

Some moral approaches to policy and law.

- Utility – greatest good for the greatest number (classical version)
- Rights – Entitlement to be treated in a certain way
 - Principles dictating high priority claims of people.
- Justice (or equity).
 - Equality and desert: issues of distribution.
 - Aristotle: treat equals equally, unequals unequally.

Classical utilitarianism

- Happiness is what we want.
 - Happiness = preference satisfaction.
- Best laws/policies would maximize total happiness of society.
- Impartial and universalistic: your and my happiness counts the same.
- Consequentialist doctrine:
 - Morality not about intrinsic qualities of action or goods: killing, law-breaking, respect for privacy.

Some implications of utilitarianism

- Useful for policy justification (especially economic issues).
- Best policy: greatest net social utility compared to alternatives. Efficiency.
- Uses cost/benefit analysis.
- Sacrificing some rights: police actions, surveillance, state emergencies.
- Indifferent to justice and distribution.

More implications

- Requires measurement of utility across persons: interpersonal comparisons.
 - Experts can't do this.
 - Market prices don't really work: measures 'willingness' to pay by 'ability' to pay.
- Should we assume that people's preferences represent their well-being?

Conflict with rights and justice.

- Equal rights of persons:
 - Killing one person vs. killing 3 people.
- What about laws permitting slavery if it increased net social utility?
- Or laws permitting poor people selling themselves into slavery?

The Trouble with Rights (acc to economists)

- Absolute, all-or-nothing quality.

Which claim should prevail

Not:

Opportunities to negotiate disputes

- How can we place a value of competing claims?
- Better to think in terms of preferences.
- Rights:
 - signal values that need special or absolute protection
 - defeat trade-offs, ‘how much’ questions

Some examples

- Charter of Rights: speech, movement, assembly, fair procedures, privacy, no discrimination
- What about other values: safe streets, good jobs, etc..
- Can education be considered a right?
- Conflicting rights: hate literature or free speech?

Privacy vs. public safety

- Right against “unreasonable search and seizure” (Charter #8, U.S: 4th amendment).
- Reasonableness works better as economic criterion than rights criterion:
 - Need less probable cause for more serious crime.
 - Fritzler: Redescribe rights in cost-benefit terms: could the police have been less intrusive, value of harm protection, etc..

Similar cases

- Free speech
 - Should all speech get equal protection?
 - Hate literature, child porn
- Benefits: protecting social and political criticism.
 - Low-value speech vs. high value speech.

1st Clause of the Charter

- “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”
- Balance between “prejudicial effects of the measure” and seriousness and urgency of the social problem.

Efficiency Tests

- Problem with **utilitarianism**: favors those who get the most happiness from things.
- **Pareto efficiency**: laws and policies that are best at giving people what they want.
- **Pareto efficient policies** – make at least one person better off w/o harming anyone else.

- Win-win outcomes – like gains from trade.

Or Kaldor Hicks...

- Problem with Pareto efficiency:
 - What about when A's and B's interests collide, are competing to use the same resources?
- Kaldor-Hicks efficiency:
 - Laws and policies that would be Pareto-efficient in win-lose situations after the winners compensated the losers.
 - Helps with cases where there are negative externalities.

A common approach: Pigouvian Taxes

- Tax those who impose externalities on others.
- Internalizing the social costs of gas use.
 - E.g., gas tax = damage caused to others.
- Outcome is socially efficient since
 - the full cost of driving would be priced.
 - Right amount of driving
- Are you a member of the Pigou club? Here:

<http://gregmankiw.blogspot.com/>

Coasian approach
(Ronald Coase)

- **Coase Theorem:** Whenever my preferred use of a resource conflicts with yours, government regulation which re-assigns or alters property rights and private costs is not needed for socially efficient outcomes. Rather, no matter what the initial allocation of rights, the private parties to the conflict will negotiate until resources will be put to their most highly valued use, so long as bargaining doesn't have transaction costs.

	Farmer (Max use \$100)	Rancher (Max use \$150)	Total Value to both
Free Access	\$25	\$140	175
Prohibit Access	\$100	\$30	130
F. sells partial access	\$75 use \$30 permit \$105 TOTAL	\$115 use -\$30 permit \$85 TOTAL	\$190

F. buys R.'s restraint	\$75 use -\$30 restraint \$45 TOTAL	\$115 use \$30 restraint \$145 TOTAL	\$190
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Posner

- Laws and courts: used when the market or negotiation can't be used.
- How should cases be decided?
 - Use a rule that increases overall social welfare in cost benefit terms.
- How to achieve net benefits (acc to Posner)?
 - Mimic the market.
 - Courts should assign rights people would have bargained for if the market could function.