

How to Define Public Interest?

This question is at the heart of the project of political philosophy, that of legitimation. Public interest, if it can be defined, serves as the fundamental criterion for establishing the legitimation of power. Political power, then, is legitimate and necessary, and even acceptable, only inasmuch as it can be established that it serves public interest. Professor Simard has also asked me to bring a philosophical contribution to the EPAC discussion on public interest. So part of my presentation will deal with definition and clarification, part of it will consider procedural aspects of the definition of public interest and part of it will deal briefly with substantive issues.

Public interest as a criterion of legitimation of power

The central question of ancient political philosophy is the establishment of the best form of government in order to realize goodness. The central question of modern political philosophy is the legitimation of the distinction between governants and governed. The ability to define and realize public interest represents a criterion of legitimation in both cases.

Thus, we can say that the best form of government for a given group or nation will be the one that is best suited to attain public interest. We abhor tyranny, despotism and totalitarianism because in these regimes, public interest is determined by one or by a few, which obviously does not take into account what the group or nation sees as its interest.

In the western tradition, we tend to put our faith into democracy because that is the form of government that is best suited to define public interest through mechanisms of representation and public debate. This follows a basic intuition of modern and especially Enlightenment philosophy.

But consensus or general assent does not always represent public interest nor the public good. A population that agrees with an unjust war or a genocide or an unacceptable social practice (e.g. burning witches) may present a strong consensus for that action or practice, but that is not what makes it right or wrong. So sometimes, it is in the public interest to act in a way that might not be favoured by the majority. Or in a more local perspective, fishing and lumber communities might favour higher exploitation rates of the resources, whereas it may be in the long term interest of the industry or the country to limit the exploitation of the resource.

Now in a democratic context, especially in the perspective of post-modernity, the good cannot be defined in a « patriarchal » way by an enlightened elite.

Ethical approaches

Perhaps more than in any other sphere of human activity, governance and political life are always guided and evaluated by some ethical doctrine it claims to follow or not.

In the same way as in private life, decisions and actions do not and cannot follow a complete calculus, but people must deliberate on the principles and norms that will govern and justify their action. That is to say people are not (like philosophers) committed to uphold or defend a particular ethical approach or theory.

The same person can be, without contradiction, be a utilitarian in business, a deontologist in her profession, a virtue ethicist in her involvement in the community and a care ethicist when it comes to her children. In other words, people integrate in their moral deliberation the ethical approach that is pertinent and just (as far as they can see) in the various circumstances of their life. In brief, people are eclectic in their moral deliberation.

In the perspective of a liberal democracy, the dominant framework to define public interest is largely utilitarian although many other approaches are present in the social and political debate. In a utilitarian perspective, public interest is defined in terms of its consequences for those affected. And those that are affected should be in a position to present an enlightened consent to the actions that are proposed. This does not mean that other approaches are excluded, for instance, government may act out of duty, say in matters of human rights or international development, or adopt a virtue approach in the context of international agreements (ex. Land mines agreement).

But we can see that this general utilitarian perspective presents some difficulties :

1. Can public interest be defined by the sum or the mean of individual or private interest? Those who think so can be called « preference utilitarians ». So a government might regulate certain practices for the good of society (i.e. public interest), in spite of the fact that it does not correspond to current practice.

So if most members of a group are opposed to, say, a national gun registry, or the privatization of hydro, or the prohibition of drugs, they will consider the laws or actions of a government illegitimate, i.e. it does not represent their interest, or what they see as the public interest.

2. Is there some good that realises public interest that transcends individual interest? Those who think so within an utilitarian perspective can be called « welfare utilitarians ».

So public representative might favour some law or action that realizes public interest even though the members of a group might not agree with it. Ex. Public health measures, seatbelt laws for automobiles, speed limits or prohibition of dangerous substances such as herbicides or drugs.

It is clear that in these two approaches, the condition of success in defining public interest rests largely on the method or procedure for attaining consensus. Yet, it may happen that what is seen as public interest by a government is not interpreted as such by a large part of the population, ex. Privatization of Ontario Hydro. In other cases, governments feel compelled to regulate areas where there is a strong public consensus, ex. Child pornography.

So we might try to articulate some principles governing the process for defining public interest.

A principle of participation

In a democracy, saying that one has freedom of speech or one can influence public debate is rather a formal right. Thus, fora where people can express their substantive views of what is public interest in certain matters must be multiplied. In addition, without calling for parliamentary reform, the function of member of parliament (or member of the legislative assembly, or local representatives) must be emphasized and valued. I.e. people must have and feel they have access to their elected representatives.

In addition, the public commission has adopted the terminology of business relations, i.e. clients, etc. This may contribute to an attitude of efficiency and productivity, but it is important in a democracy to stress the dignity of citizen. If the administrations deals with people as clients, people approach their institutions as citizens.

This is important as in a democracy, sovereignty is attached to the people. They provide the foundation of political power and the legitimation of the distinction between governants and governed.

A principle of charity

This principle is aimed more at the actions and procedures of the public commission. This principle comes from philosophy of language. It states that when our interpretation of a statement yields an obvious contradiction or absurdity, we should try to find another interpretation that preserves the rationality of the statement. (if you are asked if you have the time, yes is an uncharitable answer; you should interpret the question rather as a request for the precise time and not as a request for information on whether you have a watch or not.

Examples : veterans or senior citizens are not (all) administrative lawyers, they have sometimes to be explained their rights and entitlements in a clear language.

The resources of the public commission are also the resources of the people.

A principle of subsidiarity

Decisions regarding public interest should be taken as close as possible to the communities involved, when it touches specifically these communities. This is an application of Ockam's razor to politics. It is not necessary to take decisions at the federal level to solve a problem for a local community. Ex. Québec's law 101 might be a crucial measure for Montreal, but an absurd one for say Hudson Heights. The Gun Registry is widely accepted in urban Canada, but is resisted in the rural areas. Fine instruments should be used rather than steam rollers.

A principle of autonomy

The law should govern and regulate practices that reflect the life of the individuals without imposing values to govern their actions. The government does not have exclusivity on the meaning of life and what makes a life worth living.

This principle is expressed by Rawls as one of tolerance or respect for the plurality of « life projects».

A principle of transparency

This is an obvious principle, if not a fundamental duty in a democracy. If laws and regulations require enlightened consent, then, transparency and the free communication of information in an accessible language becomes a fundamental condition of democracy.

Conclusion

In a post-modern society, i.e. a pluralist and tolerant society, the good and public interest cannot be defined on the basis of transcendent principles, such as natural law, God's plan or the romantic idea of Bildung (high culture).

The definition of the public interest depends on a successful social and political debate in which actors can reach a consensus on values and actions and enter in agreement on the basis of enlightened consent.

It may be the case, albeit rarely, that public interest cannot be defined on a consensual basis. In this case, as Montesquieu says, the wise law-giver must understand the spirit of the people in order to formulate just laws, i.e. laws that correspond to the public interest.

For the long-term, it is important to foster a participatory political culture and education in order to integrate as much of the population as possible in an informed debate. In a democracy, people not only have rights, but they also have obligations. These include not only voting and paying taxes, but a continuous formation undertaken by citizens in order to contribute positively to the debates in which public interest is defined.

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