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CHAPTER 18

REFRAMING PROBLEMATIC POLICIES

MARTIN REIN

PUBLIC policies are often problematic because the ends they seek are themselves problematic. The defining challenge of public policy lies not in finding the best means to given ends, but rather in reframing ends so as better to cope with unavoidable problems of vagueness and conflicts among the ends themselves. Those problems are largely neglected in the standard instrumentalist approach to policy research.

Two weaknesses of the instrumental conception of policy knowledge are particularly important. First, lopsided attention to instrumental knowledge can have the effect of obscuring the value choices facing public policy, hiding them in the tools of the policy analysts' trade. Instrumentalism cannot completely bypass value choices. Instead it makes those choices silently, in its decisions about what to measure, how to specify models, and how to quantify outcomes (Rein 1976).

Second, instrumentalism has had mixed success on its own terms. Instrumentalism presupposes strong causal reasoning to demonstrate that specific variables lead to particular normatively desirable outcomes. Social science has had very little success establishing that type of relationship. Most evaluative studies simply do not reveal any strong and unambiguous effects and outcomes. The literature is littered with only modest effects, with most of the variance in the dependent variable usually

* I want to extend special thanks to David Thacher and Chris Winship for our discussions about the issues raised in this chapter. Nancy Borofsky and Bob Goodin were especially helpful during the final stages.

remaining unexplained (Rein and Winship 2000). In the meantime, the values themselves, as well as conflicts among them, usually remain unexplored.¹

I begin by exploring various different types of situations that threaten instrumental means–end rationality. Starting with two of the most familiar—namely, the conflict of values and the ambiguity of ends—I then proceed to extend the list and consider other dynamics that are less well known. The problematic ends thus revealed are not free standing but rather, are interdependent and mutually reinforcing. I end by surveying various ways of socially coping with these problematic ends, concluding with an extended discussion of “secondary reframing” as a way of avoiding problematic ends and unwanted clients. Choice is always choice under some description: institutions frame policy problems and choices in that way; and reframing, looking at the problem through a different frame, can shift how we perceive the policy problem and how we respond to it.²

1. PROBLEMATIC ENDS: SIX EXAMPLES

1.1 Conflicting Aims

What does the term “values” mean in practice? “Values” are the ultimate ends of public policy—the goals and obligations that public policy aims to promote as desirable in their own right, rather than as some clear means to some other specific objective. Goals like safety, equality, prosperity, freedom and self-governance, family autonomy (to name a few) can all have this character. Each of these ends can be its own justification, at least to some people at some times.

For example, at some level most of us believe in some form of equality. We cling to it as an ideal, even if only modest instrumental benefits can be claimed for it, or even if these benefits turn out to be an illusion. As Isaiah Berlin (1981, 102) puts it, “Equality is one of the oldest and deepest elements in liberal thought ... Like all

¹ Consider racial integration. *Brown v. the Board of Education* was based on the evidence suggesting that segregated schools “damage the personality of minority group children” and “decrease their motivation and thus impair their ability to learn.” This established the instrumental case for the desegregation of schools. But thirty years later, experience and further research showed that the benefits were minor and the community opposition among both black and white parents strong. The instrumental argument crowded out the case for desegregation on the grounds it was an important societal value, the right thing to do in a democracy. Most important, it obscured the opposition of the affected groups, who (leaving the less noble values that motivated their opposition aside) did not believe that either goal—desegregation as an end in itself, or the improvement of education for minority children—should outweigh neighborhood autonomy and cohesion (Rein and Winship 2000, 44).

² On this see Schön and Rein 1994 and cognate work across a range of disciplines, e.g. March 1972; Axelrod 1976; Sen 1980; Douglas 1986; Kahneman and Tversky 2000; Allison and Zelikow 1999.

human ends it cannot itself be defended or justified, for it is itself that justifies other acts [as] means taken towards its realization.”

Of course, the value of equality still needs specification if it is to serve as a guide for action through public policy. For example, equality has been broadly interpreted as “equal opportunity” rather than “equal outcomes.” But even on this interpretation, equality conflicts with other values such as “family autonomy.” After all, parents want to give their children an *unequal* opportunity of access to resources, in order that they will be in a better position to compete and to do well in the labor market. The value of equal opportunity is in conflict with the autonomy of the family to protect and to advance their children’s career in whatever way they can (Fishkin 1983; Swift 2003).

Another example is the conflict between participation and deliberation, seen in the American attempt, four decades ago, to promote the participation of the poor as a way to reduce poverty. Community Action programs were designed to reduce the apathy of the poor by encouraging participation that challenged the performance of local public institutions. Here, the conflict soon became visible and the program to promote participation dramatically changed. In the *Dilemmas of Social Reform*, Marris and Rein (1982, 1) tersely state the problem as follows: “A reformer in America faces three crucial tasks. He must recruit a coalition of power sufficient for his power; he must respect the democratic tradition which expects every citizen, not merely to be represented, but to play an autonomous part in the determination of his own affairs; his policies must be demonstrably rational.” The imperatives for power, participation, and rationality all conflict with each other, in practice.

Participation has evolved over time from an action-oriented concept to a more passive mode. Confrontation, viewed as building power in order to confront inept bureaucrats, has faded as a meaningful public approach to promote participation. Modern-day advocacy takes the different form of collaboration (coalition building, partnerships, building trust, citizen juries); but through this evolution of the meaning of the term, the idea of some form of citizen participation is now widely accepted. Hence, the conflict was mitigated by sanitizing the form of participation and thus, hopefully, reducing the potential conflict between participation and deliberation.

1.2 Ambiguity and Vagueness

Ambiguity is so widespread in the legislative and administrative process that a large body of literature on the subject has emerged (March and Olsen 1976; Goodin 1982, ch. 4). Even the courts sometimes make use of it to reach a decision (Sunstein 1996; White 2002).

But we still seem to be undecided about the virtues of ambiguity in political and legal decision making. The former head of the French government is widely credited with the skeptical comment, “if we extricate ourselves out of ambiguity we do so at our own cost.” Thus there is a mixed message in the literature: in some situations

clarity can be costly and the only pragmatic course to follow is by the use of ambiguity, viewed as a strong precondition to achieve some measure in building a political coalition to promote collective action.

More than the vagueness of ends and means can be found in the academic public policy literature. There is also an interesting use of ambiguous concepts and theories. Some examples are the use of ideas like “sustainability,” the “informal sector,” and “organizational learning.” These concepts are hard to define but nevertheless can be useful in both mobilizing action and charting a course for research and enquiry. The world of action and research are linked, because once a vague concept is accepted in the field of practice, and resources become available, then the academic community becomes involved in the evaluation of outcomes and in the design of future policy.

1.3 Abstract Ends

Maybe the classic statement can be found in the writing of Selznick (1957), who says: “Means tyrannize when the commitments they build up divert us from our true objectives. Ends are impotent when they are so abstract and unspecified that they offer no principles of criticism and assessment.”

1.4 Unwanted Precarious Ends

“Unwanted ends” are ones that are imposed on an organization, requiring that the organization pursue goals that extend beyond the original mandate of the organization. They create an organizational “triple bottom line:” maintaining fiscal solvency; realizing the primary mission; and dealing with the imposed and unwanted mission, which they are obliged to follow, since some regulatory oversight is imposed by an outside agency. These new and imposed values become what Selznick (1965, 126) called “‘precarious values’, defined as values that are not well integrated into the agency’s core mission.” It is precisely this loose coupling with the primary mission of the organization that makes those ends “precarious.”

David Miller (2001) formulates the problem in more normative terms, as a conflict about “distributive responsibility.” This frames the problem at an earlier stage. There can be broad agreement that we should collectively intervene in this situation, but what is unresolved is the distribution of responsibility for that intervention. Who is responsible for covering the financial and organizational costs of the decision to actually do something? We can agree to name a problem as a “humanitarian crisis;” we can collectively agree that the genocide must be stopped. But we can’t agree at what cost, to be incurred by whom. We seem willing only to define the problem, not to agree on a principle distributing responsibility for action. Many social welfare problems also take this form.

There are, of course, many other examples of posing issues of how to distribute responsibility. Consider the situation where the government cuts back on the funding of non-profit organizations and these organizations, over time, find that they increasingly lack the necessary funding to carry out their missions. They are then forced to seek other resources if they are to survive. Some turn to the market as a source of income; others seek to pass on the cost to the consumer in the form of co-payment. Weisbrod (1998) offers a telling analysis of the dilemmas of practice that emerge when public policy shifts its distribution of responsibility, by focusing on how non-profit organizations deal with their double bottom line of promoting financial stability and commitment to their mission.

This situation could provide an entrée for government to impose values on the reluctant non-profit agencies. For example, local government might insist that non-profit agencies accept a large portion of the poor welfare mothers or the homeless or prisoners released from incarceration in their caseload. That can then create a Selznick-type problem of “precarious values,” depending on how the situation is resolved. Who has the responsibility of caring for prisoners released from incarceration and unable to find their footing in their local community? Organizations eager to maintain clear and simple goals have developed strategies of restructuring to deal with these unwanted, and often alien, imposed ends.

Thacher (2004) ponders one of the serious dilemmas of a strategy of imposing punishment when the law is broken: what if no institutions will take the responsibility for what happens after the sentence is fulfilled? The graduates of these programs, with no place to go, then create a new category of “institutional orphans,” who are unwanted clients. Those caught between the punishment and rehabilitation system are often simply ignored, responsibility for them being distributed to no one who effectively accepts it.

1.5 Unattainable Objectives

The child welfare system provides a good example of the pursuit of desirable but unattainable ends. The desirable end is for children to live in “normal” families, defined as ones who accept broad social norms of child rearing. Efforts are made to realize this goal by removing neglected and abused children into alternative care, such as foster care or sometimes adoption.

The experience shows that many of these children in care do not in fact return to their original families. The child welfare system of foster care and adoption has not developed effective means to create a substitute living arrangement for these children. Many of these children spend large parts of their lives moving from one foster home to another, or from adoptions back to foster care. We seem not to be able to return these children to “normalized” living arrangements (Steiner 1981). So normalization is perhaps not an attainable objective, in child welfare organizations that pursue their mission with insufficient resources and periodic shifts in direction.

These children eventually come of age and leave foster care to be absorbed, as best they can, into the community. A recent study of youth aging out of foster care shows that “overall 19% of the study group experienced a stay on Shelters” and the numbers are higher for some subgroups depending on race and gender (Youth Aging Out of Foster Care 2002). The adjustment of many of these children to the community is clearly wanting. But this does not mean that public policy can give up on the self-evident objective of rehabilitation or normalization of these children.

We do not have a viable alternative. Placing unwanted children in institutions seems not to be the way to go forward. The cost of building and maintaining such institutions is alarmingly high and there is no evidence that is a very effective way to go. One can read accounts that date back 100 years to see that we have not made much progress (Rothman 1971; Crenson 1998). Hence we call this a “problematic end,” since we have not devised a way to attain that end (a system of normalization) for a substantial portion of this group.

1.6 Missing Ends

An interesting example of “missing ends” is found in an essay by Russell Baker (2004). Here in brief is the argument. Since the end of the cold war, Washington has been suffering from “the sense of pointlessness.” “Government is about raising money to get elected and then reelected to service those that put up the money,” but it is unclear what form that service should now take. To deal with this problem Washington has invented something called “spinning” which the press converts into what is “spun” by cunning spin doctors who create urgent problems they can then solve.

There are of course other examples in the political science literature on symbolic politics. There, action is taken for show, with little commitment to act on these symbolic intensions. Edelman’s work on *The Symbolic Uses of Politics* (1964; see also Edelman 2001) is an early example of this political form.

2. INSTITUTIONAL STRUGGLES TO DEAL WITH PROBLEMATIC ENDS

One might think that the best way to deal with these troublesome “problematic ends” is, at the conceptual level, to clarify the fuzzy ideas. If the ends are confusing, contradictory, and conflicting, then the starting point must surely be first to clarify

the muddle and substitute clear, disciplined thinking. What is needed is an intellectual search for more coherent policies that seeks to redefine the goals being sought. Henry Richardson's (1997) writing on practical reasoning develops a compelling argument to support the case for coherence.

We consider next some illustrative examples of an institutional approach to coping with the problematic ends discussed above. The central idea is to approach problematic ends as a puzzle that demands finding a plausible and coherent solution (Winship, this volume). It is a "practice worry"³ where the main focus is on the question of action, "What is to be done?" This does not rule out clarification of ends, but it extends the search for coherence and clarity to consider practical and programmatic redesigns of existing practice.

The best way to illustrate this intuition is to provide several concrete examples of these pragmatic institutional approaches. Each is briefly discussed to illustrate different approaches that we find in practice.

Gibson and Goodin (1999) view ambiguity as an ally in policy development. They call their approach "the veil of vagueness," in contrast to Rawls's famous "veil of ignorance." Rawls's idea is that if individual players did not know crucial facts about their identity and place in society, they could devise through a deliberative process a set of fundamental principles of justice as fairness. But real-world political actors cannot do this. The authors propose an alternative model, a "veil of vagueness," which can work in two different ways: the "vagueness of ends" and the "vagueness of means" respectively. First, vagueness can cloak the nature of the agreement: ambiguity or abstraction can facilitate agreement getting; practitioners who disagree at some level can often agree at some higher level of abstraction about what should be done; in broad, vague terms, most members of society can agree what is in the "public interest." Second, vagueness can be used to mask the subsequent steps in the process by which a final agreement will eventually be reached.

Joshua Cohen (1996, 2004) proposes a second, very different approach to the puzzle of how problematic ends can be dealt with in practice. He makes a forceful argument that the values of "deliberation" and "participation," the two foundational pillars on which of theory of democracy rests, not only can in practice pull in different directions; furthermore, improving the quality of participation may come at the cost of public deliberation. In brief, the theory of democracy rests on two potentially conflicting imperatives. Cohen believes that there is no intellectual way to resolve these deep value conflicts by climbing the ladder of abstraction in search of resolution at an abstract level of reasoning. It is an illusion to believe that more thought and deeper conceptual clarification of the sources of the conflict can resolve the conflict. A solution can only be realized through an institutional or a procedural approach. What is called for is "practice experimentation," an idea in the spirit of what Dewey calls "inquiry and institutional innovation." What is needed is thought combined with action, and a willingness to consider doing something different and non-conventional.

³ For an elaboration of this concept, see Rein 1983.

Popular devices such as referenda certainly encourage direct citizen participation. But at the same time, “requiring a yes/no vote may discourage reasoned discourse in legislation.” A good example of how the referendum can be disruptive is the experience of a small country like Switzerland. A small but determined group can undo a legislative initiative that has been the result of a long deliberative process (Neidhart 1970). Something like this occurred in pension policy that eventually led to mandating private pensions rather than increasing the value of pensions in the public sector. This might in the end prove to be a judicious outcome, but the process was created by a referendum designed to block legislative intent.⁴

A theory of practical reasoning must always involve the combination of thought in action and enquiry into the process and the outcomes of this enquiry. This is in fact what we actually do in practice. Consider the third example of, and the institutional approach to, how to deal with value conflicts. Thacher and Rein (2004) identify three practical strategies that societies have used for concretely dealing with them:

1. *casuistry*, which involves seeing how similar conflicts are actually dealt with and resolved in practice;
2. *cycling*, which emphasizes first one value and then another; and
3. the art of *separation* (Walzer 1983, 1984), which assigns responsibilities for each value to different institutional structures.

The principle of casuistry is common practice among legal scholars. Following this approach they ask, “what is this a case of?” They then rely upon the repertoire of case law to see how the case was handled in past practice, letting earlier decisions provide a guide for what to do in the present, on the assumption that the two cases are similar in important ways. The drawback to this approach is that in most fields of public policy no such written record exists and the repertoire of experience is only available in the lived experience of the practitioners, who often cannot fully articulate what the intuition is that guides their action (Neustadt and May 1986; Thacher and Rein 2004; Searle 2001). Cycling and separation can also fail to provide a complete solution. But they do illustrate how, in the real world, institutions cope with value conflict.

Another example of how the legal system makes use of ambiguity in its decisions involves the Environmental Protection Agency (EPA) mandate to implement the Clean Air Act. In *Whitman v. American Trucking Association* (1999), the US Supreme Court decided unanimously that the non-delegation doctrine (Alexander and Prakash 2003) was satisfied so long as the EPA had provided an “intelligible principle” governing the writing of administrative guidelines; there was no danger of passing undue vagueness on to other agencies of government (White 2002).

Another approach to dealing with problematic ends builds on the intuition (Winship, this volume) that the precondition for dealing with disagreements must also be

⁴ This is of course a one dimensional account of the effects of referenda: some can stimulate a national conversation, such as that over the monarchy/republic in Australia, or the series of referenda that eventually radically changed Irish abortion law.

based on a widely shared agreement as to what are the choices over which we might be disagreeing. Institutionally, the key to acting on this insight is a pre-negotiation stage that creates a template about the naming and framing of what is to be addressed and what is to be ignored in an actual negotiation. The institutional solution is the invention of an “art of convening” that generates a way to map the terrain of what is discussable and non-discussable in the later stage of direct negotiations (Raiffa, Richardson, and Metcalfe 2003).

One can hire an outsider, a trusted person to map actionable terrain. The aim is not to reach a philosophical clarification of what is at issue but rather to define a practical way to deal with this specific situation. It is a case of “learning by monitoring:” “an institutional device for churning, amidst the flux of economic life, the pragmatic trick of simultaneously defining a collective-action problem and a collective actor with a natural interest in solving it” (Sabel 1994, 272).

3. SECONDARY REFRAMING: THE CASE OF OFFLOADING UNWANTED CLIENTS

While some institutional approaches try to adapt a practical way to cope with the problematic ends that they confront in their practice, other institutions act in ways that exacerbate them. The strategies of offloading and secondary reframing that I review next are not really new, but are much older ideas that can be recognized under different names.⁵

The basic intuition is illustrated by the following example. Suppose a government does not wish to make the level of its unemployment of older workers politically visible, as a problem of “people without jobs sufficient to provide an adequate income to live on.” It may try to mask or hide the phenomenon by “renaming” it, and by giving it a somewhat different name shifting the problem a different institutional spheres. I call this the “transfer” from one policy domain to another. One well-known way of dealing with the problem of older workers is to pass it on to another institutional domain as a problem, not of the weakness of the labor market, but of “disability” or where the institutional rules permit, as a problem of “ageing” and “retirement” (Kohli et al. 1991). In Germany the formal retirement age is sixty-five, but the average age of actual entry in the Old Age Pension System was around age fifty-five (Schön and Rein 1994, ch. 4). In the Netherlands, where the pension system had rigid rules of entry by age, in practice flexibility was established by using the disability system as the port of entry into retirement for those below the age of

⁵ On framing and reframing more generally, see Schön and Rein 1994.