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Beyond Administrative Tunnel Vision: Widening the Lens of Costs and Benefits

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Beyond Administrative Tunnel Vision: Widening the Lens of Costs and Benefits

GOVIND PERSAD*

ABSTRACT

Choices in one sector or department of public policy, such as health, frequently produce costs and benefits in other sectors, such as education or the environment. In this article, I argue that administrators should not make decisions in ways that ignore effects on other policy sectors, and arguably—though more debatably—should not give special priority to the interests of their own sector. In Part I, I review contexts where administrators are directed to ignore or give a lower priority to effects on other policy sectors. In Part II, I lay out an argument that agencies should not ignore these effects (using an example from health policy), and consider potential responses to that argument. In Part III, I consider some strategies to remedy the problem of agencies giving insufficient weight to wide-scope costs and benefits.

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INTRODUCTION

Choices in one sector or department of public policy, such as health, frequently produce costs and benefits in other sectors, such as education or the environment. This article considers what weight public policy should give to such benefits, and argues that this weight should be greater than zero, and arguably should be the same regardless of sector.

Some assert that administrative agencies each pursue disparate goals, giving little weight to aims outside their sector. This view is exemplified by Robert Goodin's claim that "it is the Health Minister's job to look after health, and spend her money however best promotes health; any spillovers to non health matters, be they positive or negative, are naturally neglected by her on the grounds 'that's not my department.'"¹ Daniel Hausman similarly claims that "contemporary governments assign different goals to different sectors."² Depending on how strong the neglect in question is, this approach can be conceptualized in either of these two ways:

- *No Consideration* approaches to public policy involve a given policy sector, e.g. the health ministry, giving no weight at all to benefits and costs outside of that sector. (In what follows, I will call such costs and benefits "wide-scope").
- *Unequal Consideration* approaches have policy sectors give less weight to wide-scope costs and benefits.

If understood as describing how administrators *do* make decisions, Goodin and Hausman may be correct. But their observations do not support the claim that administrators *should* make decisions this way.

In this article, I will argue that administrators should not make decisions in ways that ignore effects on other policy sectors, and arguably—though more debatably—should not give special priority to the interests of their own sector. I

1. Dan W. Brock, *Separate Spheres and Indirect Benefits*, 1 COST EFFECTIVENESS AND RESOURCE ALLOCATION 1 (2003).

2. Daniel M. Hausman, *Health, Well-being, and Measuring the Burden of Disease*, in 10 POPULATION HEALTH METRICS 13 (2012).

develop this argument as follows. In Part I, I review contexts where administrators are directed to ignore or give a lower priority to effects on other policy sectors. In Part II, I lay out an argument that agencies should not ignore these effects (using an example from health policy), and consider potential responses to that argument. In Part III, I consider some strategies to remedy the problem of agencies giving insufficient weight to wide-scope costs and benefits.

I. PUBLIC ADMINISTRATION AND THE DANGER OF TUNNEL VISION

Hausman's and Goodin's observations regarding the tendency of administrative agencies to ignore wide-scope benefits are anecdotal ones, and do not examine in depth the mechanisms producing this phenomenon. In this Part, I review statutory language and other factors that may encourage agencies to ignore wide-scope benefits. Though my focus is on the United States, it would also be valuable in future work to examine similarities and differences with other nations' administrative law, and with international administrative agencies.

A. *Federal Administrative Agencies*

The enabling language creating most federal agencies in the United States focuses on their responsibility to promote specific aims, rather than their responsibility to serve the public good in general using the means at their disposal. An example is the Department of Agriculture's enabling statute, which reads:

There shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition, in the most general and comprehensive sense of those terms, and to procure, propagate, and distribute among the people new and valuable seeds and plants.³

The statute goes on to direct the agency head that "he shall advise the President, other members of his Cabinet, and the Congress on policies and programs designed to improve the quality of life for people living in the rural and nonmetropolitan regions of the Nation."⁴ Here, the focus is not on improving overall quality of life, but on improving the quality of life for particular groups.

Similarly narrow goals are provided for other agencies. The Department of Commerce's goal is to "foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, and fishery industries of the United States."⁵ "The purpose of the Department of Labor shall be to foster, promote,

3. 7 U.S.C. § 2201 (2012).

4. 7 U.S.C. § 2204 (2012).

5. 15 U.S.C. § 1512 (2012).

and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.”⁶ The specific goals prescribed for these agencies pose a clear danger of agencies working at cross purposes, as will be discussed in Part II: for instance, for the Department of Labor to promulgate labor policies without consideration of their impact on industry, or for the Department of Commerce to promulgate industrial policies without consideration of their effects on workers. Even agencies without explicit purposes are frequently organized around a fairly narrow goal. For instance, the Secretary of Housing and Urban Development is directed to perform a variety of tasks, but almost all specifically concern housing and urban development.⁷

The enabling acts for certain agencies, however—particularly those created later on—do gesture toward the importance of using agency power to promote the public good more generally. For instance, the enabling statute for the Department of Energy asserts that “the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs.”⁸ Though this language may appear to be mere window-dressing, it signals a subtle shift toward a concern with achieving the public good more broadly: rather than having the purpose of providing information about a particular topic or of advancing a specific aim, the Department of Energy—at least on paper—is charged with using energy policy to promote the “general welfare.” There is similar language concerning the Department of Education, though that language is vaguer, stating that the department’s purpose is to promote the general welfare but not explaining how it is to coordinate policy to bring that end about.⁹ The Department of Transportation is charged with the “development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost *consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.*”¹⁰ One of the newest agencies, the Department of Homeland Security, has as a primary mission the obligation to “ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.”¹¹

However, even the Departments of Education and Energy have language that seemingly directs them to place special emphasis on their own sector. The Department of Energy, for instance, is directed to “assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be

6. 29 U.S.C. § 551 (2012).

7. 42 U.S.C. § 3532(b) (2012).

8. 42 U.S.C. § 7112 (2012).

9. 20 U.S.C. § 3402 (2012).

10. 49 U.S.C. § 101 (2012) (*emphasis added*).

11. 6 U.S.C. § 111(b)(1)(F) (2012).

utilized in the development and achievement of the policies and purposes of this chapter,”¹² and to “foster insofar as possible the continued good health of the Nation’s small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.”¹³ Whether this language favors narrow-scoped benefits depends on the interpretation of “maximum extent practicable” and “insofar as possible.” If the language of the enabling statute is interpreted to direct agencies to pursue the listed goals until they are strictly impracticable or impossible, regardless of their effect on the general welfare, then it will end up favoring narrow-scoped benefits, whereas if impracticability and impossibility are viewed in light of the agencies’ duty to promote the general welfare, they need not have this bad effect.

B. State and Local Agencies

There are many more state and local public administrative agencies than there are federal agencies, and states use a variety of models for managing them.¹⁴ As an example, a recent article on Pennsylvania’s state administrative agencies notes that:

A very limited list of admirable purposes includes items as diverse and varied as building roads “to get the farmer out of the mud” (Gifford Pinchot’s campaign promise in 1930); running an ever-expanding prison system; providing benefits to the needy and the unemployed; protecting Pennsylvania’s natural resources; encouraging businesses to locate in Pennsylvania; helping to fund the public education system; protecting Pennsylvania consumers from unfair business practices; regulating public utilities; regulating the sale of alcohol; and improving the health and welfare of Pennsylvania’s citizens.¹⁵

As the list above indicates, state and local public administrative agencies frequently are given remits that are narrowly focused on promoting specific ends. As such, they are likely to run into the same sorts of challenges discussed with regard to the federal system.

C. Non-Governmental Organizations

Non-governmental and quasi-non-governmental organizations are frequently organized according to a “vertical” model, where each organization focuses on a

12. 42 U.S.C. § 7112(14) (2012).

13. 42 U.S.C. § 7112(17) (2012).

14. See Katherine Shaw, *State Administrative Constitutionalism*, 69 ARK. L. REV. 527, 532–33 (2016) (“State administrative agencies’ basic functions do not differ significantly from those of their counterparts in the federal system: they issue regulations; they adjudicate; they engage in inspections; they determine and grant benefits. . . . But there is nonetheless substantial variety within the states, and divergence between states and the federal system, on fronts of structure, practice, and authority.”)

15. Daniel R. Schuckers & Kyle Applegate, *The Rise of Pennsylvania’s Administrative Agencies and Legislative and Judicial Attempts to Constrain Them*, 81 PA. B.A. Q. 124, 126 (2010).

specific problem.¹⁶ For instance, non-governmental organizations focusing on health tend to target specific conditions or organ systems—see, for instance, the American Heart Association, American Cancer Society, American Kidney Association, and so on. This vertical model can produce problems in which each organization pursues its own aims without concern for the general good. For instance, non-governmental organizations involved in development in poorer nations have hired skilled workers away from other societal goals, potentially undermining the public good even as they promote the good of specific sectors.

II. THE GIFT OF THE MAGI PROBLEM: WHY ADMINISTRATIVE TUNNEL VISION IS COUNTERPRODUCTIVE

To see how administrative agencies could create suboptimal outcomes by ignoring wide-scope costs and benefits, consider the following example. Introducing an invasive insectivore species could reduce the incidence of insect-borne disease, but would do so at a high cost to ecosystems. A health ministry that ignores wide-scope costs and benefits would order that the predator be introduced with no concern for its ecosystems. Meanwhile, the ministry responsible for environmental protection would spend its own money to eradicate the invasive species, without any concern for the insect-borne disease deaths caused by its actions.

Agencies at such cross purposes recall not Smith's invisible hand, but rather O. Henry's *The Gift of the Magi*, in which the husband sells his watch to buy his wife hair ornaments, while his wife sells her hair to buy him a watch-chain.¹⁷ This problem is clearest on the *No Consideration* version of agency priorities, but also occurs under *Unequal Consideration* views: having the ministry of health give additional, rather than exclusive, weight to health benefits would have similarly wasteful, albeit less drastic, consequences.

The problem of agencies at cross purposes will remind philosophers of a well-known problem in decision theory, that of the money pump, a strategy for taking advantage of the preferences of agents who have cycling or time-inconsistent preferences. A recent article neatly presents the problem:

Suppose Jones has a pint of vanilla ice cream. An ice-cream trader announces that she will offer Jones the following series of trades. First, the trader will offer Jones a pint of strawberry in return for her pint of vanilla and any amount of money—Jones gets to name her price, as long as she pays something. Next, the trader will offer Jones a pint of chocolate in return for the pint of strawberry. Finally, the trader will offer back to Jones the original pint of vanilla in return for the pint of chocolate.¹⁸

16. For an overview of this model, see RIFAT A. ATUN ET AL., WHEN DO VERTICAL (STAND-ALONE) PROGRAMMES HAVE A PLACE IN HEALTH SYSTEMS? (2008).

17. See O. Henry, *The Gift of the Magi and Other Stories* (1907), https://americanenglish.state.gov/files/ae/resource_files/1-the_gift_of_the_magi_0.pdf [<https://perma.cc/7YE2-4MHC>].

18. Tom Dougherty, *On Whether to Prefer Pain to Pass*, 121 ETHICS 521, 523 (2011).

If Jones prefers strawberry to vanilla, chocolate to strawberry, but vanilla to chocolate, she is in danger of being turned into a “money pump”—a danger faced more systematically by single individual agents with uncoordinated preferences. Similarly, the Gift of the Magi problem is a danger faced by uncoordinated but interdependent agents—such as an administrative regime comprised of uncoordinated agencies.

The Gift of the Magi problem provides a strong reason not to ignore wide-scope costs and benefits. This section will evaluate several arguments for the conclusion that agencies should ignore wide-scope costs and benefits or give them less weight:

- (1) Agencies have a *role obligation* to focus on within-sector costs and benefits.
- (2) The *purpose of the goods* distributed by agencies is the provision of certain types of benefits.
- (3) The fact of *separate spheres* supports ignoring wide-scope benefits when distributing a good within a given sphere.
- (4) It would be *impractical* for agencies to consider wide-scope benefits.

A. *Role Obligations*

The claim that certain professionals are obliged to prioritize the provision of narrow-scope benefits has been most debated at what we might call the “micro-level.” This level involves direct interactions between professionals (such as teachers, doctors, or lawyers) and their beneficiaries. The role obligations of professionals are frequently seen as especially focused on promoting the interests of their direct beneficiaries, and on promoting their interests with respect to the area of life in which the professional is expert. This is exemplified by the “fiduciary” relationship professionals are supposed to have with their clients. When deciding what aid to provide her client and how zealously to defend him, a public defender is not supposed to consider the consequences for the broader community. Furthermore, she is supposed to narrowly focus on the aim of protecting his legal innocence. The same is frequently thought to be true for a community physician deciding what treatment to provide a patient, or a social worker deciding what placement would be best for a foster child.

One challenge to this model has contended that professionals should aim to promote the interests of their clients more generally, rather than only promoting their interests in the professional’s sphere of expertise.¹⁹ This has engendered a debate regarding what weight professionals such as physicians should give to values other than health.

19. Robert M. Veatch, *Doctor Does Not Know Best: Why in the New Century Physicians Must Stop Trying to Benefit Patients*, 25 J. MED. & PHIL. 701 (2000).

Even if professionals' roles favor a narrow-scoped understanding of benefits, however, public administrators likely have different role obligations. Public administrators have no fiduciary obligation to specific individuals, nor do they take a professional oath or vow to pursue narrow-scoped ends. Rather, the role obligations of public administrators are most plausibly set by the political process itself; if they have other role obligations, these—as discussed below in Part III—are likely obligations to effectively and honestly promote the public good.

The cases of public administrators who are also professionals, and of non-governmental organizations, are somewhat more complex. However, the scope of professional obligations depends on the role being played by the professional in question. Taking a personal oath or vow to pursue a narrow-scoped goal must frequently give way to the promotion of the public good: for instance, even if a public administrator has vowed to prioritize her spouse's interest above all others, her duties in her capacity as public administrator mean that she cannot use the powers of her office to promote her spouse's interests over the public good. Similarly, a public administrator who happens to also be a physician cannot prioritize health over societal aims on the basis of her personal medical oath.

B. The Purpose of What Is Distributed

The purpose or meaning of certain goods that administrators distribute may appear to support ignoring wide-scope benefits. Frances Kamm has argued that certain resources (such as medicines) should be used for the purpose for which they are specifically designed.²⁰ However, Kamm's argument faces several problems. First, no consensus exists regarding the purpose of many resources.²¹ Further, assigning moral weight to the purpose of certain resources seems vulnerable to a variety of *reductio ad absurdum* arguments. For example, it entails that there is a moral reason against an unjustly imprisoned prisoner using dental floss and toothpaste to cut through her cell bars and escape, because she is using the floss and toothpaste contrary to the purpose for which they were specifically designed. In the public administration context, it would similarly entail that there is a moral reason against using an extra ream of paper to prop open a door to a legal aid facility in order to keep clients comfortable, rather than using that paper to draft a brief in defense of a client.

Furthermore, policymakers distribute many resources that have no distinctive end. As Dan Brock observes, when the resource being distributed is money, “no direct argument that the distinctive end of what is being distributed is health seems applicable.”²² The same seems true for many other resources, such as

20. F.M. KAMM, 1 MORALITY, MORTALITY: DEATH AND WHOM TO SAVE FROM IT (1993).

21. Jessica Du Toit & Joseph Millum, *Are Indirect Benefits Relevant to Health Care Allocation Decisions?*, 41 J. MED. & PHIL. 540 (2016).

22. Brock, *supra* note 1.

legal protection or infrastructure. So even if a purpose-based argument like Kamm's can survive the above objections, its applicability is limited.

C. *Separate Spheres*

Michael Walzer contends that different distributive principles apply to different sorts of goods: education should be distributed by different rules than money, and health by a rule different from either.²³ Some have tried to use Walzer's "separate spheres" argument to support a narrow-scoped approach to benefits. For instance, Dan Brock has argued that Walzer's argument can be used to support the claim that health policy should aim to promote health, rather than to promote other societal ends. However, such an interpretation of the separate spheres approach confuses Walzer's stance that we should strive to *minimize* the ways in which distributing some goods affects the distribution of others with the much less plausible claim that we should *ignore* those effects even if they exist. Walzer argues that we should publicly fund universal health care in order to minimize the effects of health on other goods; it does not follow, and Walzer does not argue, that in the *absence* of publicly-funded universal health care, agencies should ignore the wide-scope effects of health on financial well-being. Rather, we should ensure that health care provision does not (for instance, through its costs) lead to a maldistribution of other goods.

D. *Impracticality*

Some have argued that considering wide-scope costs and benefits is an impractical task that agencies cannot accomplish. These concerns have a long pedigree in criticisms of utilitarian approaches to distributive justice: these criticisms make the case that utilitarianism is impractical as a decision procedure, because it requires exhaustively assessing the costs and benefits of the remotest and widest-scope consequences of each decision. In the context of health policy, Brock raises a similar concern:

Restricting benefit assessment to direct health benefits has the practical advantage of substantially limiting the scope of the assessment. Once we begin giving weight to the indirect non health benefits of health interventions there is no obvious stopping point stretching out in time and in non-health domains beyond which we need not go. The more extensive the consequences to which we give weight the more tenuous and unreliable our estimations of them are likely to be. We risk soon finding ourselves giving significant weight in health care allocation and prioritization choices to effects whose nature, size, and probability are highly uncertain.²⁴

However, even if restricting the scope of assessment narrowly would make the task of assessment easier, we cannot allow what we assess to diverge too far

23. MICHAEL WALZER, *SPHERES OF JUSTICE* (1983).

24. Brock, *supra* note 1.

from what we actually value. To do so would be to fall victim to the “streetlight effect” or “drunkard’s search” fallacy, exemplified by the person who loses his keys in a park, but searches for them under a streetlight outside the park, because that’s where the light is best. Even if accounting for wide-scope benefits is difficult, ignoring them will make it difficult for policy to achieve desirable outcomes.

III. WIDENING THE LENS: STRATEGIES FOR INCORPORATING WIDE-SCOPE BENEFITS AND COSTS

Parts I and II have presented potential mechanisms leading to the neglect of wide-scope benefits and costs, the problems that this neglect produces, and the reasons why this neglect is not ethically justifiable. Part III will now consider how that neglect might be remedied.

One answer I want to address at the outset is that the problem of “tunnel vision”—the neglect of wide-scope costs and benefits—is best addressed by paring back or eliminating administrative power. This argument would make the case that public administrators have the wrong incentives, and that self-interested actors in private markets would do a better job of producing the right outcomes. While more could be done to give administrators the right incentives, the privatization of public administration is a nonstarter. While private markets do well at providing many types of goods, they are weak at providing public goods and at dealing with externalities—and the problem faced by agencies is precisely that of producing public goods while avoiding externalities. Furthermore, even setting aside the problems of public goods and externalities, there is no reason to expect from economic theory that merely increasing the role of markets within a mixed economy will produce better outcomes.²⁵ This is particularly true given the myriad ways in which real-world contexts diverge from the simplifying assumptions of economic theory. Accordingly, proposals to defund or weaken public administration, or expect private-sector actors to fill in gaps, must be evaluated through real-world empirical assessment. Privatization would replace administrators who are well placed to produce public goods and who could be given incentives to consider the positive and negative externalities of their conduct with private actors who are ill placed to produce public goods and lack incentives to deal with the externalities of their conduct. Rather than throwing our hands up at the problem of tunnel vision, we would do better to first try addressing that problem within the context of public administration.

A. The OMB/OIRA Approach: Coordinated Evaluation of Wide-Scope Costs and Benefits

One approach to the problem of tunnel vision would expand the use of a single coordinating agency that examines all proposals coming from other

25. R.G. Lipsey & Kelvin Lancaster, *The General Theory of the Second Best*, 24 REV. ECON. STUD. 11 (1956).

administrative agencies and assesses their overall costs and benefits, including wide-scope costs and benefits. One model for this approach in the United States is the Office of Management and Budget (OMB) and, within it, the Office of Information and Regulatory Affairs (OIRA), which conducts an economic analysis of various proposed regulations from federal agencies. This authority has been controversial, both among critics of regulation who object to the power of an unelected agency to shape rules and among advocates for regulation who argue that OMB and OIRA water down regulations that protect the public for the benefit of industry.²⁶ Nonetheless, it has been maintained across several presidential administrations and has been praised for producing good outcomes.

OMB has published a detailed document, Circular A-4, that provides guidance on its process for review of proposed regulations. Importantly, OMB explicitly recognizes the importance of wide-scope benefits and costs, which it refers to as “side-effects and ancillary benefits.”²⁷ Circular A-4 states that assessment of regulations requires identifying “the expected undesirable side-effects and ancillary benefits of the proposed regulatory action and the alternatives,” and notes that “[t]hese should be added to the direct benefits and costs as appropriate.”²⁸ Later in the document, OMB provides a detailed framework for identifying and assessing wide-scope benefits:

Your analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking (e.g., reduced refinery emissions due to more stringent fuel economy standards for light trucks) while a countervailing risk is an adverse economic, health, safety, or environmental consequence that occurs due to a rule and is not already accounted for in the direct cost of the rule (e.g., adverse safety impacts from more stringent fuel-economy standards for light trucks).

You should begin by considering and perhaps listing the possible ancillary benefits and countervailing risks. However, highly speculative or minor consequences may not be worth further formal analysis. Analytic priority should be given to those ancillary benefits and countervailing risks that are important enough to potentially change the rank ordering of the main alternatives in the analysis . . . Like other benefits and costs, an effort should be made to quantify and monetize ancillary benefits and countervailing risks. If monetization is not feasible, quantification should be attempted through use of informative physical units. If both monetization and quantification are not feasible, then these issues should be presented as non-quantified benefits and costs. The

26. See generally Curtis W. Copeland, *The Role of the Office of Information and Regulatory Affairs in Federal Rulemaking*, 33 *FORDHAM URB. L.J.* 1257 (2006).

27. OFFICE OF MGMT. & BUDGET, OMB CIRCULAR NO. A-4, at 3 (September 17, 2003), <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>, [<https://perma.cc/ZM7G-ARPW>].

28. *Id.*

same standards of information and analysis quality that apply to direct benefits and costs should be applied to ancillary benefits and countervailing risks.²⁹

OMB also discusses different approaches to assessing risks and benefits, including cost-benefit analysis (CBA) and cost-effectiveness analysis (CEA). CBA has the easiest time incorporating wide-scope benefits, since it converts all categories of benefit to a common currency, monetary value, before comparing them to costs. However, this ease comes with the challenge of securing agreement on the monetary value of benefits. While OMB suggests several methods for valuing benefits in cost-benefit analysis, it concedes that not all benefits are ultimately amenable to quantification.³⁰ Many critics of CBA, meanwhile, have offered more searching criticisms that call its appropriateness as a tool for policy evaluation into question. They have charged that CBA relies on a controversial utilitarian philosophical framework, and that it provides an inadequate basis for its claims.³¹

CEA, in contrast, has a more difficult time incorporating wide-scope benefits. Traditional CEA assesses policies in terms of their cost per quality-adjusted life year (QALY), which means that it tends to overlook benefits that do not come in the form of quality-adjusted life-years. If we take seriously the importance of wide-scope benefits, this limitation threatens to make traditional CEA incoherent. The problem for traditional CEA is that if we consider wide-scope *costs* when deciding which health interventions receive priority, it is difficult to see why we should not also consider wide-scope *benefits*. For instance, if reducing the incidence of a communicable disease purely through spraying a pesticide costs \$5,000/QALY, while reducing it through a combination of environmental remediation and spraying costs \$7,000/QALY but also produces an extra \$4,000 worth of non-health benefits for each QALY saved (for instance, because the environmental remediation also improves the aesthetics of the ecosystem), it would be strange to focus only on the higher costs of environmental remediation while ignoring its greater overall benefits.

29. *Id.* at 26.

30. *Id.* at 27.

31. Cf. Susan Rose-Ackerman, *Precaution, Proportionality, and Cost/Benefit Analysis: False Analogies*, 4 EUR. J. RISK REG. 281, 285 (2013) (“First of all, [cost-benefit analysis] is based on a normative commitment to applied utilitarianism, and second, even given that normative perspective, it requires one to make judgments that cannot be based solely on technical economic reasoning.”); Alexander Volokh, *The Fifteenth Annual Frankel Lecture: Commentary: Rationality or Rationalism? The Positive and Normative Flaws of Cost-Benefit Analysis*, 48 HOUS. L. REV. 79, 82 (2011) (reporting that “[w]hen I teach environmental law and economics, my students usually come in . . . skeptical of cost-benefit analysis” and considering a variety of problems with the approach); Douglas A. Kysar, *The Fifteenth Annual Frankel Lecture: Commentary: Politics by Other Meanings: A Comment on “Retaking Rationality Two Years Later,”* 48 HOUS. L. REV. 43, 76–77 (2011) (“Cost-benefit analysis is a language spoken by few and dominated by even fewer. Its diction is poor though it purports to speak everything meaningful.”).

In light of CEA's difficulty in effectively incorporating outcomes that do not come in QALY terms, some have suggested adding other outcomes to CEA. This approach is frequently referred to as extended cost-effectiveness analysis, or ECEA. ECEA might, for instance, include use of scarce health system capacity among the costs of a medical intervention, and protection against financial risk among its benefits.³² ECEA approaches have been used in public health to assess the potential benefits of treating tuberculosis and vaccinating individuals against rotavirus.³³ The challenge for ECEA is to determine which benefits other than QALYs and costs other than pecuniary costs should be considered, and what priority to assign to these benefits and costs.³⁴

Regardless of whether CBA, CEA, or ECEA is employed, the value of having a coordinating agency that assesses the wide-scope costs and benefits of regulations suggests that OMB should be permitted to retain its status as a coordinating evaluator of regulations. Additionally, it suggests the potential value of introducing an actor like OMB into administrative arenas other than the U.S. federal government. Some commentators have lamented the absence of analysis of state-level regulations, and have suggested that states should create agencies analogous to OIRA:

Although it is true that, at the federal level, cost-benefit analysis is an accepted practice, it is true in part because the federal government has adopted a centralized system of regulatory review. With no New York State or New York City analogue of the federal Office of Information and Regulatory Affairs, how would a cost-benefit analysis of public health regulations happen? The members of the Board are doctors and public health specialists, not economists. The city or state could establish an analogue of OIRA, or, at a minimum, the Board could be required to consider and make findings about the material consequences—intended or unintended—of regulations that it proposes.³⁵

Happily for those advocating the extension of the OIRA model to state administrative agencies, some have found that economic evaluation of regulations is already in progress at the state level. A 2003 law review article claimed that “A recent survey of state regulatory review structures notes that some states ‘strongly encourage the use of cost-benefit analysis and cost-effectiveness analysis’ by state administrative agencies, and that ‘[o]ver half of the states

32. Dean T. Jamison, *Cost Effectiveness Analysis: Concepts and Applications*, in 2 OXFORD TEXTBOOK OF PUBLIC HEALTH: THE METHODS OF PUBLIC HEALTH 767–82 (R. Detels et al. eds., 5th ed. 2009).

33. Stephane Verguet et al., *Universal Public Finance of Tuberculosis Treatment in India: An Extended Cost-Effectiveness Analysis*, 24 HEALTH ECONOMICS 318 (2015).

34. Stephane Verguet et al., *Public Finance of Rotavirus Vaccination in India and Ethiopia: An Extended Cost-Effectiveness Analysis*, 31 VACCINE 4902 (2013).

35. Katherine Pratt, *Lessons from the Demise of the Sugary Drink Portion Cap Rule*, 5 WAKE FOREST J. L. & POL'Y 39, 101 (2015).

require agencies to assess the economic impact of all proposed rules.”³⁶ Another article observes that “states are in the middle of a wave of implementation and refinement of their rudimentary systems for economic analysis as a means of regulatory reform, with the endorsement and encouragement of institutions such as the National Governor’s Association.”³⁷

B. Emphasizing Public Administrators’ Role Obligation to Promote the Public Good

While the OIRA model of centralized review of proposed regulations for their wide-scope impacts could prevent the worst examples of the Gift of the Magi Problem, it does not prevent agencies from wasting their time and resources crafting proposed policies that are ultimately judged to be counterproductive. The development of such policies is not only wasteful at the agency level, but also places more work on the centralized reviewer and exposes that reviewer to the possibility that, under pressure from a flood of counterproductive regulations, some will be let through due to error or political pressure. Analogously, some have argued that micro-level decision makers like physicians must be empowered and encouraged to consider cost-effectiveness, because relying solely on macro-level approval bodies to contain costs will be undermined by physicians’ lack of commitment to cost-effectiveness.³⁸ In contrast, an “all hands on deck” approach would empower actors at every level of the scientific and regulatory process to promote the use of cost-effective interventions.³⁹

One way of implementing an “all hands on deck” approach would be to encourage public administrators to embrace a code of professional ethics in which they promote the interests of all, rather than furthering the aims of a particular sector. The Association for Public Administration has promulgated such a code, directing its members to be committed to advancing “the good of the public as a whole, taking into account current and long-term interests of the society” and that they must also “[s]ubordinate *personal interests and institutional loyalties to the public good.*”⁴⁰ This language strongly suggests that public administrators should prioritize the public good over the good of particular policy sectors. (Interestingly, the “good of the public as a whole” clause departs from an earlier version of the code.)⁴¹ The code also addresses the

36. Matthew Adler, *Risk, Death and Harm: The Normative Foundations of Risk Regulation*, 87 MINN. L. REV. 1293, 1392 (2003); see also Richard Whisnant & Diane DeWitt Cherry, *Economic Analysis of Rules: Devolution, Evolution, and Realism*, 31 WAKE FOREST L. REV. 693, 694 n.2 (1996) (collecting state statutes).

37. Whisnant & Cherry, *supra* note 36, at 695.

38. Peter A. Ubel & Robert M. Arnold, *The Unbearable Rightness of Bedside Rationing: Physician Duties in a Climate of Cost Containment*, 155 ARCHIVES INTERNAL MED. 1837 (1995).

39. Ezekiel J. Emanuel & Andrew Steinmetz, *Will Physicians Lead on Controlling Health Care Costs?*, 310 JAMA 374 (2013).

40. AMERICAN SOC’Y FOR PUBLIC ADMIN., PRACTICES TO PROMOTE THE ASPA CODE OF ETHICS (2013), <http://www.aspanet.org/aspadocs/practices%20with%20revisions.pdf> [https://perma.cc/FZ3J-292N].

41. See *id.* at 1.

danger of interest group pressure when it directs administrators to “[b]e prepared to make decisions that may not be popular but that are in the public’s best interest.”⁴²

Some may doubt that ethical codes can do much to influence behavior. There is a small amount of empirical literature on this question, most of which focuses on corporate rather than professional codes, and which provides some support for the idea that ethics codes correlate with behavior change.⁴³ However, as a conceptual matter, we should expect that moral commitments frequently can override pecuniary incentives individuals might have. As Amartya Sen points out, the “rational fool” who strictly maximizes individual welfare interests is a poor model for actual individual behavior, which frequently reflects moral commitments.⁴⁴ Rather, people are frequently honest and civic minded even when they have no pecuniary motivation to be, particularly when their identity involves a commitment to the relevant sort of civic-mindedness.

C. Greater Cross-Agency Collaboration

Another way of encouraging agencies to consider wide-scope impacts at an earlier stage would be to bring individuals and groups who might be affected by those impacts into the process of policy development. Many have argued for “health in all policies” initiatives, in which policymakers from non-health sectors are directed to consider the health effects of their proposals.⁴⁵ Such initiatives should be paired with similar “all policies in health” efforts, which empower health policymakers to consider the effects of their proposed policies on the distribution of non-health goods and give them the tools to assess those effects.

Going beyond the case of health, a case could be made that part of the deliberative process within an agency should include representatives from other agencies, who can bring their knowledge about ancillary effects to the table. The same could be done through interaction between nongovernmental organizations. Introducing a broader range of perspectives could help to avoid tunnel vision and attune decision makers to the wider consequences of their choices.⁴⁶

42. *Id.*

43. Margaret Anne Cleek & Sherry Lynn Leonard, *Can Corporate Codes of Ethics Influence Behavior?*, 17 J. BUS. ETHICS 619 (1998); Donald L. McCabe, Linda Klebe Trevino, and Kenneth D. Butterfield, *The Influence of Collegiate and Corporate Codes of Conduct on Ethics-Related Behavior in the Workplace*, 6 BUS. ETHICS Q. 461 (1996).

44. Amartya K. Sen, *Rational Fools: A Critique of the Behavioral Foundations of Economic Theory*, 6 PHIL. & PUB. AFF. 317, 332–35 (1977).

45. Iiona Kickbusch, *Health in All Policies*, BMJ (July 3, 2013) <http://www.bmj.com/content/347/bmj.f4283.full> [<https://perma.cc/RS4P-VS26>].

46. For two different approaches to this goal, see Jason Marisam, *Interagency Administration*, 45 ARIZ. ST. L.J. 183 (2013); Brett McDonnell & Daniel Schwarcz, *Regulatory Contrarians*, 89 N.C. L. REV. 1629 (2011). Marisam reviews and argues for greater collaboration between agencies in policy development, while McDonnell and Schwarcz argue for “contrarian” observers within agencies whose analysis serves to make the agency’s ultimate work product better.

D. Performance-Based Budgeting

Hausman claims that the philosopher and economist John Broome endorses the approach of “defining the mission of the various state sectors . . . to be to promote well-being by manipulating the particular causal factors within the purview of the particular state agency.”⁴⁷ While Hausman rejects Broome’s approach of regarding general well-being as the ultimate end and an agency’s sectoral focus as merely a means to that end, I find that approach attractive, and suggest more speculatively that performance-based budgeting could be a way of developing it.

Under performance-based budgeting, health policymakers, for instance, will develop proposals for employing health care to improve the common good; policymakers in education will suggest employing educational resources to do the same. Importantly, however, all policy actors will frame their proposals in terms of contribution to the same ultimate end. Proposals selected for implementation will then be evaluated in terms of their contribution to the public good. Under performance-based budgeting, “[s]uccessful programs may be rewarded by continued funding, while unsuccessful ones must improve or risk losing their funding to other programs.”⁴⁸ Despite regulatory efforts to embrace performance-based budgeting, the program has not been widely adopted on the federal level.⁴⁹

CONCLUSION

Many aspects of current practice encourage public administrators to adopt a tunnel-vision approach that attends only to one aspect of the public good: the benefits (and harms) that relate closely to the domain in which the administrator is expert. In contrast, effects in other domains are frequently ignored entirely, and generally given a much lower priority.

This article has argued that the tunnel-vision approach should be replaced with a wider lens. Administrative agencies and public administrators should ensure that the evidence base for interventions considers their wide-scope costs and benefits, and should put more resources into conducting empirical studies that take a broad approach to social costs and benefits. Agencies and administrators should also collaborate cross-sectorally in order to learn about and more effectively weigh the impacts of their proposed intervention. An approach to policy that does these things will not invariably maximize outcomes in any one sector, but it will more effectively improve the lives of the individuals it serves.

47. Hausman, *supra* note 2, at 5.

48. C. Putnam, *Commission on California State Government Organization and Economy (Little Hoover Commission)*, 15 CAL. REG. L. REP. at 27 (1995).

49. Seth D. Harris, *Managing for Social Change: Improving Labor Department Performance in a Partisan Era*, 117 W. VA. L. REV. 987 (2015).