



The Palgrave Handbook of Philosophy and Public Policy

Edited by
David Boonin

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and Public Policy

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ISBN 978-3-319-93906-3 ISBN 978-3-319-93907-0 (eBook)
<https://doi.org/10.1007/978-3-319-93907-0>

Library of Congress Control Number: 2018950480

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This Palgrave Macmillan imprint is published by the registered company Springer Nature Switzerland AG

The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

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Introduction: Philosophers and Public Policy

David Boonin

Public policies come in many forms and address an enormous variety of subjects. Depending on the nature of the issue in question, policy makers may therefore find it useful, perhaps even essential, to consult experts across a wide range of fields: economists, psychologists, historians, physicians, statisticians, environmental scientists, chemists, engineers, legal scholars, education specialists, nutritionists, diplomats, just to name a few. Where in all of this do philosophers fit? What distinctive contributions can they make to deliberations about public policy? This Handbook is an attempt to answer that question by illustrating the many ways that philosophical reasoning can fruitfully be brought to bear on matters of public policy.

One distinctive contribution philosophers can make to thinking about public policy takes place at a relatively theoretical level: they can help us think more carefully and critically about abstract and general moral principles that most people find themselves appealing to across a broad range of public policy contexts. Most people, for example, have at least a general sense that considerations of distributive justice are important in many areas of public policy, but they may not have thought more specifically about what exactly distributive justice means. Most people also have a general sense that equality matters in many public policy contexts, but they may not have thought clearly about just what equality amounts to or about what exactly it is that should be equalized. Chapter 31 provides a careful analysis of a variety of principles of distributive justice that might be thought most appropriate for informing economic policy and takes the reader through some of the apparent strengths and limitations of each. Similarly, Chap. 32 helps the reader work their way through a variety of forms of egalitarianism with the goal of determining the conception of equality

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that should be viewed as most important in a liberal society, and Chap. 33 in part pursues a similar project with respect to gender equality in particular. In other cases, many people may not even be aware that conclusions about some particular policy matter depend in part on taking a stance on some more abstract question, and it may take a philosopher to come along and reveal the connection between the concrete and the abstract. Chapter 49, for example, discusses the ways in which different policy positions regarding the controversial practice of surrogacy may turn out to depend on different theoretical views about the metaphysical relationship between pregnant woman and fetus.

While these kinds of philosophical contributions often take place within a general framework largely abstracted from specific policy issues, there are also a number of important ways that philosophers can more directly help us make progress when thinking about more concrete questions. One way they can do this is by using the tools of philosophical argument and analysis to try to defend a particular position on a given policy issue. Many of the contributions to this volume do this. Some focus on relatively specific issues such as imposing mandatory minimum sentencing laws for drug offenses (Chap. 5), banning computer-generated child pornography (Chap. 29), and granting pharmaceutical companies temporary exclusive user rights to the clinical data they use to show that their products warrant market approval (Chap. 44). Others aim to stake out a specific position on relatively broader questions such as whether religion should receive special protection in our legal system relative to non-religious forms of conscientious belief (Chap. 22) and whether non-human animals should have political standing (Chap. 23).

While arguing for a specific policy position clearly makes an important contribution to discussion of the particular policy issue in question, arguing against a particular position on a specific matter of public policy can also prove extremely valuable. In the current debate over physician-assisted suicide, for example, most people hold either that it should be illegal across the board or that it should be legal, but only in cases where the person who wishes to die is terminally ill. Chapter 53 argues that this second position should be rejected. The argument of this chapter maintains that if there are good reasons to permit physician-assisted suicide for terminally ill people, these reasons are also good reasons to permit it for all competent adults who wish to die. The debate, on this account, should not be between allowing physician-assisted suicide for none and allowing it for the terminally ill but between allowing it for none and allowing it for all. The conclusion of the argument of this chapter does not tell us whether physician-assisted suicide should be allowed for none or allowed for all but by trying to show that the increasingly popular intermediate position is inconsistent and untenable, it nonetheless makes an important contribution to resolving the debate over physician-assisted suicide.

And, indeed, even arguing not against a particular position but just against a particular argument for a particular position can produce important results. The other chapter on physician-assisted dying in this volume (Chap. 52), for example, focuses exclusively on one kind of slippery slope argument that has

often been defended by those who are opposed to medically assisted dying. The chapter argues against this kind of argument and, in doing so, extracts several important lessons that can usefully be extended to many other policy debates in which slippery slope arguments have played a role. A number of other entries in this collection also help us make progress in particular policy debates by trying to rule out certain arguments or certain positions even if they do not purport to thereby rule in only one.

And sometimes philosophical analysis and argumentation can help move a public policy discussion forward without taking a particular stand on any of the options currently on the table. One way it can do this is by helping to identify theoretical criteria by which any particular option in a particular policy debate should be judged. Chapter 15, for example, draws a distinction between ideal theory and non-ideal theory, identifies some objections to ideal theory, argues that prominent arguments on both sides of the open borders debate are subject to some of these objections, and concludes that any satisfactory position on issues of migration justice must therefore satisfy the methodological desiderata of non-ideal theory. This conclusion by itself does not tell us whether we should support or oppose a policy of open borders, but it does tell us where to look for an answer and, just as importantly, where not to look.

Another way philosophers can help move a policy debate forward without endorsing one side over another is simply to help us better understand the nature of the considerations that can be offered in support of each side. The debate over permitting health care professionals to refuse to provide certain services that would ordinarily be a part of their professional responsibilities on the grounds that they are conscientiously opposed to them, for example, at times involves appeals to a wide variety of considerations and values that can be difficult to keep track of. Chapter 46 is valuable largely for providing a critical survey of some of the most influential arguments that have been offered on both sides of that debate, and a number of other chapters in this collection are useful, at least in part, for the same reason.

In addition to the variety of ways in which philosophers can contribute to discussions of public policy, there are also a variety of methods they can turn to when doing so. One method starts by appealing to a general theory of some sort and then tries to extract from that theory a conclusion about some particular policy issue. Chapter 37, for example, largely draws on Marx's theory of credit in an attempt to illuminate contemporary problems surrounding student loan debt. Chapter 47 turns to the pragmatism of John Dewey for insights into a number of public policy issues regarding the management of mental health problems in educational settings. Several chapters appeal in part to general principles developed by John Rawls as a way of reaching conclusions about particular policy questions. Other arguments are developed within a broadly consequentialist framework while still others proceed from a more rights-based set of assumptions.

A second approach to thinking about concrete policy matters tries to remain neutral between rival moral theories. One way to do this is to examine a par-

ticular policy issue from the perspective of a broad range of traditional theories and see to what extent, if any, there is overlap among their conclusions. Chapter 10, for example, looks at the contemporary controversy over interrogational torture in part through the lens of such traditional general approaches as Kantianism, utilitarianism, virtue ethics, and the natural law tradition, and attempts to arrive at an assessment of that practice by doing so. A number of other chapters in this volume also take a pluralistic approach of this sort to one degree or another.

A different version of this second approach relies on a different way of remaining neutral between rival moral theories. On this version of the approach, the argument for a conclusion about a particular policy matter starts not with a set of general views but with a particular judgment about a particular case that seems compatible with a set of such views. The argument in Chap. 4, for example, is grounded in the claim that Abe's behavior is morally wrong in the following scenario:

Abe and Julian are walking down the street when they encounter what they quickly realize is a gang of gay-bashing hoodlums. The gang leader asks Abe whether his friend is gay. As it happens, Abe knows that Julian is in fact gay. Without expressing any approval for gay-bashing, honest Abe replies: "I cannot tell a lie. Yes, he is most definitely gay." The gang then proceeds, as Abe knew they would, to beat up Julian.

The chapter does not offer an argument for the claim that Abe's behavior is wrong in this case. It simply assumes that people from across a broad range of theoretical orientations will agree that it is wrong. And from the assumption that Abe's behavior is wrong, the chapter goes on to derive a defense of the practice of jury nullification, arguing that Abe's situation is relevantly like that of a jury in a case where the defendant will be punished for violating an unjust law if convicted. Chapter 14 does something similar when it takes a relevantly uncontroversial claim about a case involving a patient who sneaks into a clinical trial they were not selected for and uses it to justify a substantive conclusion about the enforcement of border control policy.

As should also be clear by this point, there is considerable diversity not only in terms of the kinds of contributions philosophers can make to public policy discussions and the kinds of methods they can use to make them but in the kinds of subjects their contributions can help illuminate. Some chapters in this collection focus their attention on issues that people have been debating for quite some time, such as abortion (Chaps. 50 and 51), criminal punishment (Chap. 6), and freedom of expression (Chap. 24). Others highlight some of the ways philosophers can help us grapple with policy questions that have arisen only recently. Sometimes this is because of relatively new technological developments, as in the case of Clustered Regularly Interspaced Short Palindromic Repeats (CRISPR) gene editing (Chaps. 38 and 39), modern military drones (Chap. 11), and various recent advances in neurotechnology (Chaps. 3 and 7). In other cases, it is due to relatively recent social developments, like the current controversies over

removing statues honoring Confederate soldiers (Chap. 27) and over whether bakers should be legally required to sell cakes for same-sex weddings (Chap. 25). And in some cases, philosophers provide a valuable service by helping us start to think about policy decisions that may have to be made in the face of future technological developments. Striking examples in this volume include discussions of human cloning (Chap. 48), future forms of space exploration including terraforming Mars (Chap. 61), and sexual orientation conversion efforts if future technology renders them effective (Chap. 41).

The chapters that enable this volume to do all of this are divided into eight parts. Part I focuses on the criminal justice system. It begins with an examination of four specific questions that each arise at a different stage of the system: whether current pretrial detention policies in the United States are morally justified (Chap. 2), whether brain scans of a defendant should be admitted as evidence in criminal trials (Chap. 3), whether juries should vote to acquit a defendant despite sufficient evidence of guilt if they believe the legal prohibition or prospective punishment involved in the case is unjust (Chap. 4), and whether the use of mandatory minimum sentences in the context of drug laws should be abolished (Chap. 5). These chapters are followed by three more that each take on a more general criminal justice issue: the implications of different views about free will for the practice of criminal punishment in general (Chap. 6), the implications of recent developments in neuroscience for the criminal law as a whole (Chap. 7), and the relationship between anti-violence movements and state violence, with a special focus on anti-rape activism (Chap. 8).

Part II considers policy issues surrounding war, terrorism, and national sovereignty. It starts with a discussion of some basic ethical questions about the use of military psychological operations (Chap. 9), turns to two recent controversies that have arisen in the context of the war on terror in particular—the use of interrogational torture (Chap. 10) and the use of lethal drones (Chap. 11)—then offers an analysis of the kind of violent atrocities associated with some terrorist groups and the kinds of misunderstandings of such violence that can lead to unjustified policy choices (Chap. 12). This part of the book then concludes with three pieces that address different aspects of thinking about immigration policy. Chapter 13 offers a defense of a policy of open borders, Chap. 14 defends a government duty to take reasonable steps to minimize unauthorized immigration, and Chap. 15 makes the case for the value of non-ideal theory when trying to work out the best view of immigration justice.

Part III is devoted to issues concerning political participation, manipulation, and standing. It begins with two chapters about the way citizens in democratic states determine who governs: one providing an ethical assessment of actual voter behavior (Chap. 16), the other providing a defense of the claim that children should have the right to vote (Chap. 17). It then offers two contributions to the recent debate over one way that states, in turn, can determine how their citizens behave: the much-discussed “libertarian paternalism” of nudges (Chaps. 18 and 19). And it concludes with four pieces on topics that each, in one way or another, engage with questions of equal standing: education policies that deny equal standing to students with special needs

(Chap. 20), dehumanizing practices that deny equal standing to those who are subject to them (Chap. 21), policies on which members of religious groups seem to be given special standing relative to those who are guided by non-religious forms of conscientious belief (Chap. 22), and the fact that non-human animals currently have no direct political standing at all (Chap. 23).

Part IV discusses a variety of issues regarding freedom of speech and expression. It starts with a treatment of the value of liberty of thought and discussion in general (Chap. 24) and then turns to consideration of two important US Supreme Court cases that each raise questions about what counts as expression for purposes of such protection: *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018), which raises the question of whether the artistry involved in creating a wedding cake should be viewed as a form of expression (Chap. 25), and *Citizens United v. FEC* (2010), which raises the question of whether donating money to a political campaign should be viewed as a form of expression (Chap. 26). It then moves on to consider three additional issues where the controversy is not so much over whether something is a form of expression but about the appropriate ways of responding to it: the question of what to do about racist monuments such as those devoted to Confederate soldiers (Chap. 27), the question about whether creationism should be taught in public schools (Chap. 28), and the question of whether computer-generated child pornography should be illegal (Chap. 29). This part then concludes with discussion of a question of importance to those whose freedom to express themselves depends in part on the services of signed language interpreters (Chap. 30): does the Americans with Disabilities Act discriminate against deaf people?

Part V covers issues concerning justice and inequality, with a special emphasis on economic issues. It begins with three pieces that each have a relatively general focus: evaluating competing principles of distributive justice (Chap. 31), determining what kinds of equality matter and when they matter (Chap. 32), and raising the same kinds of questions with respect to gender equality in particular (Chap. 33). It then turns to four pieces that each bring theoretical considerations to bear, at least in part, on some more concrete issue: determining the most effective ways to make charitable donations (Chap. 34), evaluating the use of privatized prisons (Chap. 35), and thinking about student debt and the federal student loan system (Chaps. 36 and 37).

Part VI turns to a variety of issues involving bioethics and biotechnology. It begins with two chapters, each taking as their point of departure the recent development of CRISPR gene-editing technology. Chapter 38 provides some general background about CRISPR science and the current thinking about the policy questions it raises, and goes on to challenge a distinction that seems to play a significant role in that thinking: that between genetic therapy and genetic enhancement. Chapter 39 focuses more specifically on the potential use of CRISPR to fight the spread of malaria by introducing an infertility gene or malaria-resistant gene into the mosquito population and then considers and responds to a number of objections that can be raised against such a practice. These chapters are followed by two more that deal with other controversies

surrounding enhancement and therapy more generally: the debate over enhancement and cheating in the world of sports (Chap. 40) and a discussion of what public policy regarding sexual orientation conversion efforts should be if technology that would render such efforts successful eventually emerges (Chap. 41). Evolutionary biology clearly plays a role in the background to these debates, and it is then brought to the forefront in Chap. 42, which argues that public policy decisions should not be based on evolutionary accounts of human behavior.

This part of the collection then moves on to a pair of chapters that each examine policy problems surrounding clinical research: how to address the potential for exploitation when such research is conducted in relatively low-income nations by entities from relatively high-income nations (Chap. 43), and whether to grant pharmaceutical companies temporary exclusive user rights to the clinical data they use to show that a new drug of theirs is sufficiently safe and effective (Chap. 44). A treatment of another kind of issue relating to the use of data follows in Chap. 45: the controversy surrounding what constitutes responsible management of what has come to be known as “Big Data”. This part of the book then concludes with a discussion of two issues involving health care professionals and providers: the debate over the ethics of conscientious objection accommodation for medical workers (Chap. 46) and a challenge to the current popularity among mental health professionals of “resilience” as a strategy for managing mental health issues (Chap. 47).

Part VII moves on to treat a variety of additional issues, several of which are also often subsumed under the heading of bioethics but which here are gathered together as a distinct grouping of issues relating to the beginning and end of life. This part of the volume begins with four pieces that focus on controversial practices at or near the start of life: the debates over reproductive human cloning (Chap. 48), surrogate pregnancy (Chap. 49), and abortion (Chaps. 50 and 51). It then concludes with three pieces that focus on controversial practices at or just after the end of life: physician-assisted dying (Chaps. 52 and 53) and the procurement of organs for transplant from cadavers shortly after death (Chap. 54).

Finally, Part VIII takes up environmental ethics and problems. It begins with two pieces that are focused at a relatively general level: an effort to “revive a dynamic ‘biophilic’ ethics of interconnectedness and eco-justice” that has wide-reaching implications for our treatment of the natural environment (Chap. 55) and an effort to develop a rights-based account of the kind of precautionary principle that many people think appropriate to apply to a wide range of environmental issues (Chap. 56). It then turns to three questions about how we might appropriately respond in cases where our views about the environment have not yet been put into practice, ranging from the socially conscientious use of philosophy of science in the service of environmental policy (Chap. 57) to divesting from fossil fuel companies as a response to accelerating global warming (Chap. 58) to more extreme forms of environmental civil disobedience in still other contexts (Chap. 59). This part of the book, and the book as a whole, then concludes with two pieces that focus on places less com-

monly associated with thinking about the environment but no less important despite this fact: the urban environment (Chap. 60) and the extraterrestrial environment (Chap. 61).

Having said a few words about what this book tries to do, it may help to conclude by saying a few words about what it does not try to do. First, this book does not try to provide a fully comprehensive treatment of the area it covers. Philosophy and public policy is simply too broad an area, including far too many specific subjects, for it to try to do that. It also does not attempt to offer a completely representative sampling of work in the area. While many of the topics it covers are subjects of considerable discussion and in one way or another typical for the field, others are somewhat more idiosyncratic and not especially illustrative of main currents in the area. Similarly, this book does not purport to represent a prioritized view of the field. It does offer coverage of many of the most significant and urgent issues confronting us, some of which are literally a matter of life or death, but it also considers a variety of issues that cannot be said to be of such far-ranging importance while omitting treatment of other issues that are clearly more pressing. Finally, this book does not pretend to be balanced in the sense of giving both sides of any given debate an equal hearing. A few subjects are tackled in more than one chapter in a manner that when combined approaches something like a pro and con treatment, and several others are discussed within a single chapter in a way that gives roughly equal coverage to opposing sides of the issue, but many of the chapters in this volume focus largely or entirely on defending a single point of view about a particular issue, a perspective that is not countered by any corresponding treatment of that issue elsewhere in the book.

In all these respects, this handbook might therefore best be thought of as something more like a snapshot of the field. A photograph of an enormous subject cannot be expected to comprehensively capture every element of that subject in clear detail. If a hundred thousand people are jammed into a stadium, for example, not everyone's face will fit in the frame if any of the faces are to be adequately portrayed. And since different angles and vantage points will reveal different portions of the crowd, and from different perspectives, with differences between who is in the foreground and who is in the background, no single shot can claim to be perfectly representative or balanced, either. These are limitations on what a single photograph of a crowd can accomplish, but none of these limitations prevent a photo of a crowd from being a good photo. Similarly, there are limitations on what a single collection of works on philosophy and public policy can accomplish, even a relatively large collection, but the hope is that this volume will nonetheless prove able to do what a good photograph can still do: capture your interest in its subject, draw you in to examine it more closely, provide mental stimulation and enjoyment, and, ideally, inspire you to think about its subject more carefully and to explore it from more angles than any one representation of it can provide.