a certain relationship between persons and their government. Democracy is achieved when those who are subject to law believe that they are also potential authors of law."[337] This vision of democracy is a deliberative vision—it sees democracy as more than just the election of representatives and majoritarian voting on policies. It is a goal, going back to Jean-Jacques Rousseau and Immanuel Kant, of public reason as the collective will of free and equal citizens.

In a modern democracy, informed deliberation is impossible without analysts to translate scholarly information for public consumption. Citizens and policymakers lack the time and expertise necessary to project complex policy outcomes, and without the ability to project effects, public deliberation is reduced to sloganeering and dogmatism. In this sense, policy analysis as a whole is necessary for citizens to see themselves as coauthors. Analysis enables deliberation to occur, much as the presentation of evidence at trial enables a jury to deliberate on the guilt or innocence of the accused.

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[331] Meiklejohn, *Free Speech*, p. 25.

[332] Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little, Brown, 1979).

[333] Hank C. Jenkins-Smith, "Professional Roles for Policy Analysts: A Critical Assessment," *Journal of Policy Analysis and Management* 2 (1982), 88–100, p. 90.

[334] Michael Schudson, "The Trouble with Experts – and Why Democracies Need Them," *Theory and Society* 35 (2006), 491–506, p. 500.

[335] Stephen F. Barker, "What is a Profession?," *Professional Ethics* 1 (1992), 73–99, p. 87.

[336] See §5.6.

[337] Robert Post, "Participatory Democracy and Free Speech," *Virginia Law Review* 97 (2011), 477–90, p. 482.

A skeptical reader may note that agency analysts are not the only sophisticated actors in many policy debates. Interest groups and political organizations also analyze policies to persuade citizens and policymakers to move toward their preferred policy positions. When a debate is sufficiently in the public eye, it may be possible to achieve reasoned deliberation without specific analysis from an agency analyst.[338] Nonetheless, this possibility does not diminish the expressive significance of public analysis. Policy decisions frequently fall in nooks and crannies away from public attention. Democracies express the value that they place in self-government by furnishing a public justification of policy and the means for the public to deliberate on the merits.

These three reasons ground an institutional obligation for agency analysts to remain neutral, even where one policy alternative best promotes their vision of the public interest. These are reasons that an agency analyst concerned about climate change should resist the temptation to abandon neutrality. Where institutional obligations conflict with comprehensive obligations, we must enforce institutional obligations if we wish agency analysis, as an institution, to serve roles as a fact-finder, a check on power, and a symbol of democratic legitimacy. An empowered democratic public would never allow unelected analysts to play these roles without assurances that those analysts would remain neutral. Doing otherwise would subvert the cause of self-government.

### Institutional Obligations, Rights, and Justice

Notably absent in the account offered here is a consideration of policy examples where protection of basic rights or fundamental justice are at stake. Following the work of Michael Walzer, who considers "the problem of dirty hands," and the many works considering the actions of officials during the Vietnam War, much of the literature on public role ethics has questioned the dilemmas that arise when a public official is asked to act in a way that would be considered morally wrong for a normal citizen.[339] These dilemmas have the unfortunate consequence of eliding basic definitions of role responsibilities with exceptional circumstances where those typical roles may be rightly transgressed. Using language from philosophy of law, this literature elides reasons why officials should obey the law if it is justly or near justly defined with reasons why officials should exercise civil disobedience if the law sharply diverges from justice.[340]

This article strives only to define the first element of that argument—the reasons why agency analysts should remain neutral when analysts consider policy issues in the normal course of business. It seeks to answer the analyst who wishes to advocate for a carbon tax or to answer Fukuyama, who wants policy education to emphasize a politicized implementation approach. Circumstances where an analyst would justifiably transgress her circumscribed role to draw attention to an injustice belongs to a theory of disobedience and falls outside the scope here.

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[338] These possibilities help to differentiate the role of agency analysts from the roles of political and interest-group analysts.

[339] Michael Walzer, "The Problem of Dirty Hands," *Philosophy & Public Affairs* 2 (1973), 160–80.

[340] See Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), pp. 206–22.

## 4.4 Neutrality in a Self-Governing Democracy

### Overly Technical Analysis

Having argued that analysts have a duty of neutrality, it stands to define neutral analysis in a self-governing democracy. Before doing so, it is worth clarifying the problem that drives theorists like Fukuyama to take a political realist position. Political realists like Fukuyama get one aspect of the problem exactly right. Overly technical analysis—which focuses exclusively on the technical impacts of policies and ignores ethical considerations entirely—leaves a gap that seriously impugns both the legitimacy and the efficacy of that analysis. This gap has been recognized since Max Weber, who argued, "The distinctive characteristic of a problem of social policy is indeed the fact that it cannot be resolved merely on the basis of purely technical considerations which assume already settled ends."[341] Similarly, Robert Dahl identified the difficulty in separating normative ends from administrative means the first of his three problems of the science of administration.[342]

Fukuyama argues that overly technical analysis lacks context, where "context" means "the history, culture, politics, stakeholders, norms and institutions of particular times and places …."[343] He calls context "the *sine qua non* of successful policy problem-solving." However, following the argument laid out in sections 4.2 and 4.3, the inclusion of context must by limited by the need to maintain neutrality. *The key question is how a democracy can deliver contextual, non-technical analysis without undermining the neutrality of an individual analyst.*

Concern that policy analysis will be overly technical has been prominent since the beginning of the movement to professionalize policy analysis in the 1960s. Arnold Meltsner categorized analysts as "technicians," "politicians," and "entrepreneurs." A technician "weaves around himself a protective cocoon of computers, models, and statistical regressions . . . . Politics is somebody else's business."[344] The technician is contrasted against the politician, who uses his analytical position to sell his ideas and advance his career. The entrepreneur is an ideal combination of both, who "knows how to work with numbers and people."[345] Meltsner describes the entrepreneur:[346]

> Pragmatist, educator, manipulator, coalition builder, … he sees the public interest as his client. He has strong normative views of the scope of government activity. He is concerned about distribution as well as efficiency. Whether his views are that government should do more or less, he is much more aware than other analysts that his preferences guide the selection and solution of analytical problems.

Meltsner's entrepreneur embodies the traits Fukuyama calls for in a change-maker.

Meltsner and Fukuyama each recognize correctly that analysis is insufficient where it is based solely on technical policy tools. Policies do not pass themselves, but more importantly, many reasons that citizens care about most deeply are not captured by efficiency and effectiveness. Consider the following example:

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[341] Max Weber, *The Methodology of the Social Sciences*, trans. and ed. Edward A. Shils and Henry A. Finch (New York: Free Press, 1949), p. 56.

[342] Robert A Dahl, "The Science of Administration: Three Problems," *Public Administration Review* 7 (1947), 1–11, pp. 1–4.

[343] Francis Fukuyama, "Teaching Public Policy," *The American Interest* (August 6, 2018).

[344] Meltsner, *Policy Analysis in the Bureaucracy*, p. 18.

[345] Meltsner, *Policy Analysis in the Bureaucracy*, pp. 30, 36.

[346] Meltsner, *Policy Analysis in the Bureaucracy*, pp. 36–37.

**City Zoning**: A city is evaluating whether to re-zone property to allow a polluting industry to build a plant near a low-income neighborhood. A cost-benefit analysis demonstrates that benefits in tax dollars and employment greatly outweigh costs, both in lost property value and in externalities. In addition, a survey of possible locations suggests that the benefit-cost ratio will be greatest if the plant is placed in this neighborhood.

An agency analyst set to evaluate the proposal certainly should collect and convey the technical evidence contained in the cost-benefit analysis to policymakers. However, analysis containing *only these factors* would be insufficient. Such analysis lacks "context," as Fukuyama argues, but this omission is not merely a matter of political expediency. Imagine that a local resident reads an official analysis containing only efficiency and city-planning evaluations. Nowhere does the analysis engage with the malicious history of city-zoning practices. Nowhere does it mention that city projects recently placed waste-disposal and sewage-treatment facilities in the same neighborhood, each following a similar analysis to suggest this low-income neighborhood as the ideal location. Given these omissions from the underlying analysis, how can we ask a resident who believes these facts are important to see a policy decision as justified collective self-government?

The force of these observations underlies a deliberative conception of democracy, where citizens are asked to reason with each other on terms of reciprocity and mutual justifiability. However, the implications of these deliberative values have often been strictly separated from the institution of analysis. For example, Amy Gutmann and Dennis Thompson define, "The aim of policy analysis is to estimate as many costs and benefits over time as are amenable to quantification."[347] This definition limits analysts to a purely technical role. In contrast, Gutmann and Thompson argue, "democratic deliberation is said to help the democratic process express the value of mutual respect among citizens and better inform public decision-making by bringing a wider range of perspectives to bear on the process than public officials would otherwise be willing or able to consider."[348]

These tasks are not mutually exclusive in the way these role definitions suggest. When a resident sees an official analysis that contains only technical considerations, two effects prevent her from seeing that policy as justified, even if she is later given a forum to voice her concerns. First, any subsequent deliberation on the policy will be tainted by unequal preparation for that forum. Those who favor technical considerations will have an official analysis to back their claims. Those who would like the history of zoning to be considered must scramble to gather evidence and defend the credibility of that evidence. Second, the agency will have appeared to take a stand on the relative value of that evidence. An official analysis expresses the status of that evidence as speaking to publicly relevant reasons. In contrast, a report that contains only quantitative considerations will have ignored reasons that this resident feels to be relevant to the decision at hand.

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[347] Amy Gutmann and Dennis Thompson, eds., *Ethics and Politics: Cases and Comments*, 4th ed. (Belmont: Thomson Wadsworth, 2006), p. 262.

[348] Gutmann and Thompson, *Ethics and Politics*, p. 263.

The point of the city-zoning example is not that a history of racist and malicious zoning necessarily ought to be prioritized when evaluating industrial re-zoning. Rather, a self-governing democracy should demand the ability of its citizens to *see* that policies are properly justified by their collective reasoning. Purely technical analysis falls short of this goal. As a result, analysts have a strong prima facie reason to comprehensively include evidence on reasons that the citizens find to be relevant.

## Justifying Narrow Technical Analysis?

A prima facie obligation does not entail that non-technical evidence can never be excluded. Prima facie obligations shift the burden of proof so that *exclusion* of non-technical evidence must be justified. Evidence on the history of zoning is included because (1) some citizens find it relevant and (2) no reason has been offered to exclude it. This section considers typical reasons offered to exclude non-technical evidence.

Douglas Amy considers four standard arguments to justify omitting ethical considerations from analysis, which apply equally well to the omission of non-technical considerations here.[349] Each of these arguments is unpersuasive. The first argues that rational analysis of normative values is impossible—a position Amy calls "value relativism." As Amy noted over 30 years ago, "while policy analysts continue to cling to value relativism, most moral philosophers abandoned it over 30 years ago."[350] Value judgments are more than mere preferences. They require reasons or justification to hold moral force, and those reasons are susceptible to rational identification and clarification.[351] Like technical considerations, non-technical reasons must be supported by evidence. Using city zoning as a demonstration, entire disciplines critically analyze policies through a historically informed lens, and it would be absurd to dismiss those fields as irrational without strong, specific reasons to doubt their methods. Comprehensive neutrality calls for the inclusion of these disciplines.

The second standard argument asserts that normative analysis is unnecessary. This argument suggests that value differences are sufficiently resolved in the political process and need not be analyzed. It is certainly true that weighing values is a primary purpose of the political process and that analysis should not *substitute* for that function. Analysis is intended to *inform* those political deliberations, not replace them. This is as true for non-technical scholarship as it is for technical work.

A third argument says that normative analysis is impractical. It is correct that time is pressing in most analyses, and those constraints will limit analysis in all areas. Nothing is unique to non-technical fields that make these trade-offs inherently unmanageable. Moreover, for analysis to be neutral, time constraints must not arbitrarily disadvantage one kind of analysis.

The final argument—that normative considerations insert bias—is the crux here. Both Meltsner and Fukuyama recommend supplementing technical analysis with the analyst's own normative views, a widespread approach in leading policy textbooks. For example, Deborah Stone's influential analysis of equity asks the reader to imagine dividing a cake among a class.[352] After illuminatingly describing the many conceptions of equity that can apply to "fairly" dividing a cake, Stone argues that the analyst should map out the arguments and ask herself "whether they seem accurate, reasonable, persuasive, and, ultimately, fair."[353] This advice places the agency analyst in the role of an arbitrator, who listens to various positions, considers them carefully, and ultimately decides which is fair. On this account, a conscientious analyst can analyze the normative context.

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[349] Douglas Amy, "Why Policy Analysis and Ethics Are Incompatible," *Journal of Policy Analysis and Management* 3 (1984), 573–91, pp. 575–79.

[350] Amy, "Why Policy Analysis and Ethics are Incompatible," p. 575.

[351] Frank Fischer, *Politics, Values, and Public Policy: The Problem of Methodology* (Boulder: Westview Press, 1980), pp. 2–4.

[352] Deborah Stone, *Policy Paradox: The Art of Political Decision Making*, 3rd ed. (New York: W. W. Norton, 2012), pp. 39–57.

The problem with these accounts is not that they introduce normative values to the analysis, but that they introduce the *analyst's own values*. This approach fails for the reasons identified in the efficiency argument above. If the analyst takes strong normative views on the role of government or on redistribution among citizens, then the analyst will be replaced with an analyst with different normative views at the expense of costly turnover and collective administrative experience. If it matters who the analyst is, then unfriendly administrations will always have an incentive to replace the analyst with another who holds different normative views.

### Standardized, Impersonal, and Public, Not Objective

The previous sections argued that agency analysts have a prima facie obligation to be comprehensively neutral and that standard arguments do not undermine this obligation, but there are good reasons why we might exclude evidence from a neutral analysis. Ideally, these considerations would be debated and resolved in a professional code of ethics, where theorists and practitioners can merge insights, but some relevant considerations can be identified here.

Meltsner's technician and entrepreneur misconstrue their role for different reasons. The technician believes that he remains neutral by remaining "objective." In doing so, he mistakes standardized quantitative methods based on strong but fixed value assumptions with absolute objectivity.[354] He divides work into value-free, positive methods against value-laden, normative methods and focuses on the former. This division not only misdescribes his work as absolutely objective, but more importantly, excludes other criteria without justification.[355] It is this unjustified exclusion of non-technical criteria that most pressingly impugns the technician's role in self-government.

The technician is not entirely mistaken in preferring quantitative subjects. Quantitative policy tools have features that make them particularly suited to democratic analysis. Theodore Porter describes this connection well:[356]

> It is, on the whole, external pressure that has led to the increasing importance of calculation in administration and politics. Those whose authority is suspect, and

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[353] Stone, *Policy Paradox*, p. 57.

[354] "Absolute objectivity" is objectivity in the philosophical sense, which indicates "arriving at criteria for judging claims to have represented things as they really are. These criteria of validity would then help us to advance knowledge-claims sufficiently authoritative that no rational person, after due investigation, would call them into doubt." Allan Megill, "Introduction: Four Senses of Objectivity," in his *Rethinking Objectivity* (Durham: Duke University Press, 1994), 1–20, pp. 2–3.

[355] Charles W. Anderson, "Political Philosophy, Practical Reason, and Policy Analysis," in *Confronting Values in Policy Analysis: The Politics of Criteria*, ed. Frank Fischer and John Forester (Newbury Park: Sage, 1987), 22–44, p. 23; see also Daniel Hausman, Michael McPherson, and Debra Satz, *Economic Analysis, Moral Philosophy, and Public Policy*, 3rd ed. (Cambridge: Cambridge University Press, 2017) (for a good overview of the value assumptions inherent in economic policy analysis).

[356] Theodore M. Porter, "Objectivity as Standardization: The Rhetoric of Impersonality in Measurement, Statistics, and Cost-Benefit Analysis," in *Rethinking Objectivity*, ed. Allan Megill (Durham: Duke University Press, 1994), 197–237, p. 206.

> who are obliged to deal with an involved and suspicious public, are much more likely to make their decisions by the numbers than are those who govern by divine or hereditary right. It is not by accident that the authority of numbers is linked to a particular form of government, representative democracy. Calculation is one of the most convincing ways by which a democracy can reach an effective decision in cases of potential controversy, while simultaneously avoiding coercion and minimizing the disorderly effects of vigorous public involvement.

Porter emphasizes the importance of quantitative methods specifically for those with suspect authority, a consistent theme in the policy literature.[357] Two points are critical to Porter's connection between quantitative methods and public administration. First, quantitative methods are a public form of knowledge. When an analyst bases recommendations on calculation, she can communicate the various factors included and their relative weights. This enables the public to hold the analyst accountable in ways that are impossible where criteria include amorphous considerations like experience, personal values, or backroom agreement.[358] Second, quantitative methods tend to be standardized and based on widely shared values, which are not arbitrary or personal to the analyst.[359] These impersonal methods ensure that the efficiency argument does not incentivize replacing the analyst, and they emphasize reciprocity by grounding their beliefs in reliable methods of inquiry.[360]

Public analysis with standardized methods enables the public to demand reasons and justification—a critical element of accountable government. As argued by Philip Pettit, the ability to demand reasons is inherently related to the accountability of democratic government.[361] Reason-based analysis guards against prejudice and bias in analysis and what Pettit calls the tyranny of the democratic elite, where those in the bureaucracy, the cabinet, the courts, or the police force impose their will in interpreting and implementing democratic policy.[362] Public analysis based on standardized methods alleviates these dangers by giving the public the ability to understand and contest the interpretations offered by the elite.

The fact that quantitative methods are *standardized*, *impersonal*, and *public* promotes values essential to a self-governing democracy, aside from any claim to absolute objectivity.[363] When an agency analyst publishes a cost-benefit analysis, policymakers, citizens, and analysts can examine to ensure it was calculated in a publicly acceptable manner. Because the methods are standardized, impersonal, and public, citizens and other analysts can verify their accuracy and appropriateness. In contrast, where analysts decide "fair" or "wise" policies behind closed doors or in an irreducibly personal manner, deliberations remain insulated from critical oversight. Because accountability and transparency are critical to self-government, it is appropriate to weigh whether methods have these virtues before including the resulting evidence.

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[357] Meltsner, *Policy Analysis in the Bureaucracy*, pp. 11–12.

[358] See Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996), pp. 95–127.

[359] Porter, "Objectivity as Standardization," p. 210.

[360] Gutmann and Thompson, *Democracy and Disagreement*, p. 15.

[361] Philip Pettit, "Deliberative Democracy and the Discursive Dilemma," *Philosophical Issues* 11 (2001), 268–99, p. 281.

[362] Pettit, "Deliberative Democracy and the Discursive Dilemma," pp. 281, 288.

[363] Comprehensive neutrality is consistent with the disciplinary sense of objectivity, where a discipline converges on agreed methods, or the procedural sense, where methods are standardized in procedures. Megill, "Four Senses of Objectivity," pp. 5, 10.

## Neutral Methods and Self-Government

The technician clearly errs where he excludes evidence and methods when (1) some public finds them to be relevant and (2) they can be approached in a public, impersonal, and standardized manner. Exclusion of apparently relevant reasons is harmful to legitimate self-governance because a citizen cannot know if excluded reasons would have swayed a public deliberation. Consider again the resident who believes that the history of zoning decisions should weigh in the current decision. If history is not included, she will reasonably feel alienated from the process and dissatisfied with the justification of the policy. This is a result that a self-governing democracy should want to avoid.

Here, one might object that this argument ignores the political process. If a resident finds zoning history relevant, she is free to raise it in the public forum where fellow citizens and policymakers can consider it. This objection understates the role of the professional in a just procedure. We could raise the same objection for the defendant in a criminal trial, but we would not accept its force. If a defendant believes his attorney has omitted a critical argument, he is free to present that argument himself. However, we do not rely on these opportunities because we cannot expect every defendant to argue in an appropriate way to persuade the court. Thus, we charge an attorney with the duty to represent his interests in full. If agency analysis is to do more than lip service to public justification, then analysts must take an analogous role.

Standardized, impersonal, and public methods promote the cause of a self-governing democracy by promoting accountability and transparency, virtues that must be present for citizens to take their institutions as collectively representative. Therefore, the absence of these virtues weighs against the prima facie obligation to include evidence that citizens find relevant. In short, comprehensive neutrality may be limited to evidence that meets minimal criteria of standardization, impersonality, and publicity, but the exact contours of these limitations are proper subjects of a professional code, crafted by practitioners and theorists.

## Other Reasons to Exclude Evidence

While the focus of this article is the duty of neutrality, reasons outside of neutrality considerations could weigh against the prima facie obligation to include evidence on reasons that citizens find relevant. Some evidence may conflict with the analyst's duty to present competent analysis. For example, evidence that vaccines cause autism may be excluded if any reasonable evaluation suggests that hypothesis is not viable. Comprehensive neutrality requires that analysts justify excluding evidence that the public believes to be relevant, but justification can be provided where disputes occur within a discipline and that discipline has deemed the evidence unreliable.

Other evidence violates basic democratic commitments in a way that justifies is exclusion. Evidence that depends on a hierarchy among citizens, a priority of self-interest over the public good, or on religious adherence may be excludable on this basis. These considerations would play into the definition of a professional code of ethics, but addressing them here would take us too far outside the intended scope.

### 4.5 Objections to Neutrality

We are now prepared to see how comprehensive neutrality provides a middle ground between the political realist and obedient servant views. Where the political realist view says, "Do what you can," and the obedient servant view says, "Do what you are told," comprehensive neutrality defines ethical rules that tell the analyst, "Do what a democracy demands." Comprehensive neutrality builds an idea of deliberative democracy into the standards that an analyst applies to her work. It demands that the analyst looks outward to the reasons that the citizens themselves find to be relevant, rather than inwards to the reasons the analyst finds most persuasive or most effective at implementing the policy she most prefers. As a result, comprehensive neutrality embodies mutual respect by bringing a wider range of perspectives into official analyses and better preparing deliberation.

Comprehensive neutrality is neutral in the sense that agency analysts do not exercise independent moral judgment.[364] However, they are also not subject to the whim of their agency superiors in the way the obedient servant view imagines. Rather, moral judgments are embodied within professional standards of ethics, universally applicable on each analyst. Displacing these judgments to a code of ethics makes all the difference.

In "The Possibility of Administrative Ethics," Thompson identifies three criticisms of an ethic of neutrality—where his neutrality contemplates the obedient servant view.[365] Each of these criticisms loses force applied to comprehensive neutrality. First, he argues that neutrality underestimates the discretion that administrators exercise, impeding the ability of the citizens to hold unelected officials accountable for these discretionary judgments. Neutrality provides no guidance for this discretion and therefore no basis for criticism. Comprehensive neutrality addresses this problem by giving both citizens and fellow analysts a basis to criticize an analysis where it fails to meet the standards embodied in the rules of professional conduct. In particular, one analyst can criticize another analyst for failing to analyze reasons that some group of citizens believes to be relevant. This provides a check on administrative discretion to the extent that making the public aware of alternative perspectives in a more complete analysis enables accountability.

Second, Thompson challenges the notion that office holding implies consent to the duties and perspectives of the agency, a key tenet in the obedient servant view. Thompson argues that there are many reasons why officials will seek to retain their jobs even where the agency goals diverge from their personal ethics. Moreover, if officials always resigned without hesitation, public offices would soon be populated by only those without moral principle. Comprehensive neutrality gives analysts another outlet for their dissent. Even if the agency ultimately chooses an option that the analyst would not have chosen, her analysis will include evidence and reasons that support both the position taken and the position she prefers. Where rights and basic justice are seriously threatened, this may not be enough, but those reasons are for a theory of disobedience. Just as the rules of professional conduct identify specific circumstances where a lawyer must withdraw from representing a client or even violate normal ethical rules, these a proper subjects of an ethical code, not an objection to it.

Third, Thompson argues that neutrality overly simplifies the moral circumstances of public office. Officials have duties to colleagues and to the agency that are abrogated when an official resigns and washes her hands of the decision. This protection of one's own conscience at the expense of others could be seen as an act of moral self-indulgence. Comprehensive neutrality incorporates these wider moral perspectives by convening theorists and practitioners to write a professional code of ethics, which will then be enforceable on all analysts as professionals. There may still be circumstances where analysts are expected to resign or otherwise draw attention to serious violations of justice or rights, but a professional code can embody a universally applicable duty to bring wider perspectives into the analysis than the agency would otherwise consider.

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[364] See Thompson, "Possibility of Administrative Ethics," p. 556.

[365] Thompson, "Possibility of Administrative Ethics," pp. 556–57.

In sum, comprehensive neutrality provides a middle ground to the political realist and obedient servant views. By giving analysts an alternative outlet and specific duties to bring wider perspectives into the analysis, it avoids the stark choice of resigning or obeying. As a result, absent abhorrent actions by the agency, it gives analysts of strong moral principle the latitude to remain with agencies even where the current leadership does not hold their views of ideal policy.

### 4.6 Ethics, Not an Ethos

Before concluding, it is worth emphasizing that comprehensive neutrality requires that normative obligations must be codified in a mutually enforced code of professional ethics, not a personal ethos where agency analysts are taught to weigh competing values. Recall the key question from the previous section: how can we fill the gap in overly technical analysis with normative analysis without undermining the neutrality of the analyst? This question is only answered if we agree on a mutually enforceable ethical code.

Noting the practical difficulties of defining and enforcing a code of ethics, policy scholars sometimes advocate for teaching an ethos rather than waiting for an ethical code.[366] Mark Lilla champions this view, arguing that a moral policy education should teach democratic virtues and administrative statesmanship. "A morality—an ethos—is something we live. . . . [I]t is an attitude or outlook, a set of virtues or habits which we learn, sometimes rationally but usually not, from our families, churches, peers, and even our schools."[367]

A professional ethos is worthwhile, but it is no substitute for a code of ethics. Lilla's examples are telling; families, churches, and peers not only teach virtues. They can also *enforce* those virtues through pressure and threat of ostracization without compliance. Without an enforceable code of ethics, no analogous enforcement mechanism ensures that analysts respect the ethos. As a result, the force of the efficiency argument will still apply—unfriendly administrations will simply replace analysts with one ethos with analysts who defect to another ethos.

A code of ethics solves this enforcement problem by enforcing agreed standards. Defection is solved through threat of sanction by a professional body, and the definition of specific rules allows analysts to hold fellow analysts to those provisions.[368] Similar to the professional code of responsibility in law, a code of analytical ethics would define the separate duties of analysts in specific roles and then enforce those duties on those analysts, allowing flexibility in role definition—distinguishing agency analysts from political and non-governmental analysts—while still enabling mutual enforcement. It is certainly correct that a centralized code is challenging goal, but the solution is to fight to get one. An ethos is not an acceptable replacement.

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[366] Weimer and Vining, *Policy Analysis*, p. 52.

[367] Mark T. Lilla, "Ethos, 'Ethics,' and Public Service," *The Public Interest* 63 (1981), 3–17, pp. 14–15.

[368] See §5.6.

### 4.7 Conclusion

This article has advanced four main claims. First, agency analysts, who hold unelected, unappointed positions within the government, must remain neutral with respect to moral, religious, and ideological views. Second, neutrality should be understood in a comprehensive sense, requiring analysts to collect evidence on all reasons that citizens find relevant, rather than limiting analysis to technical subjects. Third, ethical obligations must be enforced as a professional code of ethics; any lesser solution would either leave a gap in the analysis or incentivize inefficient turnover. Finally, the article defended a methodology, arguing that ethical obligations should be understood by contemplating the analyst's role in a democratic division of labor designed to work collectively as a mechanism of self-government.

# Chapter 5

## Expertise and Democratic Accountability

Guardianship has always posed the strongest argument against democratic rule. Guardianship is the idea that authority should be entrusted to a special class of people due to their special knowledge or wisdom, and it has tantalized critics of democracy from Plato to Lenin to Jason Brennan.[369] Guardianship is a compelling alternative to democracy because it need not deny *moral* equality of the people or deny that every person's interests ought to influence public decisions.[370] In its most persuasive versions, guardians are expected to use their knowledge and wisdom to act as stewards of the common good for the benefit of all.

Within this central question of political philosophy, the question of expert accountability lies at a subsidiary level. Experts and analysts are not given the final political authority of the guardians of Plato's *Republic*, which would constitute an "epistocracy."[371] Experts and analysts merely inform policy choices and implement policies chosen by democratically selected legislators and officials. The question of expert accountability asks whether experts and analysts can play the roles of informing and administering policy without inverting the oversight relationship under democratically elected and appointed policy makers and, ultimately, under the rule of the people. It is the imbalance in knowledge between expert and policy maker that gives reason to worry that experts will exploit this imbalance to exert unequal influence and democratic institutions will fail to hold experts accountable. In short, can democracies hold experts accountable?

To answer this question, this article is divided into two parts. The first part focuses on the nature of the expert-accountability problem, arguing that accountability is more challenging than recent work on expertise in democratic theory has acknowledged. The basic idea is this: to answer the problem of expert accountability, democracies must identify experts that are both competent and relevant to the task at hand, but recent literature has focused only on expert competence. Following the pioneering work of social epistemologist Alvin Goldman, recent literature has drawn an analogy to the novice/expert problem. In the novice/expert problem, a novice must select among multiple experts in a particular domain without being in a position to evaluate the experts using her own opinion. Goldman offers several approaches where a novice can reliably identify a competent expert, and recent work has used these as a model for institutional design.[372] Goldman's approach assumes that the domain has already been established and focuses on selecting competent experts within that domain, an inquiry that I will call "the problem of expert competence."

I will argue that identifying competence within a particular domain is insufficient to answer the expert-accountability problem in democratic theory, even if we accept Goldman's account of the novice/expert problem. Democracies are not only responsible for selecting among experts within a particular domain; they must also select *which kind* of expert to ask and therefore must determine *which discipline* is relevant to the policy problem at hand. I will call this "the problem of expert discipline," and I will argue that an adequate answer to that problem is necessary for an adequate justification of expertise in democracy.

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[369] Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), pp. 52–54; Jason Brennan, *Against Democracy* (Princeton: Princeton University Press, 2016).

[370] David Estlund, "Making Truth Safe for Democracy," in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John E. Roemer (New York: Cambridge University Press, 1993), 71–100, pp. 81–82.

[371] For recent arguments against epistocracy as a viable option, see Daniel Viehoff, "Authority and Expertise," *Journal of Political Philosophy* 24 (2016), 406–26; Julian Reiss, "Expertise, Agreement, and the Nature of Social Scientific Facts or: Against Epistocracy," *Social Epistemology* 33 (2019), 183–92.

[372] Alvin I. Goldman, "Experts: Which Ones Should You Trust?," *Philosophy and Phenomenological Research* 63 (2001), 85–110.

Part II sets out to answer the problem of expert discipline by asking how a democracy can select among expert disciplines in an accountable manner. Accountability is a three-part predicate: the accountability *of* an agent *to* a relevant principal *for* some action, standard, or state of affairs.[373] Answering the problem of expert discipline then requires an explanation of the accountability *of* democratic institutions *to* the people *for* the selection among expert disciplines. The approaches outlined in part I fail because they do not define standards for the selection among expert disciplines. In other words, they do not justify why an economist was selected, rather than a sociologist or a historian. Setting aside the possibility of novel institutions, such as mini-publics, I will argue that the profession of policy analysis is uniquely situated to help select among expert disciplines in existing democratic institutions.

To make this case, I will answer two critical questions. First, who decides? Answering this question will justify why policy analysts should be given the responsibility to help choose among expert disciplines. I will argue that policy analysis could implement ethical rules to ensure that analysts *do not* decide these questions individually and instead prepare citizens and policy makers to decide themselves. Second, what standards should policy analysis apply? Answering this question establishes how policy analysis should prepare the selection among relevant experts and thus what the profession should be accountable for doing. These two answers fill the first and third parts of accountability, while the second part of accountability follows from my adoption of a deliberative democratic approach in section 5.5.

Ultimately, this article argues that democratic theory can answer the two-part problem of expert accountability by holding policy analysis to ethical rules of professional conduct that focus on outward-looking standards, which I will call "preparatory standards." Preparatory standards hold policy analysts responsible for being comprehensive, giving the ensuing democratic deliberation—whether in a legislature, in an agency, or among the people—the ability to decide which evidence and which disciplines are relevant to its deliberations. Preparatory standards situate experts and policy analysts in an epistemic division of labor dedicated to enabling reasoned deliberation among equals across all of the democratic institutions where it arises. Coupled with adequate institutions to enable deliberation, it is my argument that preparatory standards and ethical institutional design allow democracies to answer the problem of expert-accountability.

## I. TWO PROBLEMS IN EXPERT ACCOUNTABILITY

### 5.1 The Instrumentalist Approach

At the most basic level, expertise is valuable to democracy to allow for an epistemic division of labor, where technical experts show the best means to achieve democratically agreed ends.[374] If successful, an epistemic division of labor allows individuals to specialize in both focus and training, facilitating social cooperation among individuals by putting this specialization toward the common good.[375] It also ensures that public policy integrates specialized knowledge from the social sciences where it is relevant to good policy making.[376]

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[373] Robert E. Goodin, *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn* (Oxford: Oxford University Press, 2008), p. 156.

[374] James Bohman, "Democracy as Inquiry, Inquiry as Democratic: Pragmatism, Social Science, and the Cognitive Division of Labor," *American Journal of Political Science* 43 (1999), 590–607, pp. 591–92; Philip Kitcher, *Science in a Democratic Society* (Amherst: Prometheus Books, 2011), pp. 20–25; Thomas Christiano, "Rational Deliberation among Experts and Citizens,"

This reasoning suggests that the problem of expertise may be solved by a simple instrumentalist approach, where policy makers delegate technical decisions to experts, then hold experts accountable by overseeing their actions on behalf of the people.[377] The most popular instrumentalist approaches draw a sharp distinction between factual and evaluative judgment, where the expert focuses solely on casual issues of effective means, while the democratic process deliberates the final ends.[378] These approaches acknowledge the epistemic superiority of experts in technical decisions of administrative means, but deny that there is any expert way to make value judgments critical to justifiable democratic institutions.[379] Thus, the task of the policy maker is to hold experts accountable for limiting their judgment to technical tasks and retaining important value judgments for the people and their representatives.[380]

As introduced above, accountability is a three-part predicate: the accountability *of* an agent *to* a relevant principal *for* some action, standard, or state of affairs.[381] By delegating implementation, an instrumentalist approach entrusts the accountability of experts to the oversight of policy makers for instrumental achievement of the will of the people. Thus, the instrumentalist approach has two necessary premises:

> (1) *Adequate oversight*: Democracies can expect policy makers to adequately oversee the work of experts; and
> (2) *Adequate representation*: Democracies can expect policy makers to represent the will of the people.

My focus here will be on the first of these premises—adequate oversight—leaving the second question to the extensive literature on representation.[382] If policy makers cannot effectively oversee experts, then we will introduce anti-democratic guardianship unintentionally through the backdoor.

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in *Deliberative Systems: Deliberative Democracy at the Large Scale,* ed. John Parkinson and Jane Mansbridge (Cambridge: Cambridge University Press, 2012), 27–51, pp. 27–28.

[375] As recently argued by Christian Quast, "The conceptual function (point, role) of expertise is to substantially improve the social deployment of available agential resources apt for an accurate attainment of cliently relevant ends…." "Expertise: A Practical Explication," *Topoi* 37 (2018), 11–27, pp. 17–18.

[376] Christiano, "Rational Deliberation," p. 31.

[377] See Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge: MIT Press, 1996), pp. 186–93 (identifying the classic separation of powers among legislation, judiciary, and administration, and the complications that arise in this separation).

[378] Frank Fischer, *Citizens, Experts, and the Environment: The Politics of Local Knowledge* (Durham: Duke University Press, 2000), pp. 15–19; Henry S. Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002), p. 115.

[379] Herbert Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations*, 4th ed. (New York: Free Press, 1997), p. 65.

[380] Christiano, "Rational Deliberation," p. 33; see Robert B. Reich, "Policy Making in a Democracy," in his *The Power of Public Ideas* (Cambridge: Harvard University Press, 1988), 123–56, pp. 124–29 (for a history of varied conceptions of administrative discretion).

[381] Goodin, *Innovating Democracy*, p. 156.

[382] See, e.g., Jane Mansbridge, "Rethinking Representation," *American Political Science Review* 97 (2003), 515–28; John Parkinson, *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy* (Oxford: Oxford University Press, 2006), ch. 4.

I contend that it is infeasible for a policy maker to adequately oversee experts on even moderately complex policy questions without specific institutional design. Consider three policy questions that we might reasonably expect a policy maker to delegate to an expert advisor.[383] The first will be easily delegated, while the second and third introduce typical complications.

1. *What is the unemployment rate in ten relevant counties?*

To answer this question, the expert must gather information about a standard policy measure: the official unemployment rate. Assuming a moderately well-informed policy maker, he and the expert work under a common understanding of the task, and either the policy maker or another advisor can verify that the expert has acted within the delegation.

2. *Is unemployment a problem in ten relevant counties?*

To answer this question, the expert must again gather information, but now she must also judge which information constitutes evidence of an unemployment problem. The difficulty is that there are multiple reasonable ways to evaluate employment, and it is not clear that there is or even should be an ex ante meeting of the minds as to which information to evaluate. While there is an official unemployment rate—defined as the number of unemployed actively looking for jobs divided by the labor force—other measures also evaluate the extent of unemployment. Unemployed workers may become discouraged and stop looking for work. Workers may be widely underemployed relative to their skill level. One particular demographic may have high unemployment, while the remaining population does not. Each of these facts is plausibly relevant to unemployment; there is no single correct answer to the question asked. Two experts with different perspectives may present factually accurate accounts that yield divergent evaluations. In reviewing these accounts, it would be appropriate to question the expert's judgment, rather than her accuracy.

3. *How will a particular change in immigration policy impact ten relevant counties?*

To answer this question, the expert must choose which among myriad factors to evaluate the policy change. A reasonable expert evaluating a change in immigration policy should examine whether it will cause an unemployment problem, as in (2), and she should collect relevant evidence to answer that question, but this will be only one of many relevant criteria. Notice that the expert now inserts multiple layers of judgment into an answer, first determining which criteria are relevant and then which methods are appropriate to measure those criteria. At each stage, questions must be evaluated not only on factual accuracy but also on reasonableness in context.

Consider the instrumentalist approach in light of these three questions. The first question can be delegated without issue because it can be evaluated based on factual accuracy, and we can expect oversight to eventually catch a factual error by checking the report against other sources. The second question shows complications in the oversight relationship. Even focusing specifically on unemployment, expert evaluation entails judgment as to appropriate measures, methods, and focus, and these judgments do not boil down to technical accuracy.[384] Determining which of the various unemployment measures is relevant will depend on which economic indicators should take priority, judgments where we should expect that individuals—including experts—will reasonably differ. Proper oversight would evaluate these choices on grounds of reasonableness, as well as technical accuracy. Finally, consider the knowledge and expertise policy makers and their staff must have to adequately oversee the third question. To fully judge these evaluations, they must know which factors would be relevant, how they should be evaluated, and whether evaluations were done correctly. It is unrealistic to expect a policy maker to achieve this multifaceted oversight.

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[383] I will distinguish scientists from analysts in §5.5. Here, I use the broader term of "expert" without distinguishing the institutional capacity.

[384] Heather E. Douglas, *Science, Policy, and the Value-Free Ideal* (Pittsburgh: University of Pittsburgh Press, 2009), pp. 134–35.

To address these concerns, more sophisticated instrumentalist accounts offer alternative channels of oversight. Consider the account offered by Thomas Christiano:[385]

> Suppose a group of politicians is crafting legislation that ignores the relevant social science in an area. Within that group's political party, expert social scientists will see this is happening. They will be able to do two things. One, they will be able to shame staffers who are helping make this legislation and who are at least partly experts. They will also be able to inform, either directly or through those who are more capable of articulating the problems of laypersons, the ordinary citizens of the party of the problematic nature of the legislation, explaining what the probable consequences of the legislation will be. The alerted citizen activists can then put pressure on the politicians to take the relevant social science into account or face sanctions from within the party.

Christiano's account of effective oversight relies on shame and censure from a coalition of experts, activists, and political actors. While one can certainly imagine circumstances where such oversight would be effective, reliance on such a broad coalition dramatically limits its scope. Effective oversight is limited to issues where three conditions converge: (1) gross errors or omissions on issues that (2) attract significant attention and (3) garner support from a major political party. Each of these conditions will frequently be absent. We can hardly expect this shame-and-activism campaign to be a mechanism for universal oversight on everyday policy problems.

Suppose an expert evaluating the immigration policy introduced above includes various well-researched impacts, but she omits two pieces of evidence that an onlooking fellow expert believes to be relevant. First, while the expert considered the official unemployment rate—seeing negligible effects—she left out employment impacts specifically on low-skilled recent immigrants. While low-skilled recent immigrants are a small segment of the overall workforce, the onlooker believes that some citizens would find this impact on a highly vulnerable population relevant to their policy evaluation. Second, the expert focused on short-term economic impacts and omitted sociological findings that show a "culture of migration," which is predictive of relevant policy variables, such as investment in education.[386] The onlooker believes the policy change would affect this culture of migration and that these impacts would resonate with some policy makers and voters.

It is difficult to imagine any of the mechanisms that Christiano describes ensuring that these omissions are corrected. Could the onlooker really shame the expert for these omissions? How should the onlooker respond if the expert believes that reporting employment effects in low-skilled recent immigrants would be misleading and would wrongly distract policy makers from overall employment effects? How should the onlooker respond if the expert takes pride in omitting sociological findings because "they aren't reliable"?

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[385] Christiano, "Rational Deliberation," p. 43.

[386] See William Kandel and Douglas S. Massey, "The Culture of Mexican Migration: A Theoretical and Empirical Analysis," *Social Forces* 80 (2002), 981–1004.

The difficulty answering these questions arises from the third part of accountability—the actions, standards, or state of affairs for which the agent is held accountable. Christiano and other accounts of expertise do not define standards of expert analysis, relying instead on vague ideas that citizen involvement or outrage can hold experts accountable. The difficulty is that they have not answered: accountable for what?

The instrumentalist account then breaks down in two ways. First, it entrusts policy makers to oversee experts where it is beyond their capability to do so. Second, it fails to define standards of expert analysis for which the experts can be held accountable in analyzing complex public policies.

## Policy Complexity

The immigration example highlights the complexity of expert analysis in typical policy problems. Much of the literature misses these complexities by focusing on gross errors, where policy makers ignore well-established science within one particular domain, but this focus dramatically underestimates the difficulty of expert accountability. One source of complexity is that policy problems often score differently on various dimensions, such that no alternative is most effective in every sense. Stephen Turner calls these "ill-structured problems." "A well-structured problem is one in which there is a single best solution. An ill-structured problem is one in which there are multiple possible solutions, each of which is 'best' in a different sense or dimension of quality, and none of which is best in all the relevant senses."[387] Ill-structured problems are the norm in policy analysis, and because of their multi-dimensionality, different scientific communities will often evaluate these ill-structured problems in different ways and under different standards, challenging the ability to separate means from ends.[388]

Awareness of multi-dimensional problems traces back at least to Max Weber, who argued, "The distinctive character of social *policy* is indeed the fact that it cannot be solved by purely technical considerations which assume already settled ends."[389] Similarly, Robert Dahl identified the difficulty of separating means from ends as the first of his three central problems of public administration.[390] Giandomenico Majone similarly notes that the characteristic difficulty of policy evaluation is the multiplicity of standards.[391] Frank Vibert emphasizes the importance of competing types of judgment in the assessment of facts and evidence about practical policy, such that holding experts to factual accuracy is insufficient.[392] Each argues that it is too simplistic to imagine a strict separation of policy goals and the technical means to achieve them.

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[387] Stephen P. Turner, *Liberal Democracy 3.0: Civil Society in an Age of Experts* (London: SAGE, 2003), pp. 53–54; see also Herbert A. Simon, "The Structure of Ill Structured Problems," *Artificial Intelligence* 4 (1973), 181–201; Fischer, *Citizens, Experts, and the Environment*, pp. 127–29.

[388] Turner, *Liberal Democracy 3.0*, p. 54; see also Edith Stokey and Richard Zeckhauser, *A Primer for Policy Analysis* (New York: W. W. Norton & Co., 1978), p. 117.

[389] Max Weber, *The Methodology of the Social Sciences*, trans. and ed. Edwards Shils and Henry A. Finch (New York: Free Press, 1949), p. 56.

[390] Robert A. Dahl, "The Science of Public Administration: Three Problems," *Public Administration Review* 7 (1947), 1–11, p. 5.

[391] Giandomenico Majone, *Evidence, Argument, and Persuasion in the Policy Process* (New Haven: Yale University Press, 1989), p. 9.

A second source of complexity has been called "trans-scientific questions" by Alvin Weinberg.[393] Trans-scientific questions can be asked in the language of science but are unanswerable by feasible scientific methods—they transcend science. Weinberg offers the example of the biological effects of low-level radiation in mice. To determine at 95-percent confidence whether low-level X-radiation has the expected mutation effects in mice would require an experiment of eight billion mice, making it practically infeasible.[394] Another example is specifying the probability of extremely unlikely events, such as dam failure. Probabilities of such rare events can be postulated but not tested because the events occur so infrequently; Weinberg estimates that it would require building 1000 dams and operating them for 10,000 years to properly test these probabilities.[395]

The difficulty of trans-science is that the expert is asked to act on the basis of (necessarily) incomplete information, using her wisdom and her judgment, rather than simply her knowledge or technical abilities. Because that judgment is stated in scientific language, it often remains beyond the reach of lay oversight.[396] In the case of trans-scientific questions, factual assertions are difficult to separate from questions of plausibility and methodology, and science is difficult to separate from politics and value judgments.[397]

These complexities show that separation of means and ends cannot be assumed, and adequate oversight requires careful institutional design to ensure that expert judgment does not overstep democratic bounds. Where one factually accurate description suggests that employment is fine and another equally accurate description suggests that it is a problem, democracies should worry that experts manipulate policy makers and citizens by selectively introducing evidence. It is a hallmark prerogative of an elite to exercise personal judgment on issues of public importance.[398] The introduction of unchecked judgment gives reason to be concerned that this division of labor privileges some interests over others without holding that judgment accountable to the people, introducing a de facto guardian class.[399]

To answer these concerns, an account of expert-accountability must show why it is justifiable to include expert advising in democratic institutions. As argued by David Estlund, "Any adequate answer to [guardianship concerns must] argue that sovereignty is not distributed according to moral expertise unless that moral expertise would be beyond the reasonable objections of individual citizens."[400] The task moving forward is to justify the institutional role of expertise by placing it beyond the reasonable objections of citizens.

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[392] Frank Vibert, *The Rise of the Unelected: Democracy and the New Separation of Powers* (Cambridge: Cambridge University Press, 2007), pp. 44–45, 58, 61.

[393] Alvin M. Weinberg, "Science and Trans-Science," *Minerva* 10 (1972), 209–22.

[394] Weinberg, "Science and Trans-Science," p. 210.

[395] Weinberg, "Science and Trans-Science," p. 210; see also Nassim Nicholas Taleb, *The Black Swan: The Impact of the Highly Improbable* (London: Penguin Books, 2007).

[396] Sheila Jasanoff, "(No?) Accounting for Expertise," *Science and Public Policy* 30 (2003), 157–62, p. 160.

[397] Majone, *Evidence, Argument, and Persuasion*, pp. 3–6.

[398] Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995), p. 117.

[399] See Fischer, *Citizens, Experts, and the Environment*, pp. 20–24 (describing the influence of policy experts, even where they lack political control).

[400] Estlund, "Making Truth Safe," p. 183.

## 5.2 Identifying Competent Experts

I will argue that a justification of expertise in democracy involves three key elements. First, what goods are provided by expertise that would be unavailable without it? Second, how can democracies ensure that experts are competent in the tasks they execute? Third, how can democracies identify which type of expert is relevant for any given policy? The literature has focused exclusively on the first two questions, as I will discuss in this section, while it has neglected the third question, which I address in the following sections.

### What Goods Are Provided by Expertise?

Expertise enables at least three goods within a democracy: (1) informing public deliberation, (2) enabling democratic collective action, and (3) serving as countervailing epistemic authority.[401] These three goods form the basis for an account of expertise by giving democracies reasons to incorporate experts, expert knowledge, and scholarly methods to evaluate and administer policy and to hold elected officials accountable for factual claims.

(1) The first value of expertise is its ability to inform the policy debate. Democracies look to experts to ensure that policies are justified relative to relevant evidence. In a deliberative conception of democracy that will form the normative basis here, the demand to justify empirical claims in relevant evidence is based in the demands of reciprocity.[402] Even in John Rawls's original position—where individuals reason behind a veil of ignorance as to personal characteristics and values—individuals have knowledge of the "general facts of society," as recognized by "common sense and the existing scientific consensus."[403] These facts provide a common basis for citizens to evaluate policies, evaluate the reasonableness of other individuals' positions, and see that policies are justified by the reasons given.[404] Without a common basis, citizens could not verify that values of reciprocity are met or use these shared beliefs to formulate just principles.[405]

(2) Empowering democratic collective action tasks experts with effectively implementing democratically approved ends.[406] As I argued in section 5.1, it is more challenging than it appears to separate means and ends. Thus, I disagree with Hélène Landemore, who argues, "Administrative tasks are those tasks for which we can a priori determine whose knowledge and opinions matter."[407] Administration defies a clean separation of means and ends. Expertise, even on administrative tasks, inevitably involves judgments on which citizens may reasonably differ,

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[401] Alfred Moore, *Critical Elitism: Deliberation, Democracy, and the Problem of Expertise* (Cambridge: Cambridge University Press, 2017), pp. 42–49.

[402] "When moral reasoning invokes empirical claims, reciprocity requires that they be consistent with relatively reliable methods of inquiry. Such methods are our best hope for carrying on discussion on mutually acceptable terms." Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996), p. 56.

[403] John Rawls, *A Theory of Justice, Revised Edition* (Cambridge: Belknap Press, 1999), pp. 479–80.

[404] Kitcher describes well threats to democratic deliberation that can occur when different communities diverge in evaluation procedures for scientific facts. Kitcher, *Science in a Democratic Society*, pp. 160–61.

[405] Coupled with adequate publicity, a common basis also enables citizens to see that policies are justified and learn from that justification. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 70–71, 225. Rawls does not discuss how lay deliberators should assess conflicting and complex empirical evidence where scientific consensus remains elusive. Mark B. Brown, "Expertise and Deliberative Democracy," in *Deliberative Democracy: Issues and Cases*, ed. Stephen Elstub and Peter McLaverty (Edinburgh: Edinburgh University Press, 2014), 50–68, p. 52.

[406] See Christiano, "Rational Deliberation."

[407] Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rules of the Many* (Princeton: Princeton University Press, 2013), p. 13.

exhibiting an uncomfortable mixing of means and ends.[408] Nonetheless, if expertise is properly held accountable, the ability to effectively administer policies is a distinct value of expertise.

(3) Serving as countervailing epistemic authority—or "telling truth to power," as Alfred Moore calls it—is the capacity to challenge authorities from a position of credibility and independence.[409] This places experts in the role of whistleblowers to cast a shadow of oversight over public discourse, increasing accountability and transparency. A countervailing epistemic authority can challenge policy makers when they make claims that contradict the results of reliable methods. This means that accountability is a two-way relation, where experts help hold policy makers accountable simultaneously as policy makers hold experts accountable, each to ensure policies are properly justified.[410] Here, the value of expertise is as a credible check on corruption and incompetence.

These three goods give reasons to design institutions that can incorporate expertise. In the framework of accountability, these reasons establish the first part of the accountability relation: why democracies should involve experts at all, and thus, why effort should be put into institutions to hold experts accountable.

## The Problem of Expert Competence

The second step begins to explain how experts can be held accountable by requiring democracies to select experts that are competent within their discipline. I will call this the "problem of expert competence." The problem of expert competence involves two elements. First, democracies must reliably identify experts with appropriate skills and knowledge. Second, democracies must hold experts accountable to use those skills competently. For example, democracies must identify competent engineers and hold them accountable for competent engineering. Approaches to both functions are defended in recent works in social epistemology.[411]

Reliable identification of expertise is a challenging epistemological problem because experts have knowledge that necessarily remains esoteric and inaccessible to non-expert selectors.[412] Before consulting expert authorities, democracies must identify which individuals or which bases of knowledge are deserving of deference.[413] Thus, recent work on expertise in democracy has focused on asking how we can reliably identify experts[414] and how we can design institutions to hold experts accountable to the democratic public.[415] For example, Cathrine Holst and Anders Molander argue, "[G]iven the fact of expertise—the problem with which we are confronted is one of institutional design: which mechanisms can contribute to ensuring that experts are really experts and that they use their competencies in the right way in a situation where non-experts are often unable to assess the quality and soundness of expert judgements directly?"[416]

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[408] Alfred Moore, "Democratic Reason, Democratic Faith, and the Problem of Expertise," *Critical Review* 1–2 (2014), 101–14.

[409] Moore, *Critical Elitism*, p. 47.

[410] Michael Schudson provides three conditions under which experts can gain public trust to play this accountability role; features that will play a significant role in §5.4. "The Trouble with Experts – and Why Democracies Need Them," *Theory and Society* 35 (2006), 491–506, p. 500.

[411] Moore, *Critical Elitism*; Cathrine Holst and Anders Molander, "Public Deliberation and the Fact of Expertise: Making Experts Accountable," *Social Epistemology* 31 (2017), 235–50; Christiano, "Rational Deliberation"; Elizabeth Anderson, "Democracy, Public Policy, and Lay Assessments of Scientific Testimony," *Episteme* 8 (2011), 144–64.

[412] John Hardwig, "The Role of Trust in Knowledge," *Journal of Philosophy* 88 (1991), 693–708, p. 693.

[413] Anderson, "Democracy, Public Policy, and Lay Assessments," p. 145.

[414] Holst and Molander, "Public Deliberation," p. 238; Moore, *Critical Elitism*, p. 76.

[415] Moore, *Critical Elitism*, p. 16.

To answer the first question, the literature has built on the work of Alvin Goldman, which identifies the circumstances under which a layperson can justifiably differentiate two experts without becoming an expert himself. Goldman argues that argumentative performance, evidence of biases, and past track records offer plausible ways for a novice to identify expertise. In particular, establishing track records of some putative experts allows inferences about a wider class of experts trained or verified by those experts.[417] Recent treatments build on this account to investigate how these approaches can be embodied in democratic institutions.[418]

Following these standards, the democratic literature has focused on the ability of non-expert citizens to hold experts accountable for competence, reduce the impact of biases and personal interests, and incorporate citizen scrutiny into expert deliberation.[419] Each of these institutional steps builds protections into democratic processes to minimize the abuse of expert authority and to ensure critical scrutiny from the non-expert community. These arguments are not my focus here, other than to distinguish them from another set of pressing problems, which I will call the problem of expert discipline.

## 5.3 Identifying Relevant Experts

### The Problem of Expert Discipline

Important questions arise before democratic institutions certify experts as competent within a discipline. Which type of expert should they ask? From which expert community should democracies draw, and how can they evaluate this question in an acceptably democratic way? Given some policy question, should they ask an economist, a sociologist, a historian, or all of them? These questions comprise the "problem of expert discipline." Without asking these questions, democratic theory has not justified the initial choice of expert discipline.

Consider again an expert asked to evaluate how a change in immigration policy will impact ten relevant counties. Using the approaches outlined above, a democratic institution may certify an economist as competent to project the impacts of policy changes on the labor market. This justifies a belief that the economist has contributed her expertise to the standards of the economics discipline. However, this approach left out an important step in the justification. Why ask an economist, rather than another type of expert?

The omission of these questions in the literature can be linked to a feature of Goldman's definition of expertise, which the sources cited here use for support. Goldman's definition focuses on identifying an expert *within a particular domain*:

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[416] Holst and Molander, "Public Deliberation," p. 236.

[417] Goldman, "Experts," pp. 93–108.

[418] See Holst and Molander, "Public Deliberation," pp. 237–39; Moore, *Critical Elitism*, pp. 80–87. Elizabeth Anderson offers alternative criteria for identifying trustworthy experts—expertise, honesty, and epistemic responsibility—but her argument is analogous to Goldman's account in that it does not answer the problem of expert discipline. "Democracy, Public Policy, and Lay Assessments," pp. 145–48.

[419] Holst and Molander, "Public Deliberation," pp. 241–43; Moore, *Critical Elitism*, pp. 95–96. Working from different premises based on the doctrine of separation of powers, Vibert offers principles that emphasize factual accuracy, respect for evidence and uncertainties, and peer review. These are similarly standards of competence within a discipline. Vibert, *Rise of the Unelected*, pp. 121–26.

> [E]xperts *in a given domain* … have more beliefs (or higher degrees of belief) in true propositions and/or fewer beliefs in false propositions than most people do …. An expert has the (cognitive) know-how, when presented with a new question *in the domain*, to go to the right sectors of his information-bank and perform appropriate operations on this information ….[420]

This definition assumes that a layperson has already established the domain in question and now attempts to identify competent experts among a pool of candidates within that domain. Recent accounts of expertise differ with respect to the method to identify subject-matter competence but agree with respect to the domain-specificity of the problem.[421] This restriction is needed for the obvious reason that having special knowledge or abilities in one area does not entail special knowledge or abilities in all areas.

Domain specificity shows that the democratic problem of expert-accountability must go beyond identifying competent experts for two reasons. First, in the realm of the social sciences and related humanities, disciplines are defined by methodology as much as the domain they inhabit. Economics, in the neoclassical form typically applied to public policies, is the study of rational choice under conditions of scarcity; it does not include every manner of studying the economy.[422] This explains why political scientists study the economy in comparative political economy, sociologists in economic sociology, historians in economic history, and so forth. These subdisciplines that study the economy scatter across varied departments, differentiated by methodology, variables of interest, and disciplinary values.

Second, the choice of domain is often ideologically significant.[423] Because disciplines vary according to variables of interest and foundational assumptions, they generate different kinds of reasons, and predictably, these reasons will appeal to different stakeholders. Faced with the ill-structured problems, where multiple solutions score differently on alternative criteria and there is no dominant solution, it matters which kind of evidence is presented to the policy maker.[424] Selecting the domain partially determines the content of the answer. Thus, an economist can be competent and answer questions to the standards of the economics discipline, and that contribution of expertise still may not be fully justified.

To answer these concerns, the institution must justify why it sought an economist's evaluation of an immigration policy. Surely, the institution asked an economist because it immediately recognized that evidence of labor-market impacts would provide a reason for or against the policy. If the immigration policy would severely oversaturate the labor market, this would be a reason to disfavor that policy.[425] That said, we could conceivably ask experts in sociology, political science, psychology, history, or ethics to evaluate the policy change as well. These experts would be drawn from expert communities that could certify competence *in their respective disciplines*, answering the problem of expert competent. Each expert would evaluate the policy under distinct techniques and values consistent with the dominant approach in that discipline to generate a reason. To differentiate these experts, institutions need a standard to choose among the various disciplines that could contribute certifiable experts and answer which should be considered relevant to the problem at hand.

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[420] Goldman, "Experts," pp. 91–92 (emphasis added); see also Alvin I. Goldman, "Expertise," *Topoi* 37 (2018), 3–10, p. 5.

[421] Richard Foley, *Intellectual Trust in Oneself and Others* (Cambridge: Cambridge University Press, 2001), p. 119; Elizabeth Fricker, "Testimony and Epistemic Autonomy," in *The Epistemology of Testimony*, ed. Jennifer Lackey and Ernest Sosa (Oxford: Oxford University Press, 2006), 225–50, p. 235; Jamie Carlin Watson, "What Experts Could Not Be," *Social Epistemology* 33 (2019), 74–87, p. 82.

[422] Ha-Joon Chang, *Economics: The User's Guide* (New York: Bloomsbury Press, 2014), pp. 15–22.

[423] Majone, *Evidence, Argument, and Persuasion*, pp. 116–17.

[424] Turner, *Liberal Democracy 3.0*, p. 62.

[425] See §3.3 (on the relationship between evidence and reasons).

### Why Rely on Disciplinary Communities?

Before identifying a selection method, we should pause to reflect on the nature of the problem at hand. In section 5.1, I identified guardianship concerns that experts pose in a democracy—expert delegation inevitably grants discretionary judgment to unelected experts and challenges the ability of policy makers to oversee that judgment. This poses serious accountability challenges that demand a justification describing how institutions can hold experts accountable to the people. In section 5.2, I offered the beginnings of that justification—expertise generates three goods for democracy: informing public deliberation, enabling collective action, and countervailing epistemic authority.[426] In section 5.3, I identified mechanisms whereby democracies can identify competent experts.

Critically, these steps require reliance on expert communities to play a constitutive role in the identification and execution of expertise. When experts administer policy or challenge authorities on facts, a *disciplinary community* oversees the actions of the expert. This is true whether we follow Goldman's veristic account, which relies on disciplinary communities as a signal of reliability,[427] or a non-veristic account, which relies on disciplinary standards more directly.[428] Experts are trustworthy partially because disciplinary communities ensure that tasks accord to community standards. So long as disciplinary communities reliably oversee scholars, we have reason to believe they will follow disciplinary standards.[429]

Michael Schudson provides an excellent example of disciplinary oversight in practice. Economist Douglas Holtz-Eakin was appointed to the nonpartisan Congressional Budget Office (CBO) from 2003 to 2005 after previously serving a political role in the Bush White House. Soon after taking office, Holtz-Eakin and the CBO projected the Bush administration's policies in politically unfavorable ways. In response to complaints by conservative commentators, Holtz-Eakin replied, "The only shield one has in a job like this is your professional credibility. If you try to play games with that, you end up in a morass and won't know what to do. It's not workable."[430]

Judgments of trust and reliability are familiar and necessary within academic communities, where even specialized experts rely on trust for critical building blocks of their knowledge.[431] No expert could verify all judgments that underlie her knowledge. "If the metaphor of foundation is still useful, the trustworthiness of members of epistemic communities is the ultimate foundation for much of our knowledge."[432] When scientific communities fill this role well, they achieve what Philip Kitcher calls "well-ordered certification" of scientific results.[433] This certification develops according to value judgments of each discipline's members; as a result, it is inconsistent across various disciplines. "For a submission to be certified in the fullest sense—to be *in* the books—a community of inquirers must count it as true enough and important enough. Value-judgments pervade this process. . . . Within each scientific subfield, researchers share a common set of standards of this sort, and those canons deemed most widely applicable are often explicitly taught—in courses on 'methodology.'"[434] Each function is reliant on and specific to each scientific community.

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[426] Moore, *Critical Elitism*, pp. 42–49.
[427] See Goldman, "Experts," p. 108.
[428] See Watson, "What Experts Could Not Be," p. 78.
[429] Schudson, "The Trouble with Experts," p. 497.
[430] Schudson, "The Trouble with Experts," p. 500.
[431] John Hardwig, "Epistemic Dependence," *Journal of Philosophy* 82 (1985), 335–49; Hardwig, "The Role of Trust in Knowledge."
[432] Hardwig, "The Role of Trust in Knowledge," p. 694.
[433] Kitcher, *Science in a Democratic Society*, p. 151.

Even in theory, when we choose an expert, we do not simply choose a particular competent individual. We also choose the expert community whose values, methods, and judgment will evaluate and oversee that expert.[435] When we choose an economist, we implicitly select a whole history of judgments that have shaped the field of economics and the standards by which it judges its members. As Charles Anderson argues, "The significant issue is how we should proceed when we are aware that public issues can be perceived and appraised through multiple frameworks of evaluation. Given the diversity of the policy sciences in our times, this has become a characteristic dilemma of policy choice and policy rationality."[436] To complete an account of expert accountability, democratic theory needs to justify the choice of expert communities in a way that is accountable to the people.

## II. SELECTING EXPERTS DEMOCRATICALLY

### 5.4 Policy Analysis as an Institutional Solution

Having identified the problem of expert discipline as an unanswered question, I will now shift focus to give an account of a justified answer. The account will take several steps, such that it is worth sketching the framework here. We can distinguish two choices that each must be held accountable. First, there is the work of the expert herself, which must be held accountable by holding it to the standards of the discipline. That is the problem of expert competence. Second, there is the choice among disciplines, which must be accountable to the people. That is the problem of expert discipline, and it is the goal of part II to give an approach to hold that choice accountable. I will argue that an accountable answer to the problem of expert discipline will justify each of the three-part predicate of accountability, answering (1) who should select among potentially relevant disciplines (accountability of whom); (2) what does it mean to hold analysts accountable to the people (accountability to whom); and (3) what standards should be applied to make the decision (accountability for what).[437] Answers to these questions jointly explain how an answer to the problem of expert discipline can be accountable to the people.

In this section, I will answer the first question by proposing to assign ethical duties to a policy analysis profession to responsibly select among disciplines. In an important sense, policy analysts *already* select among expert communities, but they do so without an account justifying that role or explaining why they are not de facto guardians—that justification is the goal here. I will then describe two features that give reason to believe that policy analysts *can* answer this question in a justified manner: (1) they have interdisciplinary expertise, and (2) they have a profession capable of enforcing ethical duties. In section 5.5, I sketch the parameters of what it means to hold analysts accountable to the people, adopting a deliberative conception of democracy, where institutions are justified by making reasoned deliberation among equal citizens possible. I will then identify three roles that policy analysis must play within a justifiable institutional design. Section 5.6 answers the final question—the standards that policy analysts can use to answer the problem of expert discipline. Three types of standards are considered before settling on what I call "preparatory standards," where analysts prepare citizens and policy makers to weigh relevant reasons themselves.

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[434] Kitcher, *Science in a Democratic Society*, p. 148.

[435] See Anthony Giddens, *The Consequences of Modernity* (Palo Alto: Stanford University Press, 1990), pp. 27–28.

[436] Charles W. Anderson, "The Place of Principles in Policy Analysis," *American Political Science Review* 73 (1979), 711–23, p. 714.

[437] See generally Amy Gutmann and Dennis Thompson, "Reflections on Deliberative Democracy: When Theory Meets Practice," in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren (Oxford: Oxford University Press, 2018), 900–12, pp. 901–04 (on the need to develop standards for organizing institutions and integrating deliberative and non-deliberative decision making).

## Why Policy Analysis?

At a theoretical level, democracies have myriad options available to answer the problem of expert discipline. A new constitution could design various institutions to reliably select among expert communities while retaining democratic legitimacy and avoiding concerns about guardianship.

Democracies make choices under institutions with dramatically different designs, from elected legislatures to semi-random juries to appointed judges. Following Robert Dahl, much of the literature concerned about guardianship has focused on small-scale institutional design, such as a mini-public—a small group of representative citizens who convene to deliberate specific policy areas.[438] A mini-public addresses the problem of expert discipline by convening a group of citizens small enough to effectively learn from experts and deliberate a policy issue. The small size and singular focus allows a mini-public to potentially answer the problem of expert discipline by effectively transforming the deliberative body from laypersons to subject-matter experts. If this group is representative of the population, then the mini-public could provide an accountable solution to the problem of disciplinary expertise, where the judgment of the mini-public represents the judgment of the people.[439] Without denigrating the mini-public, I will focus on selecting among expert disciplines through a different approach—a profession of unelected advisors trained to analyze policies. I do so for two reasons.

First, policy analysis is the dominant way that experts are chosen for everyday policy problems. Mini-publics remain novel, and other alternatives, including dedicated institutions empaneled to choose experts, such as the Intergovernmental Panel on Climate Change (IPCC), are necessarily rare.[440] Dedicated institutions require a concerted agreement to gather evidence on specific important issues. In contrast, policy analysts fit into hierarchies of existing institutions. Thousands of graduates of programs in public policy, public affairs, and public administration annually fill all levels of government to evaluate everyday policy problems.[441] A quickly growing field, there are now more schools in the combined public affairs category than there are law schools in the United States.[442] It is legitimate for theorists to postulate a world where mini-publics are prominent, but policy analysis is worthy of study as the method by which expert disciplines are currently selected, or as a harmonious approach to work in tandem with mini-publics.

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[438] Dahl, *Democracy and Its Critics*, p. 340; see Archon Fung, "Recipes for Public Spheres: Eight Institutional Design Choices and Their Consequences," *Journal of Political Philosophy* 11 (2003), 338–67; Robert E. Goodin and John S. Dryzek, "Making Use of Mini-Publics," in *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn*, ed. Robert E. Goodin (Oxford: Oxford University Press, 2008), pp. 11–37; James S. Fishkin, *When People Speak: Deliberative Democracy and Public Consultation* (Oxford: Oxford University Press, 2009).

[439] Dahl, *Democracy and Its Critics*, p. 342.

[440] The IPCC is an international consortium that assesses scientific, technical, and socio-economic evidence related to climate change. See Moore, *Critical Elitism*, pp. 136–40.

Policy analysts select among experts both explicitly and implicitly. Explicitly, policy analysts choose which scholarly work they count as evidence to answer a specific policy question. Selecting a type of evidence selects the discipline whose methodology generates that kind of evidence. Implicitly, policy analysts choose among criteria to evaluate each policy option. Choosing to evaluate a policy under the criterion of efficiency entails different expertise and different expert communities than evaluating a policy on the extent it remedies historical injustice. The combined choices of this unelected analytical class have undeniable importance.

Second, policy analysis has many characteristics that should make us worried that de facto guardianship has already crept into democratic institutions. Speaking of Plato's ideal city-state ruled by a guardian class, Kitcher observes,

> If the trouble with *kallipolis* is that vast numbers of decisions are made for us (and we worry about whether the decision makers are wise and disinterested), the same is true of contemporary democracies. In our societies, the decisions are often made by shortsighted and venal people who have to defer to uncoordinated systems of expert advisors.[443]

The account offered here will ask whether unelected advisors can contribute to choosing among experts without imposing de facto guardianship. This is a question of institutional design, which asks whether an unelected class of advisors can possibly be held accountable, given the policy complexities identified in section 5.1. In other words, if the policy analysis community were properly trained and bound by appropriate standards, would it select among expert communities in a justifiable manner that preserves the value of democratic choices?

### Enlisting a Profession

At first glance, policy analysis seems a strange institution to accountably select among experts. Unlike a mini-public, policy analysis is a decentralized group of individual practitioners who fill varied roles within a democratic system. Moreover, this decentralized group of analysts is an unelected class selected for their specialized knowledge, inspiring all the fears of guardianship discussed in section 5.1. However, two important features should give us hope that policy analysis may be part of the solution.

First, trained policy-analysis professionals can inform themselves of critical scholarship to determine which approaches are useful to evaluate policies. This does not mean that individual analysts will be experts in all the various disciplines that sometimes inform policies. Rather, certification is a layered process, in which expert communities, peer review, and scholarly reputation certify reliable work within each discipline at the first layer, and policy analysts interpret findings of certified experts and procedures at the second layer. Thomas Christiano calls a similar process "overlapping understanding" and describes well how a policy analyst can translate esoteric theorizing into practical evaluation.[444] This means that policy analysis can evaluate expertise in ways that are infeasible for a layperson in Goldman's social epistemological sense. Policy analysis could be expected to knowledgeably select among disciplines.

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[441] See Vibert, *Rise of the Unelected*, pp. 18–33.

[442] As of 2018, *U.S. News & World Report* lists 282 schools in public affairs as compared to 203 in law. https://www.usnews.com/best-graduate-schools/search.

[443] Kitcher, *Science in a Democratic Society*, p. 24.

Second, the policy analysis profession can be designed to hold itself to ethical standards consistent with the justification for policy analysis as an institution. This helps to answer how policy analysts can be held accountable where policy makers are incapable of fully supervising them. Ethical rules can be designed to require analysts to oversee each other, in addition to any oversight policy makers can provide. Ethical oversight highlights a key difference between a professional community of democratically constrained policy analysts and a disciplinary community. Policy analysis need not suffer from disciplinary bias because ethical rules can enforce a standard of neutrality carefully designed to achieve that purpose. These ethical standards do not currently exist,[445] but they could be designed and enforced.

In contrast, disciplinary communities are affected by systematic subject-specific bias, which occurs through selection of like-minded individuals, exposure to similar treatment within the discipline, and influence of shared incentives to exaggerate the probativeness of the discipline.[446] Since the community systematically shares this bias, we cannot rely on it to oversee the selection of experts among communities that share different values. In short, do not ask an economist if we should ask a sociologist, and vice versa. In contrast, if properly defined, professional ethical standards need not share any particular disciplinary bias because policy analysis is external to disciplinary communities. This does not mean that policy analysis is or will be entirely impervious to its own bias.[447] However, by defining a profession with specific functions, democracies can write a code of ethics to ensure it achieves those functions. Professional ethics enables an alternative institutional design. Alternatively, ethical institutional design is impossible if the profession has not been separated from related academic disciplines.

Ethical institutional design is critical to the account. In one recent account of expertise which briefly acknowledged the need to select among expert communities, Jamie Carlin Watson described selecting experts by drawing an analogy to a court selecting among experts at trial, where the court called "metaexperts" to testify, where metaexperts have "expertise in a domain of subject matters." Watson considers the case of *McLean v. Arkansas Board of Education*, which pitted creation scientists against evolutionary scientists in an effort to overturn Arkansas's "Balanced Treatment for Creation-Science and Evolutionary-Science Act."[448] Watson notes that the court called on people who were experts in both subjects, including a philosopher of science and a geneticist who formerly was a Catholic priest. He argues, "Someone with a facility in both subject matters can help non-experts adjudicate the conflict."[449]

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[444] Christiano, "Rational Deliberation," pp. 38–40; see also Vibert, *Rise of the Unelected*, pp. 42–45.

[445] The central agency of American policy analysis, the Association for Public Policy Analysis & Management, has no ethical code. The central agency of American public administration, the American Society for Public Administration, has a minimal ethical code that would need to be revisited in light of this purpose. See "American Society for Public Administration Code of Ethics," *Public Administration Review* 79 (2019); Imane Hijal-Moghrabi and Meghna Sabharwal, "Ethics in American Public Administration: A Response to a Changing Reality," *Public Integrity* 20 (2018), 459–77.

[446] Goldman, "Experts," p. 105; Turner, *Liberal Democracy 3.0*, p. 55; Brown, "Expertise and Deliberative Democracy," p. 60.

[447] See Fischer, *Citizens, Experts, and the Environment*, pp. 31–32; Vibert, *Rise of the Unelected*, p. 46.

[448] McLean v. Arkansas Board of Education, 529 F. Supp. 1255 (W.D. Ark. 1982).

Watson's account is correct, as far as it goes; experts in multiple domains can help adjudicate, but the question is whether they can be trusted to do so. The ability to adjudicate between domains based on superior understanding of the good was precisely the duty that Plato assigned to his philosopher kings.[450] Thus, Watson only describes metaexperts who can select among disciplines, not how they can be held accountable for doing so. Ethical rules of professional conduct can provide this account, if properly defined.

## What is a Profession?

The distinction between this account and Watson's account hinges on policy analysis enforcing professional standards. In identifying policy analysis as a profession, I rely on two features that differentiate a profession from other occupations. Professions require (1) mastery of an extensive body of scholarly knowledge and (2) a distinctive ideal of service that imposes ethical demands to which ordinary citizens are not subject.[451] These characteristics are fundamentally interrelated, explaining why professions require a code of ethics to be justifiable. The first characteristic—extensive scholarly knowledge—creates an information imbalance between the professional and her client. Describing the medical profession, Kenneth Arrow points to this information asymmetry as inhibiting critical communication,[452]

> The value of the information is frequently not known in any meaningful sense to the buyer; if, indeed, he knew enough to measure the value of the information, he would know the information itself. But information, in the form of skilled care, is precisely what is being bought from most physicians, and, indeed, from most professionals.

The information asymmetry between professional and client gives clients no choice but to rely on the advice of the professional, and thus, ethical standards are necessary to ensure that the advice is reliable.

Compare the oversight that clients can give plumbing—an occupation—as compared to accountancy—a profession. When a client hires either a plumber or an accountant, he will often be unable to directly oversee the work. However, *after the work is completed*, the client will typically know if a plumbing leak is fixed. So long as the plumber gives a reasonable warranty, the client can be satisfied based on his own inspection that the plumber has done her job properly. Market forces will then extend this individual oversight through reputational concerns of the plumber.

Now, consider a client who tries to personally evaluate the work of an accountant. Like plumbing, he will be unable to effectively oversee the accountant's immediate actions. However, he will also struggle to evaluate *afterwards* whether the accountant has invested properly. If his investment loses money, then he must differentiate whether the investment was unlucky or unwisely invested. If the investment gains, then he may still wonder if a wiser accountant would have gained more. Even after seeing the results, a profession requires expertise to evaluate results, and market forces cannot aggregate reputational concerns without this base of individual knowledge. Thus, to ensure that clients can trust accountants, the profession assigns ethical duties of fiduciary responsibility to accountants and enforces them through professional oversight.

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[449] Jamie Carlin Watson, "The Shoulders of Giants: A Case for Non-Veritism about Expert Authority," *Topoi* 37 (2018), 39–53, p. 51.

[450] Alfred Moore, *Critical Elitism*, p. 19.

[451] Stephen F. Barker, "What is a Profession?," *Professional Ethics* 1 (1992), 73–99, p. 87; see also Frank Fischer, *Democracy & Expertise: Reorienting Policy Inquiry* (Oxford: Oxford University Press, 2009), p. 23.

[452] Kenneth J. Arrow, "Uncertainty and the Welfare Economics of Medical Care," *American Economic Review* 53 (1963), 941–73, p. 946.

Policy analysis exhibits all of the features of a profession.[453] Policy evaluation occurs in a complex system where the typical policy maker lacks both the expertise and the time to fully oversee analysis, leading to the complexities detailed in section 5.1. Oversight often remains unclear even after the policy is implemented because it requires expertise to evaluate whether policies are effective in practice. Thus, clients rely on the judgment of the analyst, and ethical duties should restrain those judgments. Like law, medicine, and accountancy, it is necessary and appropriate to assign policy analysis ethical duties enforced by a professional community to ensure that analysis is trustworthy.[454]

Thus, in this section, I have argued that policy analysis is an appropriate institution to select among expert disciplines based on two features: policy analysts have some expertise across disciplines, and it is a profession that can be assigned ethical duties. These two features give us reason to look further into policy analysis as a potential solution to the problem of expert discipline.

## 5.5 Policy Analysis in Democracy

### Deliberative-Democratic Institutional Design

The next question asks what it means for policy analysis to be held accountable to the people. To answer this question, I will adopt a deliberative conception of democratic legitimacy. In a deliberative account of democracy, the core of legitimate political decision-making is the public deliberation of free and equal citizens. Deliberation involves publicly giving and demanding reasons to justify public decisions, and successful deliberation depends on the ability to find sound reasons that can convince diverse citizens who approach issues from different perspectives.[455] Deliberation is aimed at producing reasonable, well-informed opinion, where participants are willing to revise preferences in light of discussion, information, and claims of fellow deliberators.[456]

Deliberative democracy is based on two core principles: (1) it insists on *reasoning* among equals as the guiding political procedure, and (2) the giving of reasons must be *public*, as opposed to the private act of voting.[457] As a democratic procedure, deliberation is about making binding collective decisions, covering all stages of the decision-making process from problem definition through to implementation.[458]

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[453] See Fischer, *Democracy & Expertise*, ch. 1 (reviewing the history of policy-related professions).

[454] Policy analysts generally acknowledge that ethical duties are fundamental to the job, taking on a professional responsibility to promote the common good on widely shared social goals. Lee S. Friedman, "Public Policy Making and Public Policy Analysis," in his *Does Policy Analysis Matter?: Exploring its Effectiveness in Theory and Practice* (Oakland: University of California Press, 2017), pp. 6–7.

[455] James Bohman, "Deliberative Democracy and the Epistemic Benefits of Diversity," *Episteme* 3 (2006), 175–90, p. 177.

[456] Simone Chambers, "Deliberative Democratic Theory," *Annual Review of Political Science* 6 (2003), 307–26, p. 309.

[457] Parkinson, *Deliberating in the Real World*, p. 3.

Institutions play a formative role in the deliberation process, such that institutional design in deliberative democratic theory is evaluated on its ability to make successful deliberation possible. As argued by Joshua Cohen, institutions provide the framework to enable reasoned deliberation:[459]

> The key point about the institutional reflection is that it should *make deliberation possible*. Institutions in a deliberative democracy do not serve simply to implement the results of deliberation, as though free deliberation could proceed in the absence of appropriate institutions. . . . The institutions themselves must provide the framework for the formation of the will . . . .

Institutional accounts differ as to the manner that they enable deliberation, but the underlying goal is analogous.[460] Democratic justifications of public education emphasize the necessity of an educated populace to intelligently deliberate complex social issues.[461] Democratic justifications of free speech emphasize the importance of access to information in enabling a knowledgeable electorate capable of debating public policies.[462] Mini-publics, introduced earlier as an alternative institutional design, enable informed deliberation by bringing experts together with a small enough group of citizens that meaningful deliberation is possible.[463]

These institutions play different roles, but they are justified using a common theme of enabling informed deliberation among free and equal citizens. Cumulatively, the goal is to create an institutional structure that enables deliberation on important issues, and that structure is evaluated on its ability to enable informed deliberation among equals. Thus far, I have argued that a gap exists in the institutional justification of expertise represented by the problem of expert discipline. Setting the possibility of mini-publics aside, no account has been given to justify how a democracy can choose among competent experts from different disciplines without imposing guardianship. I will argue here that policy analysis, as a profession, can and should be democratically justified through its role enabling informed deliberation and that the demand to enable reasoned deliberation among equals should shape how democratic theory understands policy analysis.

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[458] Joshua Cohen, "Money, Politics, Political Equality," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [2001]), 268–302, pp. 270–71; Parkinson*, Deliberating in the Real World*, p. 3.

[459] Joshua Cohen, "Deliberation and Democratic Legitimacy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1989]), 16–37, p. 29.

[460] John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997), 765–807, pp. 772–73.

[461] See John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (New York: Macmillan, 1916); Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004), pp. 35–36; Arnon Keren, "The Public Understanding of What? Laypersons' Epistemic Needs, the Division of Cognitive Labor, and the Demarcation of Science," *Philosophy of Science* 85 (2018), 781–92.

[462] See Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York: Harper, 1948); Robert C. Post, *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State* (New Haven: Yale University Press, 2012).

[463] For overviews of the success of mini-publics and similar institutional designs, see Parkinson, *Deliberating in the Real World*, pp. 159–66.

## Three Functions of Policy Analysis

The goal here is to identify the purpose policy analysis should have in a deliberative democracy, which is to say, where policy analysis fits in an institutional structure collectively designed to enable democratic deliberation.[464] This is a similar question to section 5.2, which asked what goods are provided by experts, playing the same role of motivating who should be held accountable. Experts and analysts have similar and related democratic roles—both regularly use analytical tools to measure or evaluate the impacts of public policies.

However, there are important differences between an expert or scientist, such as an academic economist, and a policy analyst evaluating the same change policy.[465] An academic justifiably approaches a policy question from a scientific perspective, focusing on open questions in the literature to advance understanding on the scientific frontier.[466] Like any scientist, a social scientist looks to gain *generalizable* evidence about the subject in question. For instance, suppose there is a change in the minimum wage in one state, but not in its neighbor. An economist may focus on changes in employment at fast-food restaurants in one interstate metropolitan area because those restaurants have characteristics that allow her to identify and isolate the employment effect using a reliable methodology.[467] The economist focuses on one industry because there are *scientific* reasons to do so—the policy change creates quasi-experimental conditions to reliably answer a question in the literature. In the long run, this academic work cumulatively informs policy, but in the short run, policy evaluation is incidental.

An analyst, in contrast, works as a professional charged with analyzing all impacts of a particular policy change. For an analyst, the goal is to gain *specific* evidence about the policy in question, and long-run contributions to scientific understanding are of secondary interest.[468] Policy analysis is not a research institution; it is a democratic institution. Analysts are one step in a democratic division of labor that ideally leads to free and reasoned agreement among equals. Ethical obligations follow from this systemic role. Unlike an academic economist, a city analyst considering a minimum-wage increase has a direct responsibility to city residents to help ensure the policy is deliberated and justified on the basis of relevant evidence. An analyst has a direct democratic role, while a scientist does not.

Policy analysis has three functions to fulfill this democratic role:[469]

1. *Informing public deliberation of policy*

The primary function of policy analysis is to use scholarly and analytical tools to inform policy decisions. Policy analysts fill an informing role in an epistemic division of labor designed to create robust public deliberation. Deliberation is reduced to dogma and sloganeering without the ability to predict and evaluate the impacts of policies. Thus, policy analysis fits into existing institutions to ensure informed deliberation is possible.[470] Just as public education and free speech provide the general basis of knowledge to engage in meaningful deliberation, policy analysis provides the specific basis of knowledge to deliberate the particular policy change in question.

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[464] See Jane Mansbridge, James Bohman, Simone Chambers, Thomas Christiano, Archon Fung, John Parkinson, Dennis F. Thompson, and Mark E. Warren, "A Systemic Approach to Deliberative Democracy," in *Deliberative Systems: Deliberative Democracy at the Large Scale,* ed. John Parkinson and Jane Mansbridge (Cambridge: Cambridge University Press, 2012), 1–26, pp. 4–5. By adopting an institutional approach, my account diverges from other broadly deliberative approaches that reject institutional accounts. See Fischer, *Democracy & Expertise*, pp. 81–82.

[465] I explore this distinction in more detail in §3.4.

[466] See Turner, *Liberal Democracy 3.0*, pp. 54–55 (distinguishing science from politics on similar lines).

[467] See David Card and Alan Krueger, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania," *American Economic Review* 84 (1994), 772–93.

[468] See Duncan MacRae, Jr., and Dale Whittington, *Expert Advice for Policy Choice* (Washington: Georgetown University Press, 1997), pp. 3–4 (offering a similar distinction between expert communities and policy analysis).

[469] See also §4.3.

In some cases, this informational role may seem superfluous because other parties, especially the media, already analyze major policies, such as a national tax change. However, policy analysis does not only add to the chorus of voices analyzing a major tax change; it also fills nooks and crannies where agencies, states, counties, and cities change policy on the margins every day. These areas are rarely discussed by the media, granting what Turner calls "administrative secrecy."[471] Policy analysis has grown so quickly because there are good reasons both in theory and in practice to demand that these decisions are based on a sound understanding of the evidence and justified by mutually acceptable reasons.

This function echoes the first good of expertise, but it is complicated by the official role that a policy analyst holds when she is a government employee.[472] Whereas experts produce information and evidence that eventually accumulates into policy knowledge, analysts also decide which evidence is relevant to an immediate public deliberation. It is in this context that policy analysts may help to solve the problem of expert discipline by following the standards defined in section 5.6.

2. *Ensuring policy justification*

Policy analysts also hold the government's feet to the fire, ensuring that policies are grounded in scholarship and effective in implementation. While analysts rarely have the political authority to enforce adequate justification of policies, public analysis grounded in evidence casts a shadow of oversight to hold the government accountable. This is closely related to the good of "countervailing epistemic authority" identified for expertise. Analysts check the claims of policy makers to ensure that they are grounded in accepted evidence and reliable scholarship. This "speaking truth to power"[473] is complemented with a duty to "give voice to the voiceless" by ensuring that all relevant perspectives enter the public debate.[474] Collectively, well-designed policy analysis holds policy makers accountable by making evidence available to the public, making accountability between analysts and policy makers a two-way process.

3. *Symbolic statement of democratic legitimacy*

The third function of policy analysis is expressive. A democracy expresses the value that it places on reasoned agreement among equals by furnishing the means for deliberation to occur. Democracies express the value of equal deliberation by providing public analysis to prepare that deliberation. As mentioned, outside institutions, such as the media or think tanks, also serve a role informing the public. When a debate is sufficiently in the public eye, it is possible that these institutions will adequately prepare deliberation without public involvement. Nonetheless, democracies express the value of reasoned agreement among equals by providing sufficient public analysis, much in the same way that the legal system expresses respect for due process and equality before the law by offering the services of a public defender, even where many defendants hire private defense attorneys. The people recognize the mutual respect that policy justification embodies through institutions that ensure it occurs.

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[470] It would dramatically overstate the role to say policy analysis *ensures* deliberation. Well-designed policy analysis may feature in institutional structures that succeed or fail in ensuring democratic deliberation for reasons outside the control of the policy analysis profession.

[471] Stephen P. Turner, *The Politics of Expertise* (New York: Routledge, 2014), p. 30.

[472] Policy analysts may hold professional roles inside or outside the government. My focus here is on policy analysts who work in an unelected role without a political appointment within a government agency.

[473] Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little, Brown, 1979).

[474] David Leo Weimer, "Enriching Policy Discourse: Policy Analysis in Representative Democracies," *The Good Society* 11 (2002), 61–65, p. 62.

## 5.6 Standards to Select Among Disciplinary Communities

In section 5.4, I defended policy analysis as an institution capable of answering the problem of expert discipline because it can be trained in multiple disciplines and bound by ethical standards. In section 5.5, I adopted a deliberative approach to democracy and defined three functions that policy analysis should play within a deliberative system. These define accountability of whom and to whom. Section 5.6—the heart of the article's positive account—sets out to define the standards for which policy analysis should be accountable.

### Three Types of Standards

By defining standards and incorporating them into professional rules of conduct, analysts can hold each other to those standards. As described in section 5.4, the characteristic problem of professional accountability is that it takes expertise to evaluate whether the professional has done her duty appropriately. This immediately suggests that a key part of professional accountability must ask fellow professionals to oversee each other's work. However, as I argued in section 5.1 discussing Christiano's account of expert-accountability, there must be standards of analysis for fellow analysts to be able to oversee each other. Otherwise, fellow analysts will have no traction in their criticism.[475]

Potential standards can be split into three types: universal methodological standards, explicit decision-making criteria, and preparatory standards. The most obvious approach would define *universal methodological standards* to distinguish "good scholarship" from "bad scholarship," where good scholarship informs policy and bad scholarship is excluded as unreliable. Unfortunately, the search for universal methodology among scholarly disciplines has proven elusive. This failure is most stark comparing sciences against the humanities, where methods are so distinct as to be effectively incommensurable, but it is also true within the sciences. "The history of three-quarters of a century's work has shown conclusively that different areas of Science are methodologically diverse, and that most of the interesting challenges and disputes within those areas resist the styles of formalization philosophers have wanted to impose."[476] Standards for "good science" are too diverse to evaluate different sciences on the same universal standards.[477] For instance, many methodological choices that are justified in medicine would be ridiculous in physics, and vice versa.

Similarly, one discipline's standards are inapplicable as external standards on other disciplines. Standards of "rigor" or "best practices" are inevitably determined by problems taken to be important by a particular discipline and the methods that best fit those problems. Suppose a citizen or policy maker believes that procedural fairness is a relevant consideration for a policy decision. We could not justify *to him* that an analysis should exclude a philosopher or a lawyer because those experts cannot describe procedural fairness to meet the rigor standard that social sciences set for themselves.[478] To do so would be tyrannical in the sense Blaise Pascal intended when he warned against applying virtue in one realm to the affairs of another realm.[479] Thus, if we accept the deliberative democratic demand to justify policy on mutually acceptable grounds, then we must look beyond universal methodological standards and offer standards to select among expert communities in what has been called a "political philosophy of science."[480]

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[475] Majone, *Evidence, Argument, and Persuasion*, p. 182 (on the importance and difficulty of defining standards to hold analysts accountable).

[476] Kitcher, *Science in a Democratic Society*, p. 154 (internal citations omitted).

[477] Recent empirical research suggests different attitudes toward values and philosophical claims across types of scientific claims. Brian Robinson, Chad Gonnerman, and Michael O'Rourke, "Experimental Philosophy of Science and Philosophical Differences across the Sciences," *Philosophy of Science* (forthcoming 2019).

We are left with two possible types of standards: explicit decision-making criteria and preparatory standards. *Explicit decision-making criteria* define standards through a legitimate democratic procedure and charge policy analysts to apply those standards faithfully. Under this conception, there need not be a high-minded claim that standards are "universal standards of good scholarship," only that there was a legitimate democratic procedure to select the criteria. I will argue that explicit decision-making criteria are binding where they exist, but they are rare and necessarily so. The primary account then will focus on preparatory standards as the typical account and grounding for ethical standards of analysis. *Preparatory standards* define necessary information to prepare citizens or policy makers to choose which disciplines are relevant for themselves. Under this conception, policy analysts would be responsible for adequately preparing citizens and policy makers for deliberation, and the standards would determine what adequate preparation entails.

We can distinguish these two types of standards by drawing an analogy to two standards applied by a trial judge. Judges follow explicit decision-making criteria when they apply a law that has been defined by the legislature or by precedent in the common law. For example, suppose a defendant has engaged in a course of conduct that injured the plaintiff. The plaintiff contends that strict liability should apply, while the defendant contends that liability should be assigned only if she was at fault. The judge must answer a *question of law* to determine the relevant liability principle.[481] To answer a question of law, judges interpret and apply explicit standards set out by the legislature or common law.

Judges follow preparatory standards when they apply rules of evidence in a jury trial. In a jury trial, it is important for judges to maintain questions of fact for the jury. In evaluating whether to admit evidence that would weigh on a question of fact, the judge first determines whether evidence is minimally acceptable and second weighs the probativeness of the evidence against the possibility that it will prejudice or mislead the jury. For example, if the evidence was collected in an illegal search and seizure, then it would fail minimal acceptability, and a judge should exclude it from consideration, regardless of whether the judge believes the evidence accurately represents the underlying facts. That minimal-acceptability ruling reflects higher value judgments meant to ensure the fairness of the system as a whole, rather than a weighing of the immediate facts and values of that particular case. Among minimally acceptable evidence, the judge may only exclude evidence where it its probative value is *substantially outweighed* by the danger it will prejudice, confuse, or mislead the jury.[482] Thus, for questions of fact, the judge applies a substantial preference in favor of passing minimally acceptable evidence along to the jurors.

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[478] "An inequality in the basic structure must always be justified to those in the disadvantaged position." Rawls, *Theory of Justice, Revised*, p. 203.

[479] "Tyranny is the desire to have universal power beyond its scope" and "the wish to have in one way what can only be had in another." Blaise Pascal, *Pascal's Pensées* (New York: E. P. Dutton, 1958 [1669]), p. 94 (§332).

[480] John Dupré, "Toward a Political Philosophy of Science," in *The Philosophy of Philip Kitcher*, ed. Mark Couch and Jessica Pfeifer (Oxford: Oxford University Press, 2016), 182–200, pp. 182–83.

[481] Stephen A. Weiner, "The Civil Jury Trial and the Law-Fact Distinction," *California Law Review* 54 (1966), 1867–938, p. 1869.

The key distinction is that the judge directly decides questions of law, whereas she only evaluates the suitability of evidence for questions of fact. She limits her judgment not because the jury is necessarily more accurate than the judge in weighing questions of fact, but because it is important that the jury weighs questions of fact in a court of law. Enshrined in the Sixth Amendment to the United States Constitution is the right to a trial by jury, a benefit specifically mentioned as denied by the King in the Declaration of Independence. The judge preserves the value of trial by jury by barring herself from deciding questions of fact. I will argue that this example serves as a strong analogy for the standards a policy analyst should use.

### Explicit Decision-Making Criteria

Before designing preparatory standards, it is important to acknowledge that explicit decision-making criteria are binding where they exist. Explicit decision-making criteria give policy analysts specific rules to follow in selecting among areas of expertise, akin to binding legislation when a judge answers questions of law. Explicit criteria give policy analysts an outside source of authority, where the analyst justifies her choice relative to the rules. A judge applies the law *because it is the law*, and explicit decision-making criteria would give policy analysts an analogous basis of authority.

For criteria to have legitimate external authority—for analysts to rightly follow the criteria *because they are the criteria*—the sources of that authority must be democratically legitimate. While it would exceed the scope of this article to give a full account of legitimate rule-making authority in a democracy, it is enough to emphasize two things here. First, to be an external source of authority, *at minimum*, criteria must be explicitly defined by a legitimate source of law—the constitution, legislature, courts, or executive. Mere delegation from a policy maker will not suffice for the reasons identified in section 5.1, since delegation does not ensure accountability.[483] Second, explicit decision-making criteria are necessarily rare. One possible example of explicit decision-making criteria is contained in the mandate of the Congressional Budget Office (CBO), which was defined by the Congressional Budget and Impoundment Control Act of 1974. The CBO was designed as a non-partisan source of information on budgetary and economic issues going through the congressional budget process. The mandate provides criteria to select evidence. For example, CBO analysis focuses almost exclusively on costs, rather than societal benefits, a limitation that is a direct result of its mandate, rather than any methodological justification.[484] Because the mandate was defined by the legislature, the CBO treats it as an external source of authority to determine methodology.

This example also shows why explicit decision-making criteria are rare. The CBO handles specific kinds of issues for a specific purpose of informing the congressional budget process. In contrast, most policy analysts in agencies, states, counties, and cities are generalists, handling varied issues for varied purposes. Defining exactly how to analyze general policy issues and which expert disciplines are relevant to that analysis would be exceedingly cumbersome for offices that handle diverse issues. Such explicit criteria are only feasible where issues are repetitive enough to define a set process, and they are absent for the vast majority of analyses. For most issues of everyday policy analysis, other standards are necessary.

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[482] *Federal Rules of Evidence*, 2018 ed., art. IV, rule 403.

[483] See Giandomenico Majone, "Europe's 'Democratic Deficit': The Question of Standards," *European Law Journal* 4 (1998), 5–28, p. 24.

[484] Philip Joyce, "The Congressional Budget Office at Middle Age," Brookings Institution: Hutchins Center Working Paper #9 (2015).

## Defining Preparatory Standards

The idea of preparatory standards is to use the professional training of the analyst to inform deliberation, using the ability of the analyst to interpret claims in multiple disciplines, while simultaneously maintaining critical political judgments for deliberation among citizens and representatives. The goal is to inform deliberation with scholarly methods and complex analytical tools without foreclosing issues and values that ought to be weighed democratically. Because it matters *who decides* issues in a democracy, preparatory standards must preserve important value judgments for the citizens and their duly elected representatives. Preparatory standards should embody that ideal.

The critical question is how a lay citizenry can hold a profession of unelected analysts accountable for informing deliberation when the citizenry and their representatives often cannot directly oversee—even afterwards—whether the information provided was complete. This is the guardianship concern that previous theorists have failed to answer with respect to the problem of expert discipline. To appreciate the force of the concern, suppose a standard limits policy analysts to only providing information that is factually accurate and supported by reliable methods. This would make the demand to "speak truth to power" the "equivalent of the Hippocratic Oath" for the policy profession, as has been argued by Robert Goodin, Martin Rein, and Michael Moran.[485]

This standard would say too little. It would allow analysts to sort among the universe of factually accurate information to select only information that supports the analyst's preferred policy position. This would impose a de facto guardianship by effectively taking questions away from democratic deliberation and making them dependent on the judgment of the analyst.

To illustrate, consider a policy analyst evaluating a proposed ban on violent video games. Any reasonable analysis of such a ban will collect evidence on the effect of violent video games on aggressive behavior. That research will find the evidence decidedly mixed. In 2015, the American Psychological Association (APA) issued a resolution confirming the link between video games and some aggressive behavior.[486] Two years later, a division within the APA issued its own statement denying the link.[487] Under a standard that holds an analyst only to factual accuracy, she could choose to include only one of these statements in her analysis, without acknowledging the other. Doing so would predictably sway policy makers toward one policy by misrepresenting the state of the evidence.

These actions would fall short of an acceptable standard because they effectively take important judgments away from the citizens or policy makers who should decide them, undermining their political autonomy.[488] As argued by Cass Sunstein, "The notion of autonomy should refer … to decisions reached with full and vivid awareness of available opportunities, with reference to all relevant information."[489] The policy analyst deprives this political autonomy by denying citizens and policy makers relevant information without justification.

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[485] Robert E. Goodin, Martin Rein, and Michael Moran, "The Public and Its Policies," in their *The Oxford Handbook of Public Policy* (Oxford: Oxford University Press, 2008), 3–36, p. 7.

[486] American Psychological Association, "Resolution on Violent Video Games" (2015). http://www.apa.org/about/policy/violent-video-games.aspx.

[487] Chris Ferguson, et al., "News Media, Public Education and Public Policy Committee," *The Amplifier Magazine: A Magazine of the Society for Media Psychology and Technology, Division 46 of the American Psychological Association* (2017).

A reader may object that this argument fails to appreciate other sources of information that inform voters. If a state were debating a ban on violent video games, the media or the political process could make voters aware of the conflicted state of the evidence.[490] It is certainly often true that other sources inform voters, but democratic theory cannot rely on this for three reasons. First, policy analysts work at all levels of government on issues of varied interest to the media and the public, meaning that the information gap will not always be filled in practice. Because the gap goes unfilled, factually accurate policy analysis will sometimes prepare citizens unequally for deliberation, a violation of the equal concern that a democracy must show to its citizens.[491] Institutional design cannot rest on the idea that since information is conducive to good decision making, *any* factually accurate information that institutions give to citizens and policy makers is justified. This would be equivalent to arguing, "since crime prevention is valuable, nothing is wrong if a policy maker spends heavily on crime prevention only in districts that supported her in the election." It violates a principle of equal concern that holds public institutions to considering interests equally when they provide a public service. Policy analysis prepares public deliberation—a service to constituents—therefore, it must prepare citizens equally and cannot rely on other, erratic sources of information.

Second, a standard based only on factual accuracy fails to allow professional community of analysts to regulate itself. If we only judge analysis on accuracy, then one analyst cannot criticize another for failing to include a relevant type of evidence. Third, an accuracy standard fails the symbolic role that analysts achieve when they furnish the means to deliberate policy. While the media *could* make the public aware of conflicts in evidence, this is not enough to play an adequate symbolic role.[492] It is also true that a criminal defendant *could* defend himself at trial. Just as democracies express the importance of due process in a criminal trial by providing a professional lawyer to ensure that all objections are raised, we express the value of justifiable policy by providing a professional analyst to ensure that all relevant evidence is included in deliberation.

A second example can show the further complication that is added when democracies use preparatory standards to choose among expert evidence from different disciplines. Suppose a policy analyst works for the Army Corps of Engineers, which is considering whether to dam a river to provide hydroelectric power and irrigation to local communities. On top of usual construction and environmental costs, the dam would flood ancient burial sites and archaeological ruins of a local indigenous tribe. Speaking of both the Dakota Access Pipeline and the Oahe Dam, LaDonna Brave Bull Allard described these costs,[493]

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[488] See Joshua Cohen, "Procedure and Substance in Deliberative Democracy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1996]), 154–80, pp. 163–64.

[489] Cass R. Sunstein, "Preferences and Politics," *Philosophy & Public Affairs* 20 (1991), 3–34, p. 11.

[490] But see Deborah Stone, *Policy Paradox: The Art of Political Decision Making*, 3rd ed. (New York: W. W. Norton, 2012), pp. 322–24 (overviewing empirical evidence showing that the media is often ineffective in this role).

[491] T. M. Scanlon, *Why Does Inequality Matter?* (Oxford: Oxford University Press, 2018), ch. 2 (on the requirement of equal concern).

[492] See Parkinson, *Deliberating in the Real World*, ch. 5 (on the role of the media in democratic theory and in practice).

[493] LaDonna Brave Bull Allard, "Why the Founder of Standing Rock Sioux Camp Can't Forget the Whitestone Massacre," *YES! Magazine* (Sept. 3, 2016).

> Again, it is the U.S. Army Corps that is allowing these sites to be destroyed.
>
> The U.S. government is wiping out our most important cultural and spiritual areas. And as it erases our footprint from the world, it erases us as a people. These sites must be protected, or our world will end, it is that simple. Our young people have a right to know who they are. They have a right to language, to culture, to tradition. The way they learn these things is through connection to our lands and our history.

Now, imagine that an official analysis of the dam project recommends building the dam based on only an analysis of construction and environmental costs, ignoring the effects on burial sites and archaeological ruins. How can we ask indigenous groups, tribal members, and their allies to see the policy as justified when the reasons they believe are important—preservation of cultural sites—are not considered at all in public analysis?

Each of the three objections are present in this example. First, citizens who hold different values enter the deliberation on unequal footing. A citizen who believes that efficiency gains or environmental effects are important enters the deliberation armed with a public analysis based on rigorous scholarly methods, while a citizen who believes that cultural values are important has no comparable public analysis. Discussion that achieves the deliberative ideal at the heart of a deliberative account of democracy must provide minimal conditions for the availability of relevant information to all parties.[494]

Importantly, this unequal footing does not follow from any citizen's persuasiveness in deliberation. Disparities in persuasiveness are what Niko Kolodny calls "judgment-dependent inequalities." As Kolodny argues, it is not objectionable if one deliberator has greater influence because others accept the reasons she offers on free reflection.[495] Thus, if an indigenous group objected merely because it was unpersuasive in deliberation, its objection would be insufficient. Here, the objection is that citizens have not been given equivalent information to prepare deliberation.[496] This makes access to complete analysis analogous to access to a microphone in a public meeting, which must be equal.[497]

Unequal footing caused by incomplete analysis is even more pronounced when important reasons are not immediately salient. In an epistemic division of labor, analysts often inform citizens and policy makers *that reasons exist*. Consider the analyst in section 5.1 who uses her judgment to determine whether high unemployment in low-skilled recent immigrants constitutes an "unemployment problem." If the analyst omits this information from the analysis, then a policy maker will often not even know it exists.

Second, a fellow analyst who sees the importance of the cultural values has no official basis for criticism. If the Army Corps argues that the destruction of cultural areas cannot be included because there is no basis to assign that destruction a monetary value, the onlooker has no common standards on which to base her criticism.

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[494] Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), pp. 107–08; Joshua Cohen and Joel Rogers, "Power and Reason," in *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, ed. Archon Fung and Erik Olin Wright (London: Verso Press, 2003), 237–55, p. 249.

[495] Niko Kolodny, "Rule Over None II: Social Equality and the Justification of Democracy," *Philosophy & Public Affairs* 42 (2014), 287–336, p. 334.

[496] "[U]nequal access to information about how to influence political decisions in line with one's judgments is itself a form of unequal opportunity for influence." Kolodny, "Rule Over None II," p. 332. See also Rawls, *Theory of Justice, Revised*, pp. 194–200; Robert A. Dahl, *On Democracy* (New Haven: Yale University Press, 1998), p. 86.

[497] See Scanlon, *Why Does Inequality Matter?*, p. 80.

Third, there is good reason to believe that incomplete analysis will be insulting and demeaning to citizens whose reasons are ignored. Put yourself in the shoes of a citizen who believes that sacred sites are a fundamental part of her culture and who sees those sites given no value at all in a public analysis. Public analyses that fail to even acknowledge these reasons make a strong statement about the status of those citizens in a deliberation purportedly among equals. No effort is made to acknowledge these citizens or justify the policy in a way they can accept. In a deliberative democracy premised on reciprocity and mutually acceptable justification, we have strong reason to avoid this impact.

### Preparing Deliberation

Preparatory standards thus have two foundational goals: maintaining critical policy judgments for citizens and policy makers to weigh in public deliberation, and (2) preparing citizens equally and comprehensively for that deliberation. To achieve these goals, democratic theorists should conceptualize preparatory standards with two features. First, following the pioneering work of Frank Vibert on the legitimacy of unelected bodies, theorists should separate the policy process into two stages.[498] I call these the "evidence stage" and the "deliberation stage." In the *evidence stage*, policy analysts—along with outside groups such as the media, think tanks, and interest groups—gather evidence to enable reasoned deliberation to occur, similar to the way that a lawyer collects and presents evidence to enable reasoned jury deliberation to occur. Policy analysts identify reasons by collecting and verifying facts, applying methods from the various scholarly disciplines to better understand those facts, and translating the findings for a lay citizenry.[499] In doing so, policy analysts help ensure that the three goods provided by expertise—informing public deliberation, enabling collective action, and countervailing epistemic authority—are integrated into democratic institutions.

In the *deliberation stage*, citizens and policy makers weigh reasons to reach reasonable policies.[500] Unelected policy analysts should not predetermine the most reasonable weighing of the relevant reasons by baking value judgments into the analysis. That would exceed their democratic role and impose the de facto guardianship these standards are designed to avoid.

To achieve the three goods missing in incomplete analysis—placing deliberators on equal footing, giving fellow analysts a basis for criticism, and respecting diverse perspectives of citizens, analysts should evaluate relevance on the basis of a standard I call "comprehensive neutrality" in other work.[501] *Comprehensive neutrality* gives analysts a strong prima facie reason to include evidence on all minimally acceptable reasons that citizens and policy makers find relevant or would find relevant if they were well-informed. This standard asks policy analysts to *look outwards* to evaluate which reasons the public believes to be relevant and to gather evidence relevant to those reasons.

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[498] "It involves a distinction between those bodies, outside of elective politics, that have a special role in gathering and analysing information, bringing to bear relevant empirical knowledge, including navigating through contested areas, and those bodies, belonging to elective politics, that bring ethical and political values to bear in the judgmental processes of democratic societies." Vibert, *Rise of the Unelected,* p. 165.

[499] See §3.3.

[500] The divide is one-way. Nothing prevents citizens and policy makers from introducing new reasons or evidence at the deliberating stage.

[501] See §4.4 (for a full definition of comprehensive neutrality).

Comprehensive neutrality avoids guardianship concerns by taking the relevance judgment away from the analyst. Because the analyst knows that some citizens will find the destruction of ancient burial sites to be a relevant reason, she should collect evidence to make sense of that reason and a fellow analyst should be able to criticize her on that basis. For example, she could ask an archaeologist to verify the existence of the ruins, an anthropologist to put the significance of the ruins into their historical and cultural context, and ask a tribal member to testify to their continued importance. Similarly, the labor economist in section 5.1 should look outwards to evaluate if unemployment among low-skilled recent immigrants would be considered relevant in deliberation. These standards of comprehensive neutrality would be incorporated into enforceable ethical rules of conduct, as I argue in other work.[502]

Establishing the precise contours of comprehensive neutrality is the proper subject of debate among theorists and practitioners in a code of ethics for policy analysis. The argument here is that such an ethical code needs to be written. Two points can be made here. (1) *Minimal acceptability* excludes evidence in two major categories. First, evidence should be excluded where it does not meet disciplinary standards. For example, a policy analyst can justifiably exclude evidence purporting to show that vaccination causes autism if that evidence has been discredited by the relevant discipline. Comprehensive neutrality is a discipline-based standard for choosing among competent experts within their respective disciplines. In that way, comprehensive neutrality is less radical than more critical approaches that demand reconsideration and "democratization" of disciplinary methodologies.[503] Under comprehensive neutrality, evidence fails a competence requirement if it has been wholly rejected by its discipline.[504] Second, evidence should be excluded where it violates basic democratic values, such as reasons that depend on a hierarchy among citizens.

(2) The *prima facie* aspect of this obligation is also critical. Policy analysis is and must be a practical profession that faces real tradeoffs in terms of time. Every analysis cannot be a full report of every possible reason that could influence a policy decision. The prima facie obligation means that analysts must justify *to a person who thinks that reason may be relevant* why it is not included. In other words, the analysis must be comprehensive unless there is strong reason not to be, from that person's perspective. Otherwise, that person will have good reason to object that the process is unequal and her interests are being ignored. Time constraints on urgent analyses will be the most common basis for these justified exclusions, but these exclusions should be explicit and should not target one type of evidence. A citizen who believes that cultural values are relevant cannot be expected to accept that analysts never have time for her concerns.

The most difficult case for preparatory standards is an entire discipline built around highly controversial normative premises, such as Christian science or perhaps some branches of critical theory. Here, potential experts are considered competent by the standards of the discipline, but that discipline's methods are themselves controversial. There are resources within the account to exclude *entire disciplines* on the basis of unreliability. Recall from section 5.2 that the social-epistemological basis for competence judgments in Goldman's work on expertise used the reliable track records of some experts to establish the reliability of others.[505] In some areas, this chain of reliable judgment never gets off the ground. For example, astrology ought to be excluded for being wholly unreliable.

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[502] See §4.6.

[503] See Fischer, *Citizens, Experts, and the Environment*, pp. 39–40.

[504] This rejection is based in the demands of reciprocity, which ask citizens in a deliberative democracy to reason based on relatively reliable methods of inquiry. Gutmann and Thompson, *Democracy and Disagreement*, p. 56.

[505] Goldman, "Experts," pp. 106–08.

Normatively charged subject are more controversial, and tradeoffs are best addressed in a professional code of ethics. I have argued elsewhere that methods that cannot meet minimal criteria of standardization, impersonality, and publicity give some reason for these methods to be excluded by failing to promote democratic values of accountability and transparency.[506] However, I would counsel restraint in any effort to widely disregard disciplines on the basis of unreliability. A central insight in the deliberative democracy literature, building on the work of Kant and Rousseau, is that reason-giving is a way to treat an interlocutor as free, equal, and deserving of respect.[507] Excluding disciplines ostracizes the citizens that believe in those methods from the process of reason-giving, and in so doing, it treats them with disrespect. Time is a real constraint on analysis, and some disciplines are simply not well-founded, but the presumption should weigh in favor of inclusion.

## 5.7 Conclusion

Expert accountability is a difficult challenge for democratic theory because experts are selected based on special knowledge, triggering guardianship concerns that have always posed the strongest argument against democratic rule. I have argued that expert analysis features complex judgments that cannot be solved by a simple instrumental account, where experts are "on tap but not on top," as the saying goes, because (1) policy makers lack the knowledge and time to hold experts accountable for complex analyses, and (2) standards of relevant evidence are needed for fellow analysts to criticize incomplete analyses. Instead, democracies need an institutional design that accounts for typical policy complexities and offers standards to criticize incompleteness and to select experts across varied disciplines.

Previous literature has overlooked the complexity of the institutional issues by focusing only on expert competence within a particular domain. Competence is important but insufficient for expert accountability. Democratic theory also must justify which kind of experts and which sources of knowledge are relevant to any particular policy question, which I have called the problem of expert discipline.

I have answered these challenges by defending each of the three-part predicate of accountability. (1) I defended policy analysis as an institutional answer based on its ability to understand multiple disciplines, fit into existing institutions, and enforce ethical duties on its practitioners. (2) I adopted a deliberative conception of democracy to define what it means to hold analysts accountable to the people. In particular, policy analysis should be understood relative to the need to prepare deliberation on the merits. (3) I defined an outward-looking standard of relevance, which asks analysts to prepare citizens and policy makers to weigh all relevant reasons. These preparatory standards enable accountability of analysts by assigning them duties of oversight through an ethical code and by enabling fellow professionals to evaluate comprehensiveness as a standard of relevance. Together, these arguments define the accountability of policy analysts to the people for preparing citizens and policy makers to select among experts.

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[506] See §4.4.

[507] Simone Chambers, "The Philosophic Origins of Deliberative Ideals," in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren (Oxford: Oxford University Press), 55–69, p. 58.

Preparatory standards do not, of course, eliminate all difficult cases, and important debates remain around the design and implementation of ethical rules for my account to apply in practice. This article has issued a challenge in the form of the problem of expert discipline, and I have offered a feasible framework for answering that problem within existing institutions using an epistemic division of labor constrained by ethical policy analysis.

# Chapter 6

# Conclusion

The four articles of my dissertation lay out a deliberative democratic approach to policy analysis based on the idea of designing institutions to enable reasoned deliberation among equal citizens. In this conclusion, I identify six key claims from these articles to show how they cohere into a theory of policy analysis, then propose steps forward, where future work can answer open questions that remain.

## 6.1 Six Key Concepts

### (1) Equity is contextual and cannot be fully quantified.

Under my account, equity claims are those that one would maintain even if she had no relation to the beneficiary.[508] Equity claims are held on principle, not on individual gain. Thus, equity claims are impartial in the sense that the person supports the action because she believes it is in the common good to take the action under these circumstances. She does not support the action because it benefits her. This conception of equity is more general than the equity claim at the heart of cost-benefit analysis, which says that an action should be taken where the benefits are greater than the costs, each measured in willingness to pay. Both are impartial in the relevant sense, but my concept of equity will include more diverse claims.[509]

An example can show the way that equity claims are more general than cost-benefit analysis.[510] Suppose a highway project is proposed through a low-income neighborhood in West Seattle, and reliable evidence shows that exhaust emissions from the highway would impose significant costs on nearby residents in West Seattle. Cost-benefit analysis would ask an analyst to compare the estimated costs, including from the emissions, to the estimated benefits from improved transportation. If the benefits are greater than the costs, then the policy is recommendable. Equity is broader than cost-benefit analysis because it also allows a citizen or policy maker to argue that the highway should be rejected *even if* the benefits, accurately measured, are greater than the costs. She would do so by arguing that it is unjustifiable to impose concentrated harms on a few residents to achieve dispersed benefits across many residents.[511] This claim is impartial so long as the citizen or policy maker would also argue—in a counterfactual situation—that building a highway through *Central* Seattle would be unjustifiable, if that neighborhood is similar in the relevant respects to West Seattle. She rejects the highway because she believes it is unjustifiable to place these concentrated harms on residents of this kind. No part of the argument depends on favoritism for particular individuals in West Seattle, rather it is a claim about concentrated harm against dispersed benefit. This impartiality separates equity claims from political claims more generally, a critical distinction for an unelected analyst.

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[508] On my reading, this definition of equity is consistent with leading accounts of deliberative democracy and helps to clarify the relationship between self-interest and the common good, at least in counterfactual form. See Joshua Cohen and Joel Rogers, "Power and Reason," in *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, ed. Archon Fung and Erik Olin Wright (London: Verso Press, 2003), 237–55, p. 249; Jane Mansbridge, James Bohman, Simone Chambers, David Estlund, Andreas Føllesdal, Archon Fung, Cristina Lafont, Bernard Manin, and José Luis Martí, "The Place of Self-Interest and the Role of Power in Deliberative Democracy," *Journal of Political Philosophy* 18 (2010), 64–100, pp. 76–78.

[509] See §2.4.1; §2.7.

[510] See also §2.8 (the Oahe dam example).

[511] See §2.4.1, §2.4.3.

Equity is *contextual* because the strength and priority of the claims depends on the context where they arise. When the citizen or policy maker claims that concentrated harms on local residents are unjustifiable, she makes a claim specific to the circumstances in West Seattle. This might include information about the poverty or demographics of the residents, about the history and cultural significance of the neighborhood, the ability of residents to relocate away from the highway, and the likelihood that citizens will be compensated for the harms. These are context-dependent claims that cannot be adequately simplified into quantitative form or translated into rights constraints.[512] In particular, I argue that the comparison between the Lake Pollution and Noisy Airplanes examples demonstrates that apparently universal equity principles such as "polluter pays" are actually context-dependent.[513] Citizens have good reason to demand that public decision procedures weigh these contextual equity claims. Thus, I argue that a public decision procedure is unjustifiable if it does not give the means to incorporate contextual equity into public decisions.

### (2) Policy analysts must identify relevant reasons.

My account works in the domain of reasons, which I define in relation to data, information, and evidence.[514] A reason combines evidence and values to count in favor of an agent taking a particular action. Working in the domain of reasons is not unique to my account; it is inherent to a deliberative conception of democracy, which is organized around an ideal of political justification with public reasoning at the core.[515] More unique to my account is the interrelation of standards of reasons and standards of evidence, where many theorists, both practical and normative, have tended to offer only one of these standards.

Consider Frank Vibert, whose separation-of-powers account of unelected administration is among the most sophisticated treatments on the practical side of that divide. Vibert argues for three principles of legitimacy for a new, unelected branch of government: (1) a distinction between normative and positive analysis; (2) respect for evidence; and (3) respect for uncertainty. He then combines these principles with procedures based on an experimental approach, peer review, and public inspection.[516] Vibert's principles and procedures have in common an emphasis on the reliability of evidence and the clarification of the assumptions that entered into the production of that evidence. They are standards of evidence. They do not, however, give any guidance about the values that should play into selecting which reasons are relevant to particular policies. In the words of chapter 5, Vibert focuses entirely on competence.[517]

My account navigates the divide between evidence and reasons in two ways. First, I define reasons to combine facts and values to support a particular agent taking a particular action or policy in particular circumstances.[518] Thus, reasons are contextual, and adequate deliberation must be informed of the relevant context to weigh a particular policy decision. Second, my standard of comprehensive neutrality works in the domain of reasons, giving policy analysts a prima facie obligation to collect evidence on all minimally acceptable reasons that citizens or policy makers believe to be relevant.[519] This is a standard within the domain of reasons. In this way, comprehensive neutrality is similar to John Rawls's public reason standard in that it works within the domain of reasons, though comprehensive neutrality is a standard of relevance or completeness, where public reason is a standard of minimal acceptability.[520]

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[512] See especially §2.4.3.

[513] See §2.6.

[514] See §3.3.

[515] See Joshua Cohen, "Procedure and Substance in Deliberative Democracy," in his *Philosophy, Politics, Democracy* (Cambridge: Harvard University Press, 2009 [1996]), 154–80, p. 160.

[516] Frank Vibert, *The Rise of the Unelected: Democracy and the New Separation of Powers* (Cambridge: Cambridge University Press, 2007), pp. 121–26.

[517] See §5.2.

An example can distinguish these different kinds of standards. Suppose a graduate program is considering the standards to select among candidates for its Ph.D. program. A *standard of evidence* might cause the program to exclude consideration of a student's grade point average from previous graduate programs because those grades are a poor indication of academic ability. A program might adopt a *standard of minimally acceptable reasons* if it anonymized applications to prevent the committee from being swayed by personal connections to the candidates. This standard excludes personal connections as unacceptable reasons. A program would need a *standard of relevant reasons* to decide whether to require a personal essay discussing leadership qualities. To evaluate this choice, the program would need a standard to decide whether leadership qualities should count in favor of acceptance. Is leadership a relevant reason?[521] My account argues that standards of relevant reasons are necessary and offers comprehensive neutrality as one such standard.

### (3) Properly structured deliberation can evaluate contextual equity claims.

A key role of deliberation is to consider contextual equity claims that cannot be evaluated by quantitative tools and rights. I develop this claim by drawing an analogy to the ability of juries to incorporate community values into the evaluation of negligence.[522] Three aspects of this claim should be emphasized as critical to my overall account. First, the ability to evaluate contextual equity links quantification and deliberation as complementary aspects of a decision procedure. Purely quantifiable decision procedures are unjustifiable because they cannot evaluate contextual equity claims.[523] Deliberation directly answers this concern by weighing contextual equity in a complementary way.[524]

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[518] See §3.3; T. M. Scanlon, *Being Realistic about Reasons* (Oxford: Oxford University Press, 2014), p. 31.

[519] See §4.4.

[520] John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997), 765–807; Cohen, "Procedure and Substance," pp. 162–63 (on the way that the domain of acceptable public reasons is limited by the democratic setting of an ongoing system of cooperation, institutional ties, and equal standing of citizens).

[521] In the standard lexicon of policy analysis, this might be termed, "Is leadership a relevant criterion?" Eugene Bardach's eightfold path framework is already a reason-based framework, though it does not provide robust standards for selecting which criteria or reasons ought to be relevant. Eugene Bardach, *A Practical Guide for Policy Analysis: The Eightfold Path to Effective Problem Solving*, 4th ed. (Los Angeles: CQ Press, 2012), pp. 31–47, esp. 36–37.

[522] See §2.6.

[523] See §2.4.3.

[524] See §2.6; §2.8.

Second, deliberation must be *properly structured* to evaluate contextual equity. There is little value in asking a deliberative body to weigh competing reasons if that body is not informed about the relevant reasons.[525] Thus, the demand to enable deliberation must be coupled with institutions to prepare and inform that deliberation.[526]

Third, my account is intentionally unspecific about the nature of the deliberative body that weighs contextual equity. This fits with my desire to offer a theory of policy analysis that can fit into existing institutions, as opposed to demanding novel deliberative institutions.[527] The point of the contextual equity argument is that some deliberation must occur to weigh claims of a contextual nature, where the priority those claims is at issue.[528] To satisfy this demand, the deliberative body could take various forms, including a legislature, a mini-public, or even the discretion of a single decision maker. Selection among these deliberative bodies would consider wider questions of legitimacy and institutional feasibility.

### (4) Adequate accountability requires defining standards of relevant reasons.

A key claim developed in chapter 5 is that accountability has three parts, the accountability of some agent to some principal for some action, standard, or state of affairs.[529] Standards enter in the third part of this relation, asking what the agent will be held accountable for doing. Previous approaches to accountable public policy—such as Thomas Christiano's, outlined in section 5.1—seem to rely on the idea that policy makers, citizens, or interest groups will know bad analysis when they see it, and their feedback and outrage will engender accountability.[530] I argue that this assumption is both mistaken as a factual matter—because it takes time and expertise to recognize that policy analysis is incomplete or unbalanced[531]—and also normatively insufficient—because it fails to treat the claims of all citizens with equal concern and it fails the expressive purpose of professional policy analysis.[532]

My account argues that expertise must be both competent and relevant to the policy problem at hand—the problem of expert competence and the problem of expert discipline, respectively. Competent expertise is achieved through reliable methods and peer review within a discipline, but relevance must be determined by a standard of relevant reasons.[533] My account offers comprehensive neutrality as one such standard, and I argue that comprehensive neutrality gives institutions the means to hold both experts and analysts accountable.[534]

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[525] Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), pp. 107–08; Cohen and Rogers, "Power and Reason," p. 249.

[526] See §1.2, no (2).

[527] See §5.4.

[528] See §2.4.3; §2.6.

[529] See §5.1; Robert E. Goodin, *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn* (Oxford: Oxford University Press, 2008), p. 156.

[530] See §5.1.

[531] See §5.1; §5.4; §5.6.

[532] See §5.6.

[533] The need for a standard of relevant reasons has been recognized most clearly by Charles W. Anderson. "The Place of Principles in Policy Analysis," *American Political Science Review* 73 (1979), 711–23, p. 711 ("Nonetheless, the essential question is not how we can decide, or how we in fact do decide, but how we ought to decide. What counts as a good reason for a policy decision and what is an inappropriate basis for political judgment?")

[534] See §5.6.

My emphasis here is that some standard of relevant reasons is needed.[535] In contrast, the argumentative approach, outlined in the introduction, is underspecified because it punts on this question without justification. Welfare-economic approaches that assume that the only relevant reasons are considerations of utility or of costs and benefits adopt a false premise and lack an adequate standard of relevance.[536] Some standard of relevance is needed, and I argue that comprehensive neutrality is sufficient as a standard.

### (5) Ethical rules of professional conduct can be neutral without being value-free.

It is a focus of the literatures on values in science and on post-positivist or argumentative policy analysis that evaluation can never be value-free. Theorists who acknowledge this fact have tended to go in two directions. The first, outlined in section 1.2, argues that everything is political. Under this view, policy analysts and scientists should join the rhetorical fray, making evidence-based arguments in favor of their preferred policy solution. Arthur Applbaum calls this a "political realist" position, and I argue against Francis Fukuyama as a representative of this position.[537]

The second direction, also common in the literature, is to argue that policy analysts should act with their own personal sense of equity. This view would not say that policy analysts should advocate *any* policy they like; they should be constrained by a sense of fairness and an awareness of distributional concerns.[538] In the philosophy-of-science literature, this view is captured by those who answer Andrew Schroeder's question—"when scientists should make use of values, which (or whose) values should they use?"—by answering that the scientist should weigh the impacts of the science herself.[539] Heather Douglas, in the most extensive treatment of the subject to date, takes this view by arguing that scientists have a moral responsibility to consider the consequences of error in giving policy advice. For example, in considering whether to frame a correlation between exhaust emissions and respiratory health problems as reliable evidence in public debate, Douglas argues that scientists should count the consequences of error in favor of representing that evidence as reliable.[540] For Douglas, values should influence judgments about the reliability of scientific evidence.

My account charts a third path using the institutional mechanism of professional ethics. Both of the above approaches fail my efficiency argument because they make value judgments specific to the individual analyst.[541] When value judgments depend on the identity of the analyst, there will be political incentives to replace unelected analysts with other analysts who hold values more friendly values, and this will result in inefficient institutional design. My alternative, comprehensive neutrality, is also not value-free. By giving analysts a duty to collect evidence on all reasons that the citizens find relevant, the analyst looks outward to incorporate values as they are understood by citizens and policy makers, not as they are understood by the analyst. If a comprehensive neutrality is enforced in a code of ethics, then *all* analysts are given the same responsibility to be comprehensive. This institutional mechanism simultaneously avoids the false premise of value-free analysis, enables other analysts to enforce accountability, and retains the critical aspect of neutrality. This avoids the force of the efficiency argument because impersonal, outward-looking judgment does not depend on the identity of the analyst.[542] Thus, I argue that ethical rules of analysis based on comprehensive neutrality promote legitimacy, accountability, and efficiency within the basic structure of democracy taken as a whole.

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[535] See §5.3.

[536] See §2.3; §2.4.3.

[537] See §4.1; Arthur Isak Applbaum, "Democratic Legitimacy and Official Discretion," *Philosophy & Public Affairs* 21 (1992), 240–74, pp. 248–49.

[538] See §4.4; §4.6. For example, Duncan MacRae and Dale Whittington argue, "Yet individual conscience (of analysts or others) is certainly the ultimate protection against ethically impermissible conclusions that may arise from abstract expertise alone." *Expert Advice for Policy Choice* (Washington: Georgetown University Press, 1997), p. 67; see also Rosemary Tong, *Ethics in Policy Analysis* (Englewood Cliffs: Prentice-Hall, 1986).

[539] See §3.1; Andrew S. Schroeder, "Using Democratic Values in Science: An Objection and (Partial) Response," *Philosophy of Science* 84 (2017), 1044–54, p. 1044.

[540] Heather E. Douglas, *Science, Policy, and the Value-Free Ideal* (Pittsburgh: University of Pittsburgh Press, 2009), pp. 80–82.

[541] See §4.2.

### (6) Policy analysis is a democratic institution with three primary roles.

My account assigns policy analysts three primary roles in democracy: (1) informing public deliberation, (2) ensuring policy justification, and (3) serving as a symbolic statement of democratic legitimacy.[543] Each of these roles fits the modern conception of policy analysis, which sees analysts as "speaking truth to power" by ensuring that policies are well-grounded in reliable methods of inquiry. The primary question that will distinguish my account of these functions asks who the client ought to be. Policy theorists agree that analysts play the role of informing policy debates and holding the government's feet to the fire, and if pressed, I suspect that they would agree that there is expressive significance in living under a government that ensures these functions are achieved. The question is whose interests analysts are protecting when they play these roles, and the inability to answer this question clearly helps explain why "there is no commonly accepted definition of ethics of moral thinking in the field of policy analysis."[544]

My account is distinguished by the claim that ethics should be designed to ensure that policy analysts do what democracy demands.[545] This steps away from the immediate dilemmas addressed in many discussions of ethical policy analysis weighing analytical competence, respecting the client's wishes, and adhering to one's personal conception of a good society.[546] Properly understood from an institutional perspective, neither the client's nor one's own values are a sufficient basis for professional ethics. Instead, professional ethics should be designed from an institutional perspective with the goal of enabling deliberation of value judgments among the citizens and their representatives. This would give policy ethics the same kind of grounding that legal ethics already have. Anything less is abandoning the idea of self-government by the people and their representatives.

## 6.2 Steps Forward

My account of policy analysis has worked to show that particular institutional features—reasoned deliberation, professional ethics, and comprehensive neutrality—are necessary features for policy analysis to serve important interests in a self-governing democracy. Implementing these features with corresponding deliberative institutions would allow democracies to answer the problem of expert accountability, an unanswered challenge in my reading of democratic theory. Of course, these arguments do not spell out all of the details that would be necessary for implementation of this account in practice. Steps forward fall into three categories.

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[542] See §4.5. A similar framework, not detailed in this dissertation, should underlie the ethical responsibilities of scientists. These rules would themselves be value-laden, but ideally, they would apply to all scientists equally to maintain the trust that allows scientific progress within particular disciplines. See §3.5.

[543] See §4.2; §5.5.

[544] Carl V. Patton, David S. Sawicki, and Jennifer J. Clark, *Basic Methods of Policy Analysis and Planning*, 3rd ed. (Upper Saddle River: Pearson, 2013), p. 30.

[545] See §4.5.

[546] See David L. Weimer and Aidan R. Vining, *Policy Analysis: Concepts and Practice*, 5th ed. (Upper Saddle River: Pearson, 2011), pp. 40–43.

### (1) Specifying the contours of professional policy analysis

At several stages of my dissertation, I restricted my argument to a particular kind of policy analyst or reserved judgment on issues in favor of deciding them in a professional code of ethics.[547] This narrowing of the scope leaves open obvious paths for steps forward. In particular, a companion piece to chapter 4 would move beyond considerations of neutrality to define the demands of publicity that fall on governmental analysts—agency analysts and political analysts under my definitions.[548] This work would define the conditions under which analysts have an obligation to make their reasoning public, as well as the exceptions under which the value of publicity is outweighed by other important interests. Joined with competence, already well-defined in the literature, comprehensive neutrality and publicity comprise three ethical requirements of an analyst that can be derived from democratic theory. These requirements ought to be weighed against more practical concerns in a code of professional ethics.

Another question raised but not fully answered would be the conditions under which policy analysts can justifiably exclude evidence. Comprehensive neutrality gives policy analysts a prima facie obligation to include evidence on all reasons that citizens find relevant.[549] This standard is important because it shifts the burden of proof to the analyst to justify why apparently reason-giving evidence has not been considered. I have emphasized that this burden can be met in some circumstances, either by excluding entire disciplines, e.g. astrology, or by excluding considerations for reasons of time or cost.[550] However, those exclusions must be carefully designed to ensure that they do not defeat the institutional-design purpose of comprehensive neutrality. If policy analysts always exclude consideration of cultural values because of time or cost, then policy analysis retains the problems the standard is designed to avoid.

I have sketched reasons to exclude in terms of reliability and democratic values. Particularly important considerations include the debate over John Rawls's public reason standard[551] and the ability of a discipline to be standardized, impersonal, and public.[552] These will determine whether that discipline serves as a reliable and widely shared method of inquiry, features that enable core values in a deliberative account of democracy.[553] A broader consideration, especially in the design of ethical rules, would combine the insights of practitioners and theorists to weigh practical constraints against normative demands of inclusiveness. While I hope to have shown a willingness to delve into various interdisciplinary literatures, I am hesitant to pronounce on the precise context of these trade-offs without engaging in the actual deliberations with practitioners on the ground. My account is best understood as a call for these deliberations to happen.

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[547] See §4.1; §4.4; §5.6.

[548] See §4.1.

[549] See §4.4; §5.6.

[550] Relevant discussions of the practical trade-offs involved in a comprehensive standard, include Edith Stokey and Richard Zeckhauser, *A Primer for Policy Analysis* (New York: W. W. Norton & Co., 1978), pp. 117–21; MacRae and Whittington, *Expert Advice for Policy Choice*, pp. 81–88.

[551] See, e.g., Jonathan Quong, "On the Idea of Public Reason," in *The Blackwell Companion to Rawls*, ed. Jon Mandle and David A. Reidy (Oxford: Wiley-Blackwell, 2013), 265–80; David Enoch, "Against Public Reason," in *Oxford Studies in Political Philosophy, Volume 1*, ed. David Sobel, Peter Vallentyne, and Steven Wall (Oxford: Oxford University Press, 2015), 112–42.

[552] See §3.6–§3.7; §4.4.

[553] See §3.6.

### (2) Specifying the reason-giving properties of economics

My account sketches a professional role for policy analysts that many are currently poorly prepared to fill. In section 5.4, I argue that policy analysts could inform themselves of critical scholarship in multiple disciplines to determine which approaches are reason-giving in the evaluation of public policies. At a high level of abstraction, this does describe the role that policy analysts play in public decisions, but those analysts are often poorly prepared to identify the reason-giving properties of scholarly evidence and to translate that evidence into professional analysis, especially outside the confines of economics and applied statistics. Thus, my account of policy analysis implies a reconsideration of public policy education, which would focus more closely on policy interpretation and professional analysis over a wider range of scholarly work.

As with much of my dissertation, a good example may be found in law, where lawyers are trained in their first-year courses to spot legal issues and draw out the legal arguments that speak in favor and against those issues. This issue spotting trains lawyers to extract pertinent issues for professional analysis from a series of facts and to translate those issues into legal claims. Policy education trains similar issue-spotting skills when considering the definition of a policy problem, but less so in the definition and identification of criteria. My account implies more focus on translating the claims of diverse stakeholders into professional analysis and collecting multidisciplinary evidence to corroborate those claims.[554]

Most critical to this specification is gaining clarity on the reason-giving properties of economics. This focus on economics is implied not only by the central place that economics takes in policy analysis, but also by the numerous candidate standards of relevant reasons that emerge from the applied economics literature. Given that a central tenet of my account is that accountability requires standards of relevant reasons, it is critical to engage with these candidate standards to reflect on their validity.

To take one prominent example, one standard sees market failures as a necessary but not sufficient ground for public intervention, sometimes mixed with an acknowledgment that "distributional concerns" may provide an alternative grounding.[555] This standard shares with my account a focus on reasoned public justification, but it limits its reasons to market failures without justifying the exclusion of other kinds of reasons. This limitation leads to misinterpretations of justified public action, including the notion that equity claims may be ignored where no market failure is present, the notion that addressing a market failure will simultaneously address equity concerns, the notion that equity claims may be reduced to quantifiable notions of distribution, and so on. These misinterpreted principles can make policy analysis a minefield of condescending criticism for policy makers and citizens who enter a public deliberation with reasons that do not fit the market-failure paradigm. For my account to have any impact at scale, next steps will have to clear this thicket by better specifying the reason-giving properties of economics and making explicit how market failures relate to those reason-giving properties. I expect this to be my next large research project after working to publish ideas directly related to my dissertation.

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[554] See MacRae and Whittington, *Expert Advice for Policy Choice*, pp. 1–26 (for a critique of the standard policy curriculum along related lines).

[555] See, e.g., Weimer and Vining, *Policy Analysis*, p. 154. See also my discussion in §2.4.3.

### (3) Specifying the reason-giving properties of other disciplines

Also needed is for other disciplines to consider the reason-giving properties of the evidence they generate. The framework laid out in chapter 5 sees disciplines—and sometimes subdisciplines—as building evidence based on different reason-giving assumptions that comprise their methodology. As emphasized by Rawls, Gutmann, and Thompson, disciplines must be reliable methods of inquiry to meet the demands of reciprocity in a deliberative democracy.[556] The difficulty is that even disciplines that use reliable methods are shaped by values.[557] For example, subdisciplines in political science take shape against background assumptions about the desirability of democracy, elections, and representation that are familiar in systems similar to American representative democracy.

A more specific example can demonstrate how values play into the development of disciplines. Consider the recent development of behavioral economics as a discipline. Behavioral economics had two central research projects recognized as foundational by the Nobel committee of the Sveriges Riksbank: the empirical work around individual risk behavior by Amos Tversky and Daniel Kahneman, and the experimental work around market mechanisms by Vernon Smith. Where Tversky and Kahneman emphasized departures in individual rationality,[558] Smith looked at the conditions under which a market mechanism would perform well in experimental markets, a branch of study often called "experimental economics."[559] Both used empirical methods to test the idealized assumptions of economic models, but Tversky and Kahneman highlighted stark cases of individual divergences from rationality, while Smith's work tended to expand the conditions under which market mechanisms were thought to be effective. The methods of Tversky and Kahneman have come to define the discipline and take the mantle of empirically grounded economics, while experimental economics has struggled to retain relevance.

It would be difficult to tell this history without reference to the millions of books sold by practitioners of behavioral economics to liberal-leaning audiences, as opposed to the fiercely libertarian Smith. While the Nobel committee found both research paths to be reliable methods of inquiry, the dominant methodology followed the problems thought to be most relevant and most interesting by a particular audience. That methodology then came to define what it means to apply empirical methods to economics.

The difficulty for public policy is that many disciplines have developed according to controversial values built into assumptions that define the discipline. For an account of policy analysis similar to mine—one that asks analysts to draw evidence from various disciplines—policy theory must explain how to integrate these disciplines. Consider a policy analysis that integrates subjects such as critical theory, sociology, and anthropology, which reject dominant conceptions of the policy problems at hand. For example, John Dryzek states,[560]

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[556] See §3.6.

[557] See §5.3.

[558] See, e.g., Amos Tversky and Daniel Kahneman, "Judgment and Uncertainty: Heuristics and Biases," *Science* 185 (1974), 1124–31; Amos Tversky and Daniel Kahneman, "The Framing of Decisions and the Psychology of Choice," *Science* 211 (1981), 453–58.

[559] See, e.g., Vernon L. Smith, "An Experimental Study of Competitive Market Behavior," *Journal of Political Economy* 70 (1962), 111–37; Vernon L. Smith, "Microeconomic Systems as an Experimental Science," *American Economic Review* 72 (1982), 923–55.

> In its broadest sense, critical theory is concerned with charting the progressive emancipation of individuals and society from oppressive forces. It follows that such forces are ideological contingencies rather than structural necessities (from which there is no escape). Emancipation follows understanding of these forces on the part of those at the receiving end, who come to understand both the contingent character of the forces in question and what might be done to counteract them.

Critical theory seems recognizable as reason-giving under this definition. Further, there is no doubt that many citizens and policy makers take these critical methods and approaches to be reason-giving in practice. Thus, my comprehensive neutrality standard would push analysts to learn from these approaches and include them in public analyses as a matter of respect for those citizens as free and equal agents.

Less clear is how these methods can be standardized and incorporated into professional analysis. This is a challenge both to policy analysis and to the disciplines themselves, which often have not taken seriously the need to standardize and have not been given a seat at the table as policy analysis has developed. These requirements are not particularly unique to my account. If policy analysis is to gain a reputation as more than simply applied economics and if subjects such as critical theory are to be influential within reasoned policy discourse, as many have called to happen, then some clarification of the professional standards of these disciplines in public analyses will be important. My account adds the idea that such a process would be a way for policy analysis to be neutral and for representative institutions to be justifiable under a deliberative conception of democracy.

## 6.3 Concluding Remarks

In this dissertation, I have offered an institutional account of policy analysis based on the idea that policy analysis must enable reasoned deliberation among equal citizens. I have pushed to show that this alternative account is necessary to answer critical questions of legitimacy and accountability within democratic institutions, to ensure that public decision procedures adequately weigh questions of contextual equity, and to increase the efficiency of administration by making unelected policy analysis acceptable to all reasonable parties. This account grounds three functions of analysis: (1) informing public deliberation, (2) ensuring policy justification, and (3) serving as a symbolic statement of democratic legitimacy. More broadly, this account fits into a deliberative account of democracy meant to enable free and equal cooperation through reasoned deliberation on important but contentious policy issues.

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[560] John S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000), p. 20.

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